PROCEEDINGS AND DEBATES

OF THE

CONVENTION

OF THE COMMONWEALTH OF PENNSYLVANIA,

TO PROPOSE

AMENDMENTS TO THE CONSTITUTION,

COMMENCED AT HARRISBURG, MAY 2, 1837.

VOL. X.

Reported by JOHN AGG, Stenographer to the Convention:

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

HARRISBURG:

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1838.

PROCEEDINGS AND DEBATES

OF THE

CONVENTION HELD AT PHILADELPHIA.

FRIDAY, JANUARY 19, 1838.

The PRESIDENT laid before the convention, a communication from Messrs. Baldwin & Hazleton, inviting the members of the convention to attend and witness an exhibition of the construction and performance of Dr. Baldwin's rotary steam engine, on the 20th instant.

Which was read and laid on the table.

Mr. KONIGMACHER, from the committee appointed to attend to the distribution of the English and German Debates, and the English and German Journals of the Convention, reported the following resolution, viz:

Resolved, That the English Debates, German Debates, English Journal and German Journal of the Convention, shall severally be distributed according to the resolution of the 11th of May last, in the following manner, viz:

To each delegate to the convention, including those who have resigned, one copy each, making	136 copies.
Each secretary of the convention, including Samuel A. Gilmore, resigned, one copy, making	4
The sergeant-at-arms and door keepers, including Daniel Eckles, resigned, each one copy,	4
Each stenographer in the employ of the convention, one copy, making	5
The Law Association of Philadelphia, one copy,	1
The Atheneum of the city of Philadelphia,	1
The Franklin Institute,	1
The Philadelphia Library Company,	1
The printers of the Debates, each one copy,	2
The governor and heads of departments of state, one copy each,	6
The state library at Harrisburg,	13

The senate and house of representatives, four copies each,	8
The prothonotary's offices of the several counties, one copy each,	53
The commissioners' offices of the several counties, one copy each,	53
The congressional library at Washington,	5
The governors of the several states, each one copy, making	26
The remaining copies thereof, to be equally divided among the members of the Convention, to be by them, deposited for public use, in such public libraries, lyceums, and other places, as they shall deem most beneficial and proper,	931
	1250

Laid on the table, and ordered to be printed.

THIRD ARTICLE.

The convention resumed the second reading of the report of the committee, to which was referred the third article of the constitution, as reported by the committee of the whole.

The question being on the motion of Mr. MARTIN, of Philadelphia county, further to amend the first section, by inserting the word "white," before the word "freeman," where it occurs in the first line, and also, by inserting the word "white," before the word "freemen," where it occurs in the seventh line.

Mr. MERRILL, of Union, rose and said, he had never professionally, or in any other way, met a question attended by so many embarrassing circumstances. Of the consequences, some are near and some are afar off—some are certain, and some are doubtful. He could hardly bring his mind to embrace them all. It was not alone a southern question. If we wish to equalize the coloured race, we must make all slaves. There must be no free states. This cannot be done. It would be unjust to do so. These people are here among us, and they cannot withdraw themselves from our borders. If there could be devised any feasible, practicable method to withdraw them from our borders, it would be most desirable to do so. None such is proposed. A large portion of the coloured people have been born here On what terms shall they continue to live? Approaching the question now before the convention, who ought to be voters? He could not, with all his reflection on the subject, give an answer equal to what is contained in the constitution of 1776. "All freemen, having a sufficient evident common interest with, and attachment to the community, have a right to elect officers," &c.

He had found in no constitution, the idea better or more truly expressed, than it is here. This definition must be acceptable to every member of the convention. He did not believe that any one could be found in this body, to deny the truth of this proposition. Many might differ as to the purpose, and propriety of its application. Had this proposition any bearing on the question? Viewing the proposed amendment, as exclusively confined to the white citizens, and as determining a rule by which

they are to be governed, and that, hereafter, a rule may be established for the coloured people, this proposition has a direct bearing on both classes. He took it, then, that the insertion of the word "white," could not operate as an exclusion of the blacks, but merely of those who come under the amendment made in committee of the whole. He presumed, there would be another rule adopted in reference to coloured people. As far, therefore, as the introduction of the word "white" goes, it is not so material whether the words are put correctly together. It is not intended to take away any rights.

Taking it for granted, that there will be one rule for the whites, and another for the coloured people, the provision inserted in the constitution, by the adoption of the word "white," is intended to relate to the former. Is it a clear word, free from all ambiguity? It appeared to him, to be full of difficulty; for there are many men, nations of men, naturalized, who could not be called *white*. There is a great variety of shades, and an objection made at the polls, that a dark coloured man could not vote, might lead to bloodshed quicker than any thing else. Why not then, introduce a special provision for coloured persons? What is meant by the African race?

We ought to make the constitution as distinct as possible on this subject, so that the rights of all may be defined with precision. The same rule should not be applied to both races. When men come here, because there is no other place to which they can go, it would be well to require some stronger evidence of their attachment to our interests and institutions, than we would ask from others, before they should be permitted to vote. It is unnecessary to make this the subject of a special provision. And if the coloured people are not to be allowed to vote, the exclusion could be provided for by an addition to the section, and not in this way. Therefore, either way, the insertion of the word "white," cannot do much harm. What are the objections to certain portions of the coloured race—to such as have a sufficient evident common interest with, and attachment to the community? It is said they have no natural rights. Have we any?

We are not, by the laws of nature, met here to amend the constitution. It is matter of concert. It is asked, why white females are not permitted to vote? There can only be one reason. Those who made the constitution we have lived under, were married men, and did not wish to be outgeneralled. The question, then, cannot be placed on the ground of natural rights. We have no natural rights. We are making a rule of government, and a government, founded on the laws of nature, would be a return to savage life, where every man would do what he pleased, making the law for himself. What is to be done with those who have a common interest and attachment, among the coloured people?

He had no prejudice in their favor. But they are here, and this question must be settled in some way: and the question of slavery and slaveholders, is wide of this. Whenever a coloured man settles here, and becomes the owner of a part of the soil, what do republican principles teach us ought to be our course? Social intercourse is asked for. The rights of liberty and property, and the pursuit of happiness are guarantied to all. But social intercourse, is a matter to be regulated by the taste, and

the will of those who compose particular sections of society. No law can interfere there, so long as the laws of the state, and the public morals, are not violated. But, because, there exists no social intercourse between different races of men, it does not follow, that political rights are to be denied to one, more than to the other. He did not desire to see any black men admitted to vote, who had no common interest and attachment. But we ought not to say, we will deny to others any of the liberties we enjoy. It requires the oath of an individual, that he is attached to our institutions, and the oaths of two citizens to confirm it, before a certificate of naturalization can be obtained. He would have no other test than this.

If the feelings and interests of an individual are such as to divide his attachment from ours, he ought not to be permitted to vote. If a coloured man has lived among us until he has acquired a right of soil, ought he not to be admitted to the polls—not because it would please this man or that man, but because he has shown himself worthy to be admitted among us? Would any one ask to be admitted on any other principle? He trusted not. The coloured men are declared to be a branch of the African stock—a degraded people, and we are asked to adopt a provision which will continue their degradation forever. Is this right? Ought we to do so? Can we improve their condition? Shall we say, you are good citizens and behave well? Is it offering them a great interest to do what they wish? It was supposed by some that this could not be done without great injury to others. He did not think so.

We offer inducements to certain men to acquire character. Those who do not acquire it, lose the reward. But is any thing done to hinder them from obtaining it? No. They refuse to exert themselves, and therefore they cannot gain the prize. If all alike were to behave equally well, all would be entitled to equal enjoyment. But this is not the case, and they who do not behave well cannot be admitted to equal enjoyment.

And why are we to make a difference between the blacks, in this respect, any more than among the whites? It is said, force will be used to prevent the coloured people from going to the polls. The mob, he acknowledged, had, in some instanees, been stronger than the law, and he could not suppress his astonishment at some of the modern doctrines in relation to mobs. The cause of mobs is the defence of rights. It is only necessary to give up all rights, add there will be no mob.

At Charlestown, the poor inhabitants of the nunnery walked out, and the people set fire to the building: there was no need of a mob to do that. This is the modern doctrine. It has been said, in some places, that the mob was the law, the voice of the mob the voice of the law, and that where there was no law, the mob could make one: and that when people were bold enough to defend themselves, it was alleged as a crime against them that they did not regard this law, and they and their property have been destroyed. He denied that this could take place in Pennsylvania. He denied that the people here, in Pennsylvania, could be made to assemble in mobs to put down the law of the land. We in this state value property too high, and we know our privileges too well. You never could raise any considerable number here to interfere with the course of the law of the land. There is no danger of this. The existence of such a danger any where, proves that you may have the forms of republican government without the spirit.

Could it be of any great importance that men should have the right of voting, when voting gives no security. A vote, under such circumstances, would be a mere deception; as it was among the soldiers of France in 1800, when they were requested to vote for making Napoleon Emperor, and were told by their commanding officer, that they were at liberty to vote as they pleased—aye or no—but that if he found any one voting "no" —he should immediately order his head to be stricken off.

When the law ceases to protect the voter, then the vote becomes of no value. The worth of the right of suffrage is destroyed, if it cannot be exercised, because there is no protection against the mob. If the time should ever come when a man cannot vote without fear of a mob, then he will be better without the vote, and our true course would then be to get a different form of government, where a more efficient protection would be offered to its citizens.

Sir, this argument cannot be used here. We sit here as a deliberative body. We sit here for the purpose of coming to some conclusion, and to tell us that our arguments will be all in vain, is not consistent with reason, but, decide as we may, still there is a power without, not governed by any of the influences that operate upon us, and all our acts will be subjected to their approval or disapproval.

A commander of an army may perhaps do well enough to say that it was an improper order, when one was sent to him contrary to his opinion, but still when it was come to, after mature deliberation, it was his duty to obey.

As to this mob spirit which had been spoken of so frequently, he regarded it not. He thought that every man could be protected, not only throughout the state, but even in the county of Philadelphia. This was no new doctrine with regard to the rights of mobs and their power to resist the laws and constitutions of the land—our fundamental laws—as well as our special enactments, but it was a doctrine which he repudiated, and hoped to see it frowned down by the friends of law and order.

He thought there ought to be some provision in the laws in relation to these people of colour, and it should be so plain and specific that no difficulty can arise from it, but he was not prepared to say, that the insertion in the constitution of this word white, would have the effect which some gentlemen expected, with regard to the right of people of colour to vote. He thought if they had the right to elect, they also had the right to be elected, and he was willing to go so far as to make provision that your legislative halls should not be filled with these people. He would go so far as to say that you should not be compelled to sit and legislate with them, but while he would do this, he would not do any thing which would be oppressive to them. He would have the law plain and explicit, so that it could not be misunderstood, but he would not permit the opinions of a few madmen to overrule the law of the land. All the people of our commonwealth should be made to submit to the laws of the country, and that spirit which stirs up mobs and confusion, should be put down by an intelligent people.

Mr. Forward said, that he knew of no subject in regard to which he felt a stronger desire of giving to the body those views which were to

govern his vote than this. He was sure it was one which, although it had but partially engaged the public attention of the country, still would shortly be made a question of very general interest; and, whatever this convention may do in relation to it, will be examined by the people with great care and attention.

For this reason, he was desirous of expressing to the convention the views which he entertained on the subject. It was difficult to take a stand on either side of this question without being subject to imputations of some description or other, and unjust ones too. On the one hand is the subject of modern "abolition," and on the other we hear of high pretensions being made by those in favor of colonization. With respect to the first—abolition—he knew very little about it, but if its pretensions were what he had heard, he certainly could not participate in the feelings of those that belong to it, but from what he knew of some of those calling themselves abolitionists, he must say they were as just and upright a people as he ever knew.

In some parts of the Union, however, he had heard that they were opposed to that institution, to which he looked as the lever by which slavery was to be overturned in this country. He alluded to the colonization societies—and if their plan succeeded, and the coloured people were found capable of self-government, there must sooner or later be an end of slavery in this country; for the institution of slavery among us, was, in his opinion, on a false basis, and could not endnre.

He had no doubt if that was demonstrated which was yet unsettled—that is, if it was made to appear—as it was now having a fair trial—that the coloured population were entirely capable of self-government, that slavery would be yielded up, and better feelings and better principles will universally prevail throughout this extensive country.

With regard to the views of the abolitionists, in connexion with the institution of slavery in the south, he knew but little. He knew, however, that we had a national compact, in which the people of Pennsylvania were a party, and he knew, as far as he was concerned, that he would strictly and scrupulously adhere to that compact, and to the government under it, and he would give no aid or countenance to those who would sever the sacred compact of our Union.

He conceded the right of the southern states to be secure in all their institutions, and admitted that we had nothing to do with them. They had the sole right to manage their own concerns as they saw fit, and he would have no hand in doing any thing further than addressing arguments to the reason of those who had the only right to act in the matter.

But he would come directly to the question before the convention. It was now proposed to insert into the constitution a word of doubtful meaning, because, in his judgment, it was impossible to erect a standard by which the two races were to be judged of and separated. There was a great variety of shades, and if you insert this word "white," how are you always to determine with accuracy, who will constitute that class. He thought it to be entirely too doubtful a word to be inserted in the fundamental law of the land.

He had heard it asserted, with much confidence, by some of the gentlemen, that these coloured people never had enjoyed the right of suffrage

in Pennsylvania, and that they never ought to enjoy it. He would ask, however, for what reason ought they not? Are they not human beings? Certainly they are, and some of them are intelligent men. You do not put it upon the grounds of their natural vice or ignorance, and there could be no other good grounds on which to put it. If you erect this barrier in the constitution, no natural abilities or acquirements, will ever enable any of these people to enjoy the rights of free citizens, although there have been many instances of great capacity evinced by many of them.

There has been found, and may be found again, among the coloured population, those of extensive knowledge, and much virtue, yet if this amendment is adopted, no matter how virtuous—no matter how wise any of them may be—still they are forever excluded from this right, so dear to freemen, in a land of free institutions.

Many coloured men are men of extensive property—as has been shewn by a memorial from his own district—and bear the burdens of state equally with your other citizens, and would you also exclude this portion of them, by the insertion in the constitution of this word "white." This, it seemed to him, would operate most onerously, if it should be adopted, and might lead to much difficulty and disturbance.

You do not prohibit a man from voting, because of his dishonesty or bad character, and why make this distinction in relation to these people? A man may make a fortune by defrauding his neighbors, and by the worst of crimes, and may go to the polls with your most respectable citizens, and exercise the right of suffrage; but, the honest and upright man, with a dark skin, is to be excluded.

This, he looked upon as being entirely wrong, and he would never lend himself to a principle calculated thus to confound all rules of vice and virtue.

Is it because one man is rich and another is poor, that you give one a vote and refuse it to the other? No, sir, that is not the reason, but it is because one man is coloured, and the other is not. It is because one man has a fair skin, and another a dark one. It is nothing belonging to his moral nature. The one may be of the worst description of character, and the other the most honest and upright person. Then the one has a dark skin and the other a light one, and the one is entitled to every political privilege, and the other is debarred from it.

He thought there ought to be some respect paid to virtue and knowledge wherever they might be found, and he thought that a bad principle which threw these in the shade. But, he wished to examine this subject a little farther. He would argue the question in every way that it was in his power with gentlemen, in order to come to correct conclusions. Were gentlemen about to say that, because a man was a black man, no matter what his character and conduct may have been, he should not enjoy the same rights which other men enjoyed?

He thought gentlemen had better be a little cautious in relation to this matter, before they come to such conclusions. It was a monstrous injustice thus to deprive men of their rights, and it was impossible to say what the consequences might be. Was there any more reason why these peo

ple should be excluded from the right of suffrage, than that they should be excluded from the right of holding property within this commonwealth?

But, was there any truth in the doctrine that, because you do not associate with these people, you cannot permit them to exercise the right of suffrage? This, in his opinion, ought not to be made a ground of exclusion.

Why, sir, will you associate with the white man, who is sunk in the lowest depths of vice? Will you associate with the habitual drunkard? Will you make a man a companion, who has defrauded the widow and the orphan of their all? No, sir. Still, do they not come to the polls on an election day, and exercise their rights on an equal footing with the best of you? and you cannot exclude them from it.

Why, sir, the meanest scavenger in your street comes to the polls along side of the most respectable gentleman in the commonwealth, and you take his vote there. Was it then true that, because you cannot associate with them, you are their natural enemies, and that there must be an ever-existing hostility and enmity between those who cannot associate together? Are there not different ranks in life? Certainly there are. Well, are they natural enemies? Do we not find society divided off into different grades and ranks, and the one not associating with the other, still, are they not all entitled to the same political rights and privileges?

A man may not be willing to associate with me for some particular cause, but is that any reason why I should be excluded from any of my political rights? You do not take a man's vote from him because he labors in the streets, or is a drunkard, or is a man of immoral character, and why will you take away the right of these people to vote, when many of them may be persons of great intelligence and many virtues?

By this assumption of power, you claim a moral superiority over these people. You claim the right to rule them, and you impose upon them the duty of obedience, and it is thus that you create differences which never can be reconciled.

This seemed to be the idea of many members of this body, but, in his opinion, it was a false idea, and one which ought not to be cherished by the intelligent citizens of this commonwealth, or any where else.

Give the black man his rights, and you may make him a contented, and perhaps a useful citizen; but, take away from him those rights which belong to him, and his bosom will rankle with hate, and discontent will prevail amongst them. Do him but that justice which he has a right to claim, and he will be satisfied, because he has no right to claim to associate with you in the daily intercourse of life.

The black man does not, and will not claim to associate with you, but he does think that he is entitled to certain political rights, such as the right of voting at an election, where he has paid a heavy tax to the support of your government, and if you refuse him this, he will look upon you with jealousy and hatred, and upon your government, as a government of injustice and oppression.

How is it now with regard to these people? Is there any natural enmity existing between the white and the black race in this common-

wealth? Do you find the black man in array against the interests of the white man?

No, sir, you find them submitting to the laws, and yielding to the prejudices which prevail in relation to them, and so long as they enjoy common rights they are satisfied, and so they ought to be satisfied. But, there is nothing which will tend more to create a mutual hostility between the white and the black race in this commonwealth, than to deprive them of those rights which it is now attempted to take away from them, for it would be looked upon by them as a severe oppression, and they would consider that they were compelled to acknowledge obedience to you.

But some gentleman had expressed very serious apprehensions, lest the black, in the course of time, should out-number the white race in this commonwealth. Well, let us examine this matter a little. How has it been in this commonwealth from 1800, down to the present time? Whether has the ratio increased most in the black or the white race? Sir, the census will determine this matter accurately, and it shews that the gain has been in favor of the whites, and that the black race has decreased in proportion.

We find, too, that the deaths among the black population have been in a greater proportion than among the whites. The number of deaths in the white population had been but as one to forty-two, while among the blacks it had been as one to twenty-one, being double. This shewed that the ratio among the blacks was fast diminishing in this commonwealth.

But, again, it had been said that great numbers would come in from other states, if this amendment was not adopted. This, perhaps might be the case, but then we might so modify our laws, as to require those that come in, to remain a certain number of years, before they would be entitled to these privileges, and if the time was long, it might operate as a preventive to their coming in in very great numbers.

You might say that those who come in from a neighboring state, should remain three, five or seven years, before they should enjoy this privilege, and this could not be looked upon by them as any very great hardship, because if they were not satisfied with it, they need not come into the state.

This, he might be willing to do, but when you tell him that a man's colour ought to exclude him from the exercise of the right of suffrage, he could not go with you.

He would now examine another reason which had been pressed upon the convention, as an argument in favor of this amendment. It had been said by some gentlemen that you will have a black representation in your legislature, from those districts in which a majority of those people reside. But, supposing even this to be the case, it would not deter him from doing what he considered to be his duty here. Suppose the people of a particular district in Pennsylvania should find a man like one or two he might name—a man of liberal education, of great natural talent, and of much property, who was more capable, or at least as capable of representing them as any other person, would you deprive the people of the

right of sending such a man to your legislature? Would you prohibit them from ever selecting such a man to represent them any where? He knew there was a great prejudice in the public mind in relation to these people, and he believed there was more of it in this country than in perhaps any other.

It was a singular fact, that there was some years ago, a black man in this country, by the name of Smith, who asked admission into an American University, and it was refused to him; and, afterwards, he went to Glasgow, in Scotland, and was there received and graduated, and took all the degrees which a man of the most liberal education took.

But, still in this country, we see black ministers entering the pulpit and addressing a white congregation, and no man feels ashamed to listen to him, and even in the southern states where slavery exists, you see the black man and the white man sitting down together at the same communion table. And why was this the case? It was because they were both equal in the eye of their Creator, and they were both in pursuit of the same grand object.

The Savior of the world suffered for the redemption of the black man as well as the white man, and a christian who would think of refusing to commune with the black man here, must not expect to inhabit the same abodes with him hereafter. Sir, they dare not refuse in the sight of their Creator, to put themselves on this equality with those people.

He knew, however, that prejudices existed in relation to these people, and he respected those prejudices, because they were common to us all, but he was, at the same time, not disposed to permit these prejudices to deprive any man of his rights. He had no idea of carrying this prejudice so far as to deprive the black people of this commonwealth of the right of suffrage, because they enjoyed the protection of our laws. Personal liberty was as dear to the black man as to the white man, and the right of suffrage was equally dear to both.

Why do you give a man the right of suffrage at all? Is it because he has or has not the right of protection? Has the black man of property, not an equal stake in the government with you? And is protection not equally dear to him? Does your colour give you a larger interest in this matter than it does him? If the black man be as intelligent, as virtuous, and as patriotic as you, no man can give a reason why he ought not to enjoy the right of suffrage on an equality with you. But, say gentlemen, he is an inferior being, and therefore ought not to enjoy this right. He wished, however, that gentlemen would shew him how and why these people were inferior. Are they inferior with regard to the offices and duties of life? There is no duty which you do not exact from them, and they are subject to all the obedience to rules and law, which the white man is subject to.

Has the black man any excuse for disobeying the laws? He has none whatever. All men are presumed to have a sufficient knowledge of the laws, and the black man is not exempted when he commits any offences against those laws. Can he exonerate himself, by saying that he was ignorant of the law? Certainly he cannot. Then he is on an equality with you, as to the duties of life and obedience to the laws.

The same measure of obedience is exacted from him and from you. In all your laws—in every form of your government, and in all your institutions, you exact of the black man, the same responsibilities, moral and political, that you do of the white man, and when you come to the right of suffrage, you tell him that he is not equal with yourself—you tell him that he shall not vote—and why? Can it be because he is an inferior being? Certainly not—because you make him equal to you in all moral responsibilities.

It is a contradiction—it is a farce—it is an insolent pretension to talk about inferiority in the right of government. If this principle is to be cherished here, why carry it out and lessen the duties of these people, and excuse them from the duties of your laws, when you deny them a participation in them.

Do not require obedience of them, and deny them all the benefits arising from the laws that govern them, for this can be looked upon as nothing more nor less than a flagrant violation of all correct and sound principles. If you excuse him from the duties imposed by your laws, and deny him the exercise of the right of suffrage, then you may put him on an equal footing with the white man, but otherwise you cannot deprive him of this right.

What was this doctrine which we had heard asserted on this floor as to the inferiority of these people? Was it not the old ultra aristocratic doctrine, that man was incapable of self-government. You assert that these people are incapable of self-government, and claim the right of ruling over them.

This was the true regal principle—and it was that principle which always ought to be frowned down in this country, and especially in this state.

Why, sir, you would scarcely find such a doctrine as this maintained in South Carolina. You might find it in some of the speeches of gentlemen on this floor, but you certainly would not find it in North Carolina or Virginia.

This doctrine was never held to by Jefferson or Washington or Pinckney. It has, however, on some occasion, been held in South Carolina, and it has by some means or other, found its way into Pennsylvania.

This incapacity for self-government was a dangerous doctrine to be put forth in this country, because if it is held that one description of men are incapable of self-government—it may also be held that another description are equally incapable.

Let those who are in favor of this amendment speak plain, so that we may know what they mean. If they can make it appear that these people are incapable of self-government, then let them insert the word "white," but when they do this, they assert that they are incapable of self-government now or hereafter.

This, sir, will be a strong doctrine, for he himself knew many intelligent coloured people. He had known some with an education which would fit them for any situation in life; and some of them with talents

of a very high order. But, if you hold to this doctrine, that these people are incapable of self-government, because they have been slaves and are degraded, you must recollect that you insult the white man as well as the black, because many of them have been much degraded, and might be supposed to be incapable of self-government; besides, you destroy all the hopeful prospects of those most excellent institutions—the colonization societies.

If you establish the inferiority of the black race, you insult some of the white race. Sir, slavery existed among the Greeks and among the Romans, and who were their slaves? Was it the Ethiopians, or the men of dark skin? No, sir, it was white men that were held in slavery, and were they not as degraded, and as ignorant as our negro slaves? Let gentlemen read the history of slavery as it existed in those ancient countries, and they will be able to determine this question, as to which was the most degraded. The slaves in those countries were not only degraded as low and lower than our slaves, but the matter of life and death was in the hands of their masters. In many other countries were white men held in slavery, and would you say that this race was incapable of self-government.

If you go to Russia, at this time, they will tell you that the serfs are an inferior people. Also, in Germany, you may learn that they look upon a portion of their population, as an inferior order. There are there the high born and the low born, and of course with them the one is inferior to the other.

Slavery has existed among most nations, and wherever it does exist, those who are held in servitude are looked upon as an inferior order, whether they have black skins or white skins, but this was no evidence of their inferiority when they were released from servitude. They may then become as intelligent, as upright, and as virtuous a people as any other.

It seemed strange to him that gentlemen should hold a doctrine so insulting to a great portion of the community, and as well to the white as to the black race of people.

A slave not capable of self-government! They may be capable of looking into the nature of rights, and of judging between right and wrong.

Mr. CUMMIN rose and asked leave to explain. The gentleman from Allegheny, (said Mr. C.) has stated that I contended that the slavery which existed in the world, in ancient days, was a slavery over the blacks. I said nothing of the sort. What I stated was this—that slavery was an institution as ancient as the organization of society; and I said moreover, that this slavery which now exists, proceeded from that country which Ham, the son of Noah, settled with his progeny. And this is all the length I went in support of slavery.

Mr. FORWARD resumed.

They are said to be incapable of self-government, and yet the slave-master ascribes to the slave, the possession of those very attributes on which rests his claim of subjection. Incapable of self-government! Does not this make him answerable for his actions.

The gentleman from the county of Philadelphia has told us that it is no slavery—that the fact of one man laboring for another, is no slavery at all. Does the gentleman speak from experience? Did he ever submit to that condition himself, or did he ever agree that he or any of his friends should submit to it? Labor without profit and without hope—and, says the gentleman that is not slavery. Yes, sir, and he would rather be a southern slave than a northern free black. Why, how can this be? Is freedom nothing? Has it no value? Is there no blessing in it? Is it a mere empty sound, signifying nothing? It is a strange circumstance that those men who justify slavery, say that the condition of the southern slave is better than that of the black man at the north—because he may live as well. And is that all? Is there nothing beyond that? Have we no higher object to aim at? Does eating and drinking constitute the happiness of life? Those who advocate these doctrines, say nothing of liberty—not a word. It is eating and drinking—and money and power. In the north and in the free states, the sentiment is different. What, let me ask, is poverty? In the country in which it is our lot to live, poverty is at least sufferable, so long as there is liberty with it; so long as there is no lash with which we may be beaten—so long as there is no man to interpose between the husband and the wife, the parent and the child. Poverty, I say, under such circumstances as these, may be endured. Yet in the very eyes of these men, who at one time cry out "liberty or death," at another, liberty ceases to be of any value. It ceases to be reckoned amongst the blessings, or even amongst the satisfaction of life. It is eating and drinking, and money and power.

Mr. President, I am able only to give you a brief sketch of my sentiments on this subject; I refrain from entering into any extended debate upon it. I say that I will not, by word or action of mine, here or elsewhere, exclude a man from the exercise of the right of suffrage, simply upon the ground that he has a dark complexion.

I will not, by any vote or action of mine, exclude a man from the exercise of this privilege, because he may be said to belong to an inferior race of beings. My views in this matter are all regulated and controlled with reference to the virtue, to the intelligence, and to the patriotism, of this unfortunate people.

I find that they are regarded as morally responsible beings, and that we never excuse them for any offence they may have committed against the laws of the land, on the ground that they are an inferior race of beings. I find this to be the case, and I infer from this, that the rights of the coloured man are as precious as my own, and that the government under which he lives may influence his happiness as much as it may influence my own; and that, therefore, if he has equal intelligence, virtue and patriotism, he has the same right to vote as I myself possess. I set up no claim to superiority in the eye of Him who created both, and I dare not place my vote on that ground.

Mr. WOODWARD, rose and said, Mr. President:

Who ought to be voters in Pennsylvania? Or, in other words, who ought to have the political control of our government? This is a question of the first impression, and of great magnitude. When you have established your government, and distributed its powers among the several departments—legislative, executive, and judicial—it remains to decide who shall control and direct that government. The machine may be well supplied with all the necessary wheels and springs, but, in preparing and fitting them, no question can arise of so great moment, as who shall have the regulation of its motions and direction, when it is finished and ready for use. This question has now to be answered, with reference to two distinct and separate classes of men, the whites and the blacks; and from all the reflection I have been able to give the subject, I am prepared to say, the political powers of this government ought to be exercised exclusively by the whites. In coming to this conclusion, sir, I have endeavored, as far as possible, to divest my mind of all the popular prejudices against the African race, whom we have among us. They deserve my sympathies, and they have them; but I feel unwilling to surrender this government, in whole, or in part, into their keeping, and I am therefore, prepared to vote for this amendment, and to say in our constitution that the voters of Pennsylvania shall be *white* freemen.

The reasons for this vote, must be stated, but I cannot explain them clearly, without noticing a few prominent and undoubted facts, which attended the introduction of negroes into Pennsylvania, and the other American colonies, and which now mark their condition here. The first fact, then, to which I invite the attention of the convention, is, that the negroes of Africa were brought into these colonies, by the English. Whatever the sin was of seizing the defenceless African, of tearing him from his home and country, and carrying him into hopeless bondage, in a distant land, lies at the door of England. And whatever of evil has resulted, or is to result to the coloured people or the whites of this country, from the institution of domestic slavery, and the presence among us, of large masses of degraded and wretched blacks, is also fairly chargeable to the inhuman policy of Great Britain. From the middle of the sixteenth century up to 1807, England carried on an extensive slave trade, from the coast of Africa, and whilst the American Colonies belonged to her, she made it a state object to introduce so many of them here, as would render the colonies more productive and beneficial to her. Avarice, and an ambition for commercial supremacy, were the motives which impelled England to the vigorous prosecution of the slave trade. And she made it as far as she could, her own trade. She incorporated African companies, and gave to these and her merchants, a monopoly of the business. If the colonies desired a participation in this nefarious traffic, they were excluded by the monopolizing inhumanity of the mother country, and did not, to any considerable extent, engage in it.

The next fact to which I refer, is, that from a very early day, in the history of the colonies, they resisted in every way they could, by petitions, and remonstrances, and laws, the continuance of the slave trade, and the increasing of the black population by importation. I find that in 1688, the "Friends," who have always been foremost in every work of humanity and benevolence, began in Pennsylvania to consider and agi-

tate the subject. The German Friends settled at Germantown, presented a protest at their yearly meetiug—this year held at Burlington—drawn by Daniel F. Pastorious, against the "buying, selling, and holding men in slavery, as inconsistent with the christian religion." That meeting did not feel prepared to act, and declared it "not proper then to give a positive judgment in the case." In 1696, the yearly meeting discouraged the further importation of slaves, and adopted measures for their moral improvement. In the same year, George Keith and his friends denounced the institution of slavery, "as contrary to the religion of Christ, the rights of man, and sound reason and policy." About the same period, several of the other colonies began to move in the same direction. Massachusetts, in 1645, made a law prohibiting the buying and selling of slaves, except those taken in lawful war, or reduced to servitude for their crimes by a judicial sentence, and in 1703, Massachusetts imposed a heavy duty on every negro imported, for the payment of which, both the master and vessel were answerable.

Mr. Walsh, in his appeal, tells us that "legislative proceedings in relation to the exclusion of slaves, similar to those of Massachusetts, are recorded in the annals of the other New England provinces. Pennsylvania and New Jersey trod in their foot steps, and early displayed a strong desire, arising from the same considerations, to plant an effectual barrier against the evil of continued importation." In 1728, Pennsylvania passed a law, imposing a duty on the importation of negroes, and allowing a draw back on their re exportation. Virginia, too, was early and earnest in her opposition to the introduction of negroes. By petitions to the crown and colonial legislation, she discouraged to the utmost, this inhuman traffic, which had long been a settled and a favourite policy of England, and the first legislature which met under the first constitution of Virginia, abolished the traffic.

These measures were constantly opposed by the mother country—to the petitions of the colonists, she turned a deaf ear, to their legislation, she opposed her negative, and overruled and defeated every effort which was made in the colonies, for preventing the introduction of the negro population. And this policy, so disgraceful to England, and so injurious to the colonies—so perseveringly adhered to by her, and so abundant in bitter fruits to us, was one of the causes which finally impelled the colonies to throw off their allegiance to Great Britain.

Another fact, having reference to this subject, remains to be noticed, and it attests the sincerity of the colonies in their opposition to the introduction of slaves or slavery. The fact is this: So soon as the colonies became free states, they abolished the slave trade—Virginia in 1778, Pennsylvania in 1780, Massachusetts, Connecticut, and Rhode Island, 1787 or 88. The revolution was not yet fought, their independence was not yet established, when the "old dominion," and the future "Keystone" of the federal arch extinguished forever within their borders, the nefarious traffic in human flesh. Now, sir, let it be remembered that England, who forced slavery upon us, and whose authors, orators, and travellers, denounce us on account of it, did not, herself, abolish the slave trade until 1807. Mr. Walsh, to whom I have already referred, asserts in his "appeal," that federal America interdicted the slave trade from her ports

thirteen years before Great Britain—that she made it punishable as a crime seven years before—and that she fixed four years sooner, the period of non-importation."

Now, sir, these are some of the facts which belong to our early history, and I conceive they warrant me in saying that whatever of evil there is in the slavery of the United States, has England for its author. On her head rests the guilt of persevering in the adoption of this evil, and whilst it is so, I protest against the authority which the gentleman from the county (Mr. Earle) quoted yesterday—opinions of Mr. O'Connell, and of the herd of unprincipled travellers, who abuse our hospitality, and libel us by the volume. What right has the best of the English public to meddle with a domestic question of so much delicacy to us—let them repent and atone for their original sins concerning American slavery, before they undertake to read us lectures as to the manner in which we should deal with the evil they have entailed on us. But when not the best, but the worst of English travellers, reviewers, demagogues, and infidels, undertake to handle this subject, their insolence becomes insufferable, and yet it is the authority of such characters, that the gentleman from the county insists on thrusting into this debate. I protest against it. Daniel O'Connell! the slanderer of Washington! Does the gentleman (Mr. Earle) think *he* is authority fit to be named in this Pennsylvania Convention? Is this question to be settled according to the opinions of an English madman and anarchist, whose ignorance of our local institutions is equalled only by the insolence of his dictation? And the gentleman vouches Garrison too, as authority on this point. He is the founder of the abolitionists, and a worthy co-adjutor of O'Connell, in denouncing the institutions of this country. That his opinions may be duly appreciated, I beg leave to read an extract from a speech delivered in England, in August 1833, by this man, the accredited agent of the New England anti-slavery society, on the constitution of the United States.

"I know that there is much declamation about the sacredness of the compact, which was formed between the free and the slave states, on the adoption of the national constitution. A sacred compact, forsooth! I pronounce it the most bloody and heaven daring arrangement ever made by men, for the continuance and protection of a system of the most atrocious villany ever exhibited on earth. Yes, I recognize the compact, but with feelings of shame and indignation; and it will be held in everlasting infamy, by the friends of justice and humanity, throughout the world.

"It was a compact formed at the sacrifice of the bodies and souls of millions of our race, for the sake of achieving a political object—an unblushing and monstrous coalition to do "evil that good might come." Such a compact was, in the nature of things, and according to the law of God, null and void from the beginning.

"No body of men ever had the right to guaranty the holding of human beings in bondage. Who, or what were the framers of the American government, that they should dare confirm and authorize such high-handed villany—such a flagrant robbery of the inalienable rights of man—such a glaring violation of all the precepts and injunctions of the gospel—such a savage war upon a sixth part of the whole population? They were

men, like ourselves—as fallible, as sinful, as weak, as ourselves. By the infamous bargain which they made between themselves, they virtually dethroned the Most High God, and trampled beneath their feet, their own solomn and heaven attested declaration, that all men are created equal, and endowed by their Creator with certain inalienable rights —among which are life, liberty, and the pursuit of happiness. They had no lawful power to bind themselves, or their posterity, for one hour—for one moment—by such an unholy alliance. It was not valid then—it is not valid now. Still they persisted in maintaining it—and still do their successors, the people of New England, and of the twelve free states, persist in maintaining it. A sacred compact! A sacred compact! What, then, is wicked and ignominious?"

Perhaps I owe an apology to the convention, for offending their ears with such blasphemy as this, but, as this man is misleading a portion of our fellow citizens, and especially, as his opinions have been offered us here, I thought it proper to show, that he is aiming at nothing less than the overthrow of that constitution, which is the bond of our Union, and the source of our national prosperity and glory. To such authority, sir, I will not defer; nor can I listen with any more patience to the dictation of the English. Let England's patriots dwell on her own guilty connexion with slavery in every part of the world. Let them contemplate the huge sin which rests on her conscience.

During the time the British nation was engaged in the slave trade, from the early part of the sixteenth century to the year 1807, a period of nearly two hundred and fifty years, it is estimated that she must have torn from their homes in Africa, six or seven millions of human beings, and carried them away into hopeless slavery. If the English, instead of superadding to their guilt, by attempts to dissolve our Union, and to sacrifice our liberties, were to enlighten, civilize, and christianize the remaining millions on the continent of Africa, they would scarcely atone for the deep and unutterable injuries inflicted on that race, by their prosecution of the slave trade.

The history of slavery in the American colonies, establishes the fact beyond all controversy, that negroes were brought here, and planted by the power of England, against the will as well of the negroes themselves, as of the colonists. They were forced upon us. They came not as the primitive colonists came, searching for liberty, but, torn from their native soil by English rapacity, they were brought here slaves. The colonists sought these peaceful shores as a refuge from tyranny, and as a home where they might worship God according to the dictates of their consciences, and enjoy all the blessings of civil and religious freedom. And when in further pursuit of these objects, they proceeded to establish governments, there was in their voluntary presence here, an implied consent to the forms of government which were adopted. They were freemen, capable to consent to a particular form of government, and they did consent. It is the great excellence and beauty of our system, that it is founded on the *consent* of the governed, so that allegiance and fidelity result as necessary consequences, and need not to be enforced by oaths and positive enactments.

But, Sir, the negroes never assented, and their presence here, since it

was procured by fraud and force, could not be construed into an adoption of the country, or an acquiescence in its forms of government. They were brought here to be slaves, and not freemen; and they were slaves and not freemen when the principles of government were agreed on, and when its foundations were laid. They had neither lot nor part in the matter. I inquire, not whether they *ought* to have had. Sufficient for my present purpose is the fact that they had not. No sir, this government, the control of which it is now proposed to divide with the coloured race, was founded and reared by white freemen—it was a white government, and not a parti-coloured. In its institution they had no voice—in its early struggles no share—it was founded by white men and freemen, and they bequeathed it to us. Shall we preserve it as we inherited it, or share it with a race with whom we cannot have any social equality? It seems to be supposed, that since the first establishment of free governments in this country, the condition of the negro at least, in Pennsylvania, has been so changed as to qualify him for the proposed participation. A great change has indeed been wrought in his condition by our humane legislation, but nothing which elevates him to political brotherhood with us.

The act of 1780, which abolished slavery in Pennsylvania, has already been referred to. That act was a proud monument to the humane policy of the state, and presents a contrast with the course of England on the subject of slavery, which no Pennsylvanian need blush to look on. It wiped out the stain of slavery, which England had left on our soil, and conferred on the negro what he had not before enjoyed, *civil freedom.* It secured to him those civil rights to which he, in common with all other human beings, of whatever clime or complexion, had an inalienable title, and of which he never ought to have been deprived. But did it do more? Did it confer political equality? Did it say to the negro, you have indeed been thrust upon our soil by your oppresser and ours, against your consent and in defiance of our opposition; but we bestow on you now, a full measure of our political privileges, which we have purchased at so great a cost of blood and treasure? No, such was not the construction of that law. It pledged the security of the government for his life, liberty, his reputation and property, but it went no farther. It has never been understood to confer any political privileges—it opened no door for him into the political family. The legislature of Pennsylvania and the public at large, have never so understood it. The naturalization laws illustrate and fortify this position. A free white alien comes to Pennsylvania and establishes a residence. No law compels him to become naturalized—we receive him into the community on a footing of exact equality with ourselves, so far as relates to his natural and civil rights—we extend to him not only the charities of life, but the same protecting laws which secure our interests, and he may live his whole life time in this condition, and be all the while as destitute of our political privileges, as if he had never set foot on our soil. Into that condition, sir, and no more did the act of 1780 bring the negro. Before the alien can add our political privileges to his other rights, he must become naturalized, but no provision has been made for admitting coloured men, whether native or alien born, to political equality. And I infer, from the absence of all such provisions, that it was never dreamed of in the early days of our government, that these people were to be made voters. Some act like that of natur-

alization would be necessary to testify the allegiance of even native negroes, for when we look into the history of the race, we can find nothing in the fact of their presence amongst us, which is a pledge for their fidelity to the government.

But no means have been provided for their testifying their allegiance, even though they come here voluntarily from abroad, and take up a residence like other foreigners, and is not this indicative of the universal understanding of our people, that they do not, and ought not to possess our political privileges? The act of 1780 was not a naturalization law. It could not be, for it was the act of a single state, and would have interfered with the uniformity which was to prevail under the legislation of congress, in reference to the naturalization, and would have been unconstitutional. It attempted no impossibilities, and it accomplished whatever it attempted —the relief of the Pennsylvania negro from slavery and all its disabilities, and here it stopped. The negroes have, themselves, understood it in the same manner as the whites. In common with the whites, they have appealed to the laws, for the redress of their injuries and the protection of their rights, but they never have, as a body, exercised or claimed the right of exercising the political privilege of voting. I do not say, that, now and then, on occasions of great popular excitement, a single vote, or perhaps a few votes, may not have been offered at the polls by negroes, and occasionally, perhaps, these votes have been received, but my general position is not affected by these instances—that the negroes, as a body, have never claimed the rights and privileges which have lately been discovered to have belonged to them since 1780.

No sir, they have lived in the peaceful enjoyment of their civil rights, exempted from the payment of such taxes as are assessed on the person, and from the performance of those duties which attend the right of suffrage, and they might have so continued to enjoy the blessings of freedom without prejudice, excitement or reproach, if a new party had not started into existence, who arrogate to themselves, a peculiar sympathy for this injured race, and who testify their affection, by sowing discord and jealousies, where peace and confidence prevailed before. Would they not have been content so to live? Do they now ask for any change in their past condition? But an excitement has been produced in the country, which threatens to overthrow all the governments, hitherto the protection of the blacks, as well as the whites—an excitement which is rending society to its foundation, and which threatens to melt in its lurid flames, the bands of our national union—and, under the influence of this pernicious excitement, men demand for the blacks what the blacks never demanded themselves, a share, a partnership with us, in the administration of this government of ours.

If this point could be gained, if the negro race could be elevated to political equality with the white voters of Pennsylvania, this excitement would acquire a new impulse, and the war of the abolitionists against our southern brethren would be waged with redoubled ferocity. I cannot assent to it. Let us rescue our institutions from meditated debasement, by declaring, what has always been understood, that voters must be white men. Let us rebuke the excitement which has been kindled by the bad passions of the north, by a vote which will show, that we mean not to dis-

turb the foundations of our political fabric, but that we do mean to preserve them, where our revolutionary ancestors planted them.

Sir, it seems to me, that our covenant engagements, and obligations to the surrounding states, forbid us to license negro votes. When the constitution of the United States was formed, these people were just emerging from slavery in Pennsylvania, and were not voters. Pennsylvania, considered as a political body, was like all the other states, a *white* state, and as such it entered into a compact with them. Slavery was then, as it still is, a delicate question in the south, and can it be supposed, that the southern states would have come into a compact with Pennsylvania, if they had anticipated, that the same race of people whom they held in slavery, were to assist in administering the government, by becoming voters in Pennsylvania? Would they have confederated with a state who was to make their fugitive slaves voters? Impossible. No, sir, if there were no express stipulation in the bond against such a contingency, it was because it was too monstrous to anticipate and provide for. The transaction affords an implied obligation, equal in force to the most express stipulation, and that obligation we violate, if we allow negro suffrage. We keep not our faith, fairly and on sufficient consideration plighted to sister states, if we receive negroes into our political family. Pledged and linked as we are, I see not how they can be made voters, without a total revolution—a radical remodelling of our whole federal system.

A sentiment, sir, has been expressed by several gentlemen on this floor, and especially by the gentleman from Union, (Mr. Merrill) and the gentleman from Allegheny, (Mr. Forward) from which I entirely dissent. They suggest that we may confer political equality on the coloured people, without admitting them to social equality; and, the gentleman from Allegheny had said, that we are not obliged to associate with every street scavenger who exercises the right of voting.

Now, sir, I submit to gentlemen, whether these political rights, of which we are speaking, do not depend, for their preservation and right exercise, on social intercourse and equality. Not that every man, must associate with every man in the community, but I hold there must be that free and unrestrained interchange of sentiments on public questions, which can only attend a state of general equality, if we would properly prepare the mass of men to exercise political suffrage. Every man, from the highest to the lowest, has his sphere, and his appropriate circle of friends, and in his daily intercourse with them, both in the business and the pleasures of life, opinions become formed and matured, which when all men come out on terms of exact equality to vote, manifest themselves and influence whatever decision is to be made by the popular voice. And these separate circles or little societies which wealth or adventitious circumstances, and not our political institutions, have made distinct, have connecting links that extend the opinions thus formed by the contact of minds, from and to the extremities of the body politic, and keep up a sympathy between the whole and all its parts; and here is the foundation of the system of universal suffrage. For suffrage is only the expression of the opinions which are perpetually maturing under the influence of social intercourse and equality.

Now, sir, if negroes cannot be admitted to this free and unrestrained intercourse with whites, and they never can be without practical amalga-

mation, how are they to become qualified to vote? The question relates not to individuals amongst them, who may enjoy peculiar advantages of society, or possess unusual intelligence, but it relates to the mass of that population on whom it is said suffrage should be conferred. Shall they be brought to the polls in masses, under the direction of demagogues, without knowledge of public men or public questions, uncaring for consequences? This would be a reproach on popular suffrage, which cannot be allowed. But what is to qualify them to vote, save that social equality with them which involves all the horrors of amalgamation, and which is opposed to the instincts of our nature? Shall we then amalgamate with them, marry and intermarry with them, and establish between us and them the close and tender relations which bind society together? God forbid it.

No sir, they are a caste with whom we never can have that kind of intercourse, which can alone qualify them to vote. Call it prejudice or what you will, and balance it as you may, it is inseparable from our natures, and neither reason or force can correct the feeling. We may love the virtues which they display, and we may sympathize in their sufferings, and alleviate their wants, but white men will not consent to the self debasement, which political and social equality with them would imply. I stop not to inquire whether this be right or wrong, or whether it spring from the virtues or the vices of our nature—the *fact* is so, and it is the fact, immoveable and unchangeable as it is, on which I rest my argument.

Why, sir, what have we heard in this debate? The gentleman from the county, (Mr. Brown) and the gentleman from the city, (Mr. Meredith) who addressed us in a powerful speech which, however, he brought to a most lame and impotent conclusion, have both testified that an attempt by the negro population of this community, to exercise suffrage with the whites, would be the signal for burning every negro dwelling in the city and county and would endanger the lives of the whole population. Be it that this is the spirit of mobism; it is, when provoked by such injudicious means, irrepressible. It becomes us not to trifle with it. We must legislate with a view to human nature, as human nature is constituted, nor expect any miraculous changes in its constitution, to suit a system that grossly violates all its principles and sympathies. Whilst this prejudice remains deep seated in the bosoms of the whites, I feel unwilling to disregard it, by making this which was formed a white government, a white and black government—a compound—a streaked and spotted affair. I choose rather to preserve it as we inherited it, and to efface no one prime feature which our fathers impressed on it, and least of all, to efface this feature.

The gentleman from Lancaster, (Mr. Reigart) has appealed to the prejudices of this body, against what he deems southern prejudices, and he has told us that he deprecates ministering to the latter. I have nothing to do with southern prejudices and passions, more than to say, that they have been greatly invigorated and inflamed by the treasonable measures of some of the northern abolitionists, but I object to the gentleman's calculating the value of the Union. He exclaimed, "let the south go, they cannot do without us—she would have no navy, no army, let the south go." Would my friend dissolve the Union? Would he let Virginia go

with the tomb of Washington in her bosom? Would he make the "old dominion" and all the fair fields of the south, enriched as they have been by the best blood of our revolution, a foreign country? Because the south has been lashed into commotion by northern fanatics, on a subject which involves not the peace merely, but the existence of southron families, would the gentleman really let the south go—dismiss them to their fate with no navy and no army? No, no, my worthy friend would do no such thing. His sentiment is unworthy of himself, and unsuited to this place and occasion. This amendment has nothing to do with the question that agitates the bosom of the south. It is a Pennsylvania question, though I agree its settlement will exert an influence over the whole Union.

For the manifold evils which connect themselves with the black population of this country, slavery, abolitionism, questions of suffrage and all, there is a remedy—a peaceful and a constitutional remedy. My friend from Allegheny, (Mr. Forward) has discussed it. It is colonization. The negroes belong to Africa—they were cruelly torn from that country, and if now they could be returned to their father land, with the arts of civilization, and the lights of education and religion, their bondage might prove a blessing to the benighted millions who inhabit that continent.

Colonization is the antidote both for slavery and that wild fanaticism, which is far spreading now, and destined one day to rock this Union—it is the best expedient for both the blacks and the whites. Sir, by giving the blacks the right of suffrage, an everlasting obstacle is thrown in the way of colonization—it will chain them to us, and expose them to every species of indignity and outrage on the election grounds. Broils and bloodshed will be the inevitable consequence of their attempts to vote, particularly in large and dense communities like this. But if you deny them the right to vote, you not only save them from this danger, but you keep before them an abiding lesson, that this is not their fit resting place, and that on the luxuriant soil, and in the genial climate of the country of their ancestors, they could enjoy a full measure of the privileges which are denied them here. The amendment becomes another argument for colonization, and as such is worthy of all support.

Sir, I believe the negro race to be capable of self-government, and if habits of industry be cultivated among them in the colonies of western Africa, and if care be taken to educate them, they may in our day present the delightful spectacle of a great, free and prosperous people. Undoubtedly they deserve civil and religious freedom, and with proper culture are capable of enjoying it. Thither then, would I turn the eyes and the hopes of these people. Thither let them go with our political principles, and establish governments after our model, which may protect them, and exert salutary effects on their fellow Africans, now ignorant of all the blessings of civilization. And, sir, verily do I believe that the much wronged people of the south, would add to the tide of emigration by gradually abolishing slavery, and sending their blacks to Africa, so that we might hope that our country would see the day, when slavery on her soil would be extinct—her whole population white people, and this same government still enduring the glory of the world, and the fountain of infinite happiness.

With these remarks, sir, I will dismiss this subject, after expressing an earnest hope that the people of Pennsylvania are not destined to be disappointed by the vote we are about to give. I am sure the sober sense of our citizens would be outraged, by a decision that negroes are to vote, and this will be decided if you reject the amendment. At no stage of our history, have our people been willing to give them this right, and now let us not offend against nature, and do violence to the general feeling, by saying that in all time to come they shall possess it. Let us not reduce the inestimable right of suffrage to this degradation, lest the people spurn it from them, as unworthy any longer of their affections, but let us preserve and bequeath it as we have inherited it, and then posterity will have no reproaches for our memories.

Mr. DUNLOP rose and addressed the convention.

[The remarks of Mr. DUNLOP not having been returned in time for their insertion in their proper place, will be given in the APPENDIX.]

Mr. DUNLOP, having concluded his remarks, moved,

That the Convention adjourn; and,

The Convention adjourned until 3 o'clock this afternoon.

FRIDAY AFTERNOON, JANUARY 19, 1838.

THIRD ARTICLE.

The convention resumed the second reading of the report of the committee, to whom was referred the third article of the constitution, as reported by the committee of the whole.

The question being on the motion of Mr. MARTIN, of Philadelphia county, further to amend the first section of the said article by inserting the word "white" before the word "freeman," where it occurs in the first line: and also by inserting the word "white" before the word "freemen," where it occurs in the seventh line,

Mr. HOPKINSON, of Philadelphia, moved that the gentleman from Franklin, (Mr. Dunlop) have leave to finish his remarks, cut off, during the morning session, by the rule which limits a speaker to an hour.

Mr. BELL said, that there was no gentleman whom he would listen to with more pleasure, than the gentleman from Franklin, but the rule was imperative, and it must also be borne in mind, that we have but a few days yet to remain here. It, therefore, now becomes us to cease speaking to a certain extent, and to commence voting.

There were many important subjects scarcely touched yet, and a whole article of the constitution which had not even been taken up in committee of the whole. We have heretofore refused this privilege to members of the very higest standing and greatest abilities, and he hoped the convention would grant no one this right, unless it was their determination to prolong the session, and in that case, he would agree that every man should speak as long as he desired. Until, however, that should be done—if it ever was done—he would feel it to be his duty to object to every man's speaking more than the allotted time, no matter what his talents or standing might be.

It was with reluctance that he made this objection, still he felt it to be his duty to make it at this time, inasmuch as the convention had seen proper to determine, that no gentleman should address the convention more than an hour at any one time.

Mr. HOPKINSON could not see how this rule operated as a means of saving time; because, although a gentleman could not speak more than an hour at one time, still after an intervening speech, he might again speak another hour on the same subject, and no time was saved by this operation.

Mr. DARLINGTON would put it to the Chair now, as a question of order, whether the gentleman from Franklin would not be perfectly in order, if he went on with his speech without the leave of the convention.

Mr. DUNLOP assured gentlemen, that he should take no offence at whatever decision they might see proper to make in relation to this matter. If they decided that he should go on, he would proceed with pleasure, but he felt no very great anxiety on the subject, and should rest perfectly content, let what decision would be made.

Mr. INGERSOLL inquired if it was not in order now, for the gentleman to proceed?

The CHAIR thought it would not be in order for the gentleman to proceed.

Mr. DORAN asked for the yeas and nays on the motion, that Mr. D. have leave to proceed, which were ordered.

Mr. INGERSOLL thought if the gentleman from the city had delivered an intervening speech, that the gentleman from Franklin was entitled to proceed without a motion to that effect.

Mr. FULLER said, that anxious as he was, to hear the argument of the gentleman, he could not vote to permit the gentleman to proceed, because it would be setting a bad precedent, and the rule we had adopted would be set aside. There were other questions, of equal importance with this, yet undecided, and if the convention held to their determination, to adjourn on the second of February, there would be little enough time to get through with our business.

Mr. DUNLOP hoped the gentleman from the city would withdraw his motion, as he cared but little about it, and much time would be saved.

Mr. HOPKINSON then withdrew his motion.

Mr. DUNLOP,* resumed and concluded his remarks.

*See Appendix.

Mr. DORAN, of Philadelphia county, rose and addressed the chair.

[The remarks of Mr. DORAN not having been returned in time for insertion in their proper place, they will be given in the APPENDIX.]

Mr. EARLE moved an adjournment. Lost.

Mr. EARLE then said, that on a former occasion, he had refered to the opinions of some eminent men, who were united by one common principle, whose opinions he thought calculated to have some influence on the people of this commonwealth. He now proposed to read some further extracts of the opinions of great men, from a work which had a circle on its title page, of thirteen stars, surrounding the word "liberty," together with the state house bell in this city, which rung at the proclamation of independence, and whose motto was "*to proclaim liberty throughout the land to all the inhabitants thereof.*"

The question now was, upon the insertion of the word "white" in the constitution, which he was opposed to, and being opposed to it, and wishing to bring to the notice of the convention many authorities, he would proceed at once to his notes, for he could not, at this time of night, commence to read extracts from a book. He wished to show that there were many eminent men, who held doctrines entirely at variance with those of some gentlemen on this floor. He wished to show, that there were many who were distinguished for their love of liberty, and their adherence to the rights of man, who held doctrines directly the reverse of the doctrines promulgated by this amendment.

He would refer to Simon Bolivar, the liberator, and in doing so, he would take occasion to point gentlemen to the high compliment paid this great man, by one of our presidents, in his annual message. Well, this gentleman in one of his speeches while president, said he begged of his people, for the sake of their country, that they would never make any distinctions on account of colours, because the principles of liberty were held as sacred by one class as by the other.

Mungo Park says, in relation to these people:

"I was fully convinced, that whatever difference there is between the negro and the European, in the conformation of the nose and the colour of the skin, there is none in the genuine sympathies of our nature."

Mr. Addison, says: what colour of excuse can there be for the contempt with which the whites treat these people—the negroes.

Mr. E. here gave way to

Mr. DICKEY, who said that he was desirous of addressing the convention, if the previous question could not be carried, and with a view of having an opportunity, he moved an adjournment. Lost.

Mr. EARLE resumed: John Randolph said:

"I neither envy the head nor the heart of that man from the north, who rises to defend slavery on principle."

Thomas Jefferson Randolph, says of the individuals of the African race.

"No matter what the grandeur of his soul, the elevation of his thought; he may be a Newton or a Des Cartes, a Tell or a Washington, he is chained down by adamantine fetters; he cannot rear himself from the earth, without elevating his whole race with him."

Robert Burns, who was a man with a great soul, says:

"If I'm designed yon lordling's slave
By natures law design'd,
Why was an independent wish
E'er planted in my mind?
If not, why am I subject to,
His cruelty or scorn;
Or why has man the will and pow'r,
To make his fellow mourn?
Then let us pray, that come it may,
As come it shall for a' that,
That sense and worth, o'er all the earth,
Shall bear the gree, and a' that,
For a' that an' a' that,
When man to man, the world all o'er,
Shall brothers be, an' a' that."

Thomas Jefferson, the great apostle of liberty, says:

"What an incomprehensible machine is man! who can endure toil, famine, stripes, imprisonment, and death itself, in vindication of his own liberty, and the next moment be deaf to all those motives whose power supported him through his trial, and inflict on his fellow man a bondage, one hour of which is fraught with more misery than ages of that which he rose in rebellion to oppose.

"But, we must wait with patience the workings of an over-ruling Providence, and hope that that is preparing the deliverance of those our SUFFERING BRETHREN. When the measure of their tears shall be full—when their tears shall have involved heaven itself in darkness—doubtless a God of justice will awaken to their distress, and by diffusing a light and liberality among their oppressors, or, at length, by his exterminating thunder, manifest his attention to the things of this world, and that they are not left to the guidance of a blind fatality."—*Notes on Virginia.*

"The love of justice and the love of country plead equally the cause of these people; and, it is a moral reproach to us that they should have pleaded it so long in vain."

"Nursed and educated, in the daily habits of seeing the degraded condition both bodily and mental, of those unfortunate beings, but not reflecting that *that degradation was very much the work of themselves and their fathers*, few minds have yet doubted but that they were as legitimate subjects of property as their horses or cattle."

"I had always hoped that the younger generation, receiving their early impressions after the flame of liberty had been kindled in every breast, and had become, as it were, the vital spirit of every American, in the generous temperament of youth, analogous to the motion of their blood, and above the suggestions of avarice, would have sympathized with oppression wherever found, and proved their love of liberty beyond their own share of it."

"This measure is for the *young*; for those who can follow it up, and bear it through to its consummation. It shall have all my prayers; and these are the only weapons of an old man. It is an encouraging observation, that no good measure was ever proposed, which, if duly pursued,

failed to prevail in the end." *Mr. Jefferson's letter to Gov. Coles, August* 25, 1814.

Mr. E. here gave way to

Mr. DORAN, on whose motion,

The convention adjourned.

SATURDAY, JANUARY 20, 1838.

Mr. FOULKROD, of Philadelphia, presented a memorial from citizens of Philadelphia county, praying that measures may be taken effectually to prevent all amalgamation between the white and coloured population, so far as regards the government of this state; which was laid on the table.

Mr. COATES, of Lancaster, presented a memorial from citizens of this commonwealth, praying that the right of trial by jury may be extended to every human being; which was also laid on the table.

Mr. BEDFORD, of Luzerne, submitted the following resolution, which was laid on the table for future consideration, viz:

Resolved, That the following rule be adopted in convention, viz: "That when any thirty delegates rise in their places and move the question on any pending amendment, it shall be the duty of the presiding officer to take the vote of the body on sustaining such call: and if such call shall be sustained by a majority, the question shall be taken on such amendment without further debate.

Mr. COPE, of Philadelphia, moved that the convention do now proceed to the second reading and consideration of the following resolution, postponed on the 17th instant, viz:

Resolved, That the President draw his warrant on the state treasurer, in favor of Joseph Black, late sergeant-at-arms of the senate, for the sum of two hundred and eighty-two dollars and fifty cents, in full for one hundred and thirteen days' services in the senate chamber, during the sessions of the convention at Harrisburg.

The motion being agreed to, the resolution was considered and adopted.

THIRD ARTICLE.

The convention resumed the second reading of the report of the committee to whom was referred the third article of the constitution, as reported by the committee of the whole.

The question being on the motion of Mr. MARTIN, of Philadelphia county, further to amend the first section of the said article, by inserting the word "white," before the word "freemen," where it occurs in the first line, and also by inserting the word "white," before the word "freeman," where it occurs in the seventh line of the said section.

Mr. EARLE, of Philadelphia county, resumed his remarks. It had been alleged, on account of the supposed inferiority of all persons having a dark complexion, that they ought to be excluded from the exercise of those rights, which are asserted in the declaration of independence, to belong to all mankind, and which nearly all the constitutions of the several states of this Union, had declared to be natural rights. Some learned men have asserted that the negro is the connecting link between the human and the brute races. He desired to make a few observations on this point. There was a broad line of demarcation between the human and brute races; while there was no essential difference between the different branches of the human species. The difference was immense between the lowest of the human race, and the highest of the brute species. Milton describes man as the only creature on all the earth that walks erect with upright port. This is true. There is no other animal that naturally assumes the upright position. It is true, you may make an ape walk on two feet, and also a dog, and you may make man walk on four, but this is a violation of the intention and custom of nature.

Man is distinguished by his sense of the ludicrous. He is a laughing animal, and, in this respect, there is no other animal which resembles him. Man prepares a dress for his body, when his necessities require it; and no brute does this. Man is capable of forming language, of combining sounds into words, and communicating his ideas by those words; properties which belong to no brute. It is true, certain animals convey limited information to each other by instinctive sounds; but human language is artificial and not instinctive. Man can erect habitations with endless variety of form and structure. The squirrel and the birds form nests, but they do it from instinct. The young bird, without any instruction from the parent, builds its nest in the same form, but there is here an absence of all invention. All progress in the arts is peculiar to man alone.

The beaver builds a dam in the same manner in which his ancestors did a thousand years ago. Man makes improvements in the arts, and hands those improvements down to his posterity. He prepares tools, he tills the soil, he builds fires, he cooks his food, he studies medicine, astronomy, and physical laws, he plays at games of skill and of chance, he constructs instruments for music, he forms poetry and fictions, enters into contracts, &c. &c. These peculiarities create a broad line of demarcation between the human species and the most intelligent brutes. Yet no such line can be drawn between men of different nations and complexions. There are a hundred strong and obvious distinctions between the human and brute animal; but not a single intellectual feature, creating a distinction between human beings of different colours, and existing as a uniform line of demarcation.

How are we to apply a test? Shall it be by some intellectual exercise, as strength of body is exhibited by lifting a weight? Is there any capability of intellectual exercise which one complexion posesses, and no one else? Perhaps some game would furnish as good a test of intellectual power as could be obtained, perhaps the game of chess. Can no coloured man beat a white man at chess? When our ancestors were barbarians, painted and clothed in skins, the Africans were working iron in as great perfection as any people in the world. The narrow prejudice which has

assigned to the coloured man an irremovable inferiority, is gradually melting away. It is already banished from Europe, and from all the countries of America, south of Texas. A coloured man, in France, is treated as well as any other man.

A gentleman of this city, recently informed him, that he saw white soldiers in Paris, commanded by a black captain; and that he saw black officers dance at the same ball with members of the imperial family. Gentlemen go back to the times of yore, and tell us that the coloured people were cruelly oppressed some hundred years ago; and shall we be told, that because our ancestors were barbarous and cruel in former times, that we shall be so now? If this doctrine be a sound one, we ought to go back to monarchy, and to the despotism of the dark ages; we should become slaves ourselves, because our white ancestors were once so in England. We have been told that we are under great obligations to the United States, and to the sister states, and that we, in Pennsylvania, should regulate this matter by their wishes, and that our constitution was made for the white citizens, and that it would be a fraud on the other states to admit coloured people to the right of suffrage. Is this so? What southern man ever objected to the suffrage of negroes in the northern states? None, so far as my knowledge extends. Yet we have heard these northern states, which permit coloured people to vote, charged on this floor, with fraud. This charge is unfounded. It arises from an insufficient examination of the subject. It is made by men who are biased by prdjudices, and who do not correctly understand the constitution of the United States in its details, or the obligations which arise under it.

Mr. CUMMIN rose to explain. He had read from the constitution of the United States often, his quotation concerning servitude, the clause about "three-fifths of all others," which, he inferred, meant persons of colour. He had said no more than, that this was a compact between the several states, and that all were bound to acquiesce in it, and that Dr. Franklin was a member of the convention by which that compact was entered into.

Mr. EARLE resumed. The gentleman from Juniata represented the constitution of the United States, as basing representation in proportion to all the free *white* male citizens, and three-fifths of the blacks: but there is no such thing in the constitution. And thus the gentleman comes to tell us what the constitution means, when he himself does not even know what it says. There was neither the word "white," or "black," in that instrument, from the beginning to the end. If it had been intended that there should be exclusion, would not the word "black," or "slave," been found somewhere. The people of the United States, at the time of forming the national constitution, were determined to extirpate these distinctions, and establish the principle, that freedom and equality are the unalienable rights of all. Each state was left to prescribe for itself, who should be voters in the choice of her representatives in congress. If the United States constitution intended that no coloured man should vote for a member of congress, it would have inserted the word "white," in the list of qualifications. If the framers of the constitution intended what gentlemen say they did, then they were deficient in sagacity in not making the language more explicit. The constitution of the Uni-

ted States was framed with a view to the abolition of slavery, and the ultimate establishment in practice, of the equality of rights which its framers advocated in theory.

What had been the course of the principal states—of Virginia, Massachusetts and Pennsylvania—three of the greatest states in the Union. Virginia, shortly before the formation of the United States constitution, ceded the north-west territory to the United States, and congress, with the unanimous vote of the members from Virginia, prohibited the existence of slavery there. Was Virginia, at the very time of this measure, to be considered as friendly to slavery, and to those representatives, forever? Massachusetts had a provision in her constitution, which was declared by her courts, to secure equal freedom for all. In Pennsylvania, the abolition act had been already passed, and Dr. Franklin, the governor of Pennsylvania, and also the most influential delegate from this state to the United States convention, was then the president of the Pennsylvania abolition society.

In 1774, before the declaration of independence, the American congress unanimously adopted a declaration, of which the following is an extract:

"We will neither import nor purchase any slaves imported, after the first of December next, after which we will wholly discontinue the slave trade, and will neither be concerned in it ourselves, nor will we hire our vessels, nor sell our commodities or manufactures to those who are concerned in it."

Among the other signers of this document, are found the names of George Washington, Samuel Adams, Patrick Henry, John Adams, John Jay, Thomas M'Kean, George Read, Caesar Rodney, &c.

On the 6th of April, 1776, the congress, resolved, "That no slaves be imported into any of the thirteen United Colonies."

The declaration of American Independence proclaims, that all men are born free and equal. Some gentlemen assert that the author, by all men, meant all *white* men: that he has not said what he intended. Let us test this question by his opinions as expressed in other places. In the original draft of that instrument, its author, Mr. Jefferson, inserted a clause in condemnation of the conduct of the British King, in reference to the slave trade. It charged him with waging "cruel war against human nature itself," and with being determined to keep open a market "where MEN, should be bought and sold"—the word *men*, being printed in capitals with Mr. Jefferson's own pen. This shows what he meant by *men*, in the declaration, and that he confined the term and its attendant rights, to no nation or complexion, to the exclusion of others.

In the plan of confederation first proposed in congress, by Dr. Franklin, July 21, 1775, it was provided that contributions should be supplied by each colony "in proportion to its number of male polls between sixteen and sixty years of age;" and that representation should be apportioned on a like basis. Here was no distinction of complexion. In the article of confederation, as ultimately adopted, on the 15th November, 1777, it was provided that the "*free inhabitants*" of every state, should be entitled to all the privileges of citizens in the several states. Here was no distinction of complexion. It has been asserted that "freeman,"

and "free inhabitants," as used in those times, signified, *white* men, and white inhabitants. The following facts show that this assertion is erroneous—viz:

When the articles of confederation were reported, the state of South Carolina, moved to insert the word "white," between the words "free" and "inhabitants" as above quoted. This motion was lost, ayes 2, noes 8. One state divided.

In the American congress of 1783, it was resolved, ayes 8, noes 2, one state divided,—"that the expenses incurred for the war, and for the general welfare, shall be supplied by the several states, in proportion to the whole number of *white and* OTHER *free citizens* and inhabitants, of every age, sex and condition."

In the resolves of congress, which formed the basis of the United States constitution, it was recommended, that the apportionment of taxes, should be upon the basis of "*white and other free citizens.*"

Now, the gentleman from Montgomery, (Mr. Sterigere) pretended to be wiser than the congress of 1783. He says there never was a freeman, unless he was a white man. The congress of 1783, declared that the expenses of the war should be defrayed by the whole number of "white and other free citizens." Who, he would ask, were they who composed that congress, that they did not know what they were about? He supposed a wiser race had sprung up now!

In a pamphlet entitled "Observations on the American Revolution," published by order of congress, in 1779, the following sentiments are found:

"The great principle is, and ever will remain in force, *that men are by nature free;* as accountable to him that made them they must be so; and so long as we have any idea of divine justice, we must associate that of human freedom. Whether men can part with their liberty, is among the questions which have exercised the ablest writers: but it is concluded on all hands, that the right to be free can never be alienated. Still less is it practicable for one generation to mortgage the privileges of another."

Thus it will be seen that the condemnation of slavery is not confined to, nor did it originate with those, whom the gentleman from Luzerne denominates calumniators of this country—the British infidels, Daniel O'Connell and Mr. Garrison. What have they to do with the question. Are they cited to array prejudices? I demand the gentleman's authority. I ask the names of the British infidels who started the question of emancipation in this country?

[Mr. Woodwrrd here named the Westminster Review.]

Mr. Earle: the Westminster Review is now substituted for British infidels. It is not the fact, that the agitation of this subject in England originated with, or had principally been forwarded by infidels. But suppose it were so; would not those infidels, who acted conformably to the precepts of christianity, in sustaining the rights of man, be more commendable than those professed christians, who acted in opposition to them? Thomas Paine was one of the founders of our republic, and the author of many excellent political works. Shall we condemn our free institutions, because Paine was an infidel? Would it be right in me, who listened

with pleasure, on many occasion, to the most eloquent enforcement of sound principles by the gentleman from Luzerne, to condemn all those principles, because he might err on one point. Ought I to condemn every thing coming from him, if he should offer a resolution to exclude, by the constitution, the participation in voting, and in holding office, of all persons born in foreign lands?

Mr. WOODWARD, explained that he did not wish to be slandered by any reporter or misrepresented by any member on this floor, and he would not allow gentlemen to impute measures and sentiments to him which did not belong to him. He said he never did propose to exclude the foreigners now in the country, from political privileges, nor those who should at any time hereafter come to the country. He presumed the gentleman alluded to an amendment offered by him in convention at Harrisburg, which proposed nothing more than an inquiry into the expediency of preventing foreigners who should arrive in the country after 1841, from voting and holding office. That was an amendment to a proposition made by the gentleman from Chester, (Mr. Thomas) suggesting an inquiry into the expediency of excluding foreigners altogether from our soil; and the amount of it was to give the proposed inquiry a different direction from that proposed by the gentleman from Chester. The proposition of the gentleman from Chester being withdrawn, Mr. Woodward explained, that he withdrew his amendment.

The gentleman from the county, (Mr. Earle) should have represented him correctly on this subject if he understood it, and if he did not understand it, he should have informed himself before he undertook to speak of it.

Mr. BROWN, of Philadelphia county, rose to a question of order. He wished to know whether it was in order to allude to a proposition that had been withdrawn?

The CHAIR, (Mr. Chambers) said the opinions of delegates might be alluded to in debate. He hoped the gentleman from the county of Philadelphia, (Mr. Earle) would confine his remarks to the subject immediately before the convention.

MR. EARLE proceeded. He had applied the argument *ad hominem*. He had only said that when the gentleman from Luzerne shall introduce a resolution. He did not say that he had introduced a resolution. Governor Eustis, of Massachusetts, an officer of the revolution, who was secretary of war under President Madison, stated in a speech in congress in 1821, that there was a black regiment in Rhode Island, which had greatly contributed to the success of our arms during our struggle for independence, that the brave Colonel Greene was so much attached to the men composing it, that he used to call them his children, and that when the colonel fell in the field of battle almost every one of them were slain before the enemy could reach his body. He (Mr. Earle) would read the following extract from a speech delivered by Mr. Faulkner, in the legislature of Virginia, on the 20th January, 1832.

"The idea of a gradual emancipation and removal of the slaves from this commonwealth, is coeval with the declaration of our independence from the British yoke. It sprung into existence during the first session

of the general assembly, subsequent to the formation of your republican government. When Virginia stood sustained in her legislation by the pure and philosophic intellect of Pendleton—by the patriotism of Marion and Lee—by the searching vigor and sagacity of Wythe, and by the all embracing, all comprehensive genius of Thomas Jefferson! Sir, it was a committee composed of those five illustrious men, who, in 1777, submitted to the general assembly of this state, then in session, a plan for the gradual emancipation of the slaves of this commonwealth."

The honorable Benjamin Watkins Leigh, late a United States senator from Virginia, in his letters to the people of Virginia in 1832, signed "Appomattox," page 43, says—"I thought till very lately, that it was known to every body that during the revolution, and for many years after, the abolition of slavery was a favorite topic with many of our ablest statesmen, who entertained with respect all the schemes which wisdom or ingenuity could suggest for accomplishing the object. Mr. Wythe (the chancellor) to the day of his death, was for simple abolition, considering the objection to colour as formed in prejudice. Mr. Jefferson retained his opinion, and now we have these projects revived."

Governor Eustis, in the congressional speech already referred to, said that the people of colour not only participated in electing the framers of the constitution of the United States, but also in electing several of the state conventions by which that constitution was ratified. The knowledge of Mr. Eustis on the subject was indisputable and his word unquestioned. The occasion of this speech, was the celebrated Missouri question, when the point was started, whether free people of colour were citizens of the United States, inasmuch as the constitution of the proposed new state of Missouri required the legislature to pass laws for preventing the immigration of free people of colour into that state. This was asserted by Mr. Eustis, and also by Judge Hemphill of this city, who argued the question on the same side, to be in contravention of that clause of the national constitution which declares that the citizens of each state shall be entitled to all the privileges of citizenship in the several states. The decision of congress was in favor of the citizenship of the coloured people, and Missouri was required, with the acquiescence of Mr. Lowndes, and other southern members of congress, to expunge that clause of her constitution, as a condition of her admission; and her legislature by a formal act, assented to the condition.

He (Mr. E.) held in his hand a passport to travel in Europe, granted by Mr. Forsyth, the secretary of state at Washington, to Peter Williams, a coloured preacher of New York city, describing him as a citizen of the United States. He also held in his hand a letter written by De Witt Clinton, while governor of New York, demanding that a black man who was then imprisoned in the District of Columbia, should be liberated, as being a free *citizen* of the state of New York.

He contended that the constitution of the United States, contemplated the entire extinction of slavery in this country. He believed it was Mr. Jefferson who had stated, that the representatives of all the states but one or two at most, in the convention which formed that constitution, was willing to give congress immediate power to abolish the slave trade. But the opposition of one or two states, led to the compromise by which it

was to be prohibited after 1808. The clause of that instrument which fixes representation, gives to each state precisely the same weight in the national councils for its free black inhabitants, as for the same number of free whites. Pennsylvania has now its representation in congress, founded on this principle, as Philadelphia has also in the state legislature—things which ought not to be, if the doctrine of the gentleman from Juniata were sound. It was provided that states having slaves, whether black slaves or white slaves, which are equally tolerated by the constitution of the United States, should have a representation for them proportionate to three-fifths of their number. And slavery was left to be abolished, either by the action of the several states, or through an amendment to the constitution of the United States. He was unable to account for the power given to congress to abolish the slave trade after 1808, upon any other supposition than that of the contemplated entire extinction of slavery in this country. If any gentleman would examine carefully the constitution of the United States, the Virginia act of cession of the northwestern territory, and the ordinance of congress for the government of that territory, made immediately preceding and immediately succeeding the formation of the United States constitution, he thought he would be satisfied that two things were contemplated; first, the right of citizenship and political equality for people of colour: second, the abolition of slavery in the United States. These were in accordance with the spirit of that age.

The gentleman from Luzerne, seems to intimate that we must perpetuate slavery here, because Great Britain introduced it! The gentleman's notions of logic were certainly very different from his. Why, did the fact of Great Britain having introduced slaves into this country, render it the less unjust on our part to oppress their posterity, and to continue them as slaves? He would ask if the British government had ever compelled the people of America to purchase slaves? And were there not, at this time, slaves here that had been purchased by Americans? How did the gentleman account for the long period of time which elapsed between the revolution and the present time? Admitting, as he must, that the British government had done wrong, he would ask the gentleman, what Englishman at the present day attempted to justify it? Now, if the gentleman justified the British government, then he stood on less enviable ground than the British infidel, who did not justify what his government had done. The constitution of the United States, was a constitution of freedom. It contemplated the perpetuation of freedom. It was well known, that the question now before the convention, was deliberately and fully discussed by the framers of the present constitution of Pennsylvania, and that Mr. Gallatin opposed the introduction of any distinctions of colour into the constitution, as to those who should be entitled to the exercise of the elective franchise.

The gentleman from Luzerne had advocated a doctrine, to which our farthers were directly opposed, and that was, that no man had any natural right to enjoy political rights—no right to a voice in his own government! This was a most horrible and despotic doctrine. Could a worse doctrine be found in Russia, Turkey, Persia, or any other country in which the light of liberty had not yet made its appearance? He was perfectly astonished to hear such an argument as this, from a gentleman who con-

sidered himself free and enlightened. The gentleman's argument went to establish the doctrine, that the majority could rightfully disfranchise the minority at pleasure; and, if this position was sustained, there was no safety for any citizen. According to this strange assumption, in a community consisting of five hundred and one citizens, two hundred and fifty-one might disfranchise the other, two hundred and fifty. Then one hundred and twenty-six might disfranchise one hundred and twenty-five, and so on, until all power became vested in two men, and one of those two, killing the other, would be entitled to reign and rule alone, the mass having no right to resist, or to refuse obedience. The doctrine acknowledges no rule but might, savage warfare, and brutal force. It was monstrous and untenable. It would lead every where to the destruction of liberty, and the establishment of despotism.

The gentleman from Union, Mr. Merrill, had referred to the constitution of Virginia, as affording, by the exclusion of people of colour from the right of voting, an argument against their being citizens within the meaning of the constitution of the United States. But he referred to the Virginia constitution, recently adopted. The Virginia constitution which was in force when the United States constitution was made, gave free blacks the same right to vote as whites: consequently, the gentleman's mode of reasoning works against his position.

What, he asked, did the constitution of Pennsylvania say? Why, that "all men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness. And yet, it had been intimated that men have not inalienable and indefeasible rights.

He Mr. E., wished to refute the error—he would not call it calumny, but error. He wished to refute the error of his friend from the county of Philadelphia, (Mr. M'Cahen) who had declared, that which, if true, would make the people of this city and county, degraded in moral standing below the blacks. He had intimated, that if the blacks are allowed the right of suffrage, the people here would rise *en masse*, and tear down their houses.

He, Mr. E., regarded such an assertion as nothing less than a slander upon the citizens of Philadelphia city and county.

The Chair (Mr. Chambers) asked if the gentleman from the county of Philadelphia meant to impute slander to the delegate?

Mr. Earle did not mean to say the gentleman had told an untruth, but that he had formed a wrong estimate of the character of the citizens of whom he spoke. It had been said that women ought to be allowed to vote. Now, what he asked, had that to do with the question? It had nothing to do with it—had not the least bearing upon it. Taxation without representation was tyranny. That was asserted to be the fact in Boston, just before the breaking out of the revolution; and it was the doctrine on which the right of America to independence was sustained throughout the country.

The gentleman from Juniata, (Mr. Cummin) had expressed his fears

lest the blacks should become numerous in this state, and therefore, he would deprive them of the unalienable rights of man! There were not the slightest grounds for any apprehension of that kind. Texas was a wide country open to them, and they would gradually diminish in their proportion to the whites in all the states north of South Carolina. Their proportion to the whites had somewhat diminished in this state. Colonization was the proper remedy it was said. Well he was not opposed to it at a proper place and with the free consent of the colonized, but, on the contrary, he was in favor of it. But that affords no justification for depriving those who remain of their inalienable rights. It had been contended here by some gentlemen that the right of suffrage, if granted to people of colour, would lead to amalgamation. He could not believe it. Now it was a fact that where the people of colour were most degraded and oppressed, there was more amalgamation; as for instance, more in New Orleans or South Carolina, than in Massachusetts or any other eastern or northern state. It was the law of nature that the people of different complexions living together would intermix more or less. It would go on *in some degree whether right or wrong*; but it certainly went on least where the rights of the coloured man were best secured. It had been contended on this floor, that as the coloured people were not naturalized they had no claim to the right of suffrage. He could not believe the doctrine. He conceived that every man born on the soil of Pennsylvania had a right to vote, and he did not think the question, whether the individuals or their ancestors were introduced originally as slaves or freemen, had any thing to do with the right. It had been said that if the negroes of Pennsylvania were permitted to vote, the consequence might be a dissolution of the Union. This was, he thought paying but a poor compliment to the nullifiers of the south, the great sticklers for the right of each state to regulate its own concerns. He should call it a calumny on the southern people. It was said by many, that the granting of the privilege of voting would be of no service to them. What was the opinion of Dr. Franklin on this point? In his address to the English people, he laid it down, as a universal principle, that if any portion of the community was deprived of their right to participate in the choice of their own rulers, they would be oppressed and deprived of justice. And he (Mr. E.) would ask, if that was not the fact? If any man, accustomed to attend courts of justice, would say that the black man stands the same chance of having justice done him, as the white, or of being pardoned by the governor after he has been convicted of an offence:—if any one said so, then all he had to say was that it was contrary to his opinion.

Mr. DARLINGTON, of Chester, remarked that after what had been said, it could scarcely be expected that he should have much to say. However, as the question was one of the highest importance, he deemed it his duty to express his sentiments on it, in as brief and concise a manner as possible. No question had been brought before this body which was of greater importance, and it ought to be decided deliberately and dispassionately. He trusted that when the convention came to take a final vote, every delegate would find himself prepared to say yea or nay, as an expression of his sentiments in favor of, or against, liberty, and be able afterwards to reconcile to himself the correctness of his course. With regard to himself, he intended to record his vote in the negative. He

hoped that every gentleman would give his vote, regardless of consequences, and in accordance only with the dictates of his conscience. It had been truly said that this was a Pennsylvania question. It was a question for us to decide, as Pennsylvanians, and with reference only to the sentiments and feelings of this great commonwealth. The question was one which ought to be decided without the slightest regard to what might be the opinions entertained by other portions of the confederacy. But while he said this, he would ask if the question had not been argued on this floor as if it was not one in which the people of Pennsylvania only were concerned, and in relation to which their wishes and sentiments should be regarded? He would ask whether it had not been treated by some delegates in a manner indicative of a desire to be governed by southern feeling, rather than that of Pennsylvania?

Now, he begged to say that he was not one of those who thought with the late Governor M'Duffie, of South Carolina, that "slavery is a necessary ingredient of an unmixed republic," nor that it is the chief corner stone of the republican edifice? Neither could he agree with the sentiments of an able writer who had lately closed a series of essays, which appeared in the Charleston Mercury. The substance of the closing remarks of the writer was that "he trusted he had proved that slavery was approved by God and the Patriarchs, and Christ and the Apostles. And, that to say it was sinful to hold slaves, was impious."

He (Mr. D.) could not believe there was a man within the walls of this convention who would give the slightest credence to such horrible and abominable doctrines as these.

He would ask whether the members of this convention called for the purpose of making amendments to the constitution of Pennsylvania were to be govered or influenced, in the most remote degree, by the wishes and feelings of those who hold doctrines so utterly repugnant to common sense and the feelings of the whole community? If he was not mistaken, the delegate from the city of Philadelphia, (Mr. Meredith) contended that we ought to keep in the councils of the nation a protector of the negroes.

He (Mr. D.) would ask whether the house of representatives was not the protector of the blacks and whether the members of that body do not represent them, if not directly, yet indirectly? Most assuredly they do. He thought no man could doubt it. He confessed he could not see the force of the gentleman's argument on this point. He did not court the influence or protection of the south in regard to the negro. What, he asked, was the influence of the south in the congress of the United States? And, what the influence of the north? The north had nothing to fear on that score. She was abundantly able to take care of herself, as had been frequently proved by the votes she had given on all important questions over the south. He had alluded to the argument of the delegate merely for the purpose of showing upon what ground this question was placed. He felt quite satisfied that had it not been for the excitement which prevailed in relation to slavery, this question as to the right of negroes to vote would not have been heard of in this convention.

Another gentleman, also from the county of Philadelphia, on the other side of the house, (Mr. ,) had argued for disposing of this question with reference to the interests of the south. He (Mr. Darling-

ton) did not pretend to quote his language, he merely gave his sentiments. The gentleman asked, with an air of triumph, whether we wished the free negroes of the south to inhabit our soil? And was this convention not to amend the constitution with a view to the benefit of the free negroes of the south?

Now, he (Mr. D.) would inquire if any act of this body would have the slightest possible influence in regard to the south, where the most cruel and barbarous laws prevailed, and which drove the unfortunate negro to find refuge where he might? Was not this the case at the present time? He would ask what possible good effect the introduction of the word "white," or any other amendment, into the constitution, would have, in preventing the evils of which the south complains? He maintained that no benefit would result from the insertion of the word. Before he closed his remarks, he trusted he would be able to show what would have the effect of diminishing the number of negroes in Pennsylvania.

The delegate from Luzerne, (Mr. Woodward) had said that the south had been lashed into excitement by the fanatics and abolitionists of the north. Whatever that gentleman, or any other, in this body, thought and might be disposed to say of those whom he denounced as abolitionists, it was quite unnecessary that he (Mr. D.) should step forward to defend their character, for they number among them many of the most respectable citizens of Philadelphia, and of the state at large. What! was it to be said, forsooth, that because the south had lashed herself into an excitement, we must do something to appease her wrath—must do an act of injustice to a portion of our population? He contended that this convention should not be actuated by any such sordid motives, and that the object and end of its proceedings should be a desire only to promote the best interests of the commonwealth of Pennsylvania. Let the south look to herself.

A delegate from the county of Philadelphia had observed that the salvation of the country depended on the convention adopting the amendment under consideration. He (Mr. D.) had no conception that so much importance was attached to the proceedings of this body. He had not the most remote idea that the salvation of the Union depended on anything we could or might do. The people of Pennsylvania were their own best judges in regard to this matter. He could not concur with the delegate from the county of Philadelphia, in the conclusion he had drawn, and he did not deem it necessary, from all that he had heard, to insert the word "white."

We have been told that we should act upon this subject with reference to the interests of the southern states of this Union. Sir, it is my firm conviction—and in this conviction I believe that I am sustained by the opinions of a majority of the members of this body—that, had it not been for the excitement which is known to exist at the south, this subject would never have been introduced into this convention. If it had not been for the high and imperious tone in which the south has undertaken to dictate to the north not only on the subject of slavery there, but in relation to our conduct, our actions and our words, my conviction is that we should not have been discussing an amendment of such a character as that which is now pending.

What have we witnessed within the last few years? We have seen the southern states of this Union, by their governors and legislators, demanding from the legislatures of the northern states that they should put down by legal enactments the expression of public opinion—that they should stifle the freedom of speech, and that, too, in a land which, of all others upon earth, boasts of its free institutions. We have seen them demand the enactment of penal laws against the abolitionists—against those who entertain the belief, and think proper to declare their belief, that slavery is a sin in the sight of God and of man. We have seen the governors of some of the states of the south, demanding of the governors of some of the states of the north, the persons of their citizens, that they might be delivered up to be tried for penal offences against the south. We have seen rewards offered to large amounts to any man who would bring there a free citizen of the north, to be tried and executed, or otherwise punished—for what? For any offence against the laws of the south? Not at all. But for the expression of an opinion entertained by him at the north, in relation to the propriety of some of the proceedings of the south. I ask the members of this body whether, in view of all these facts, we are to be called upon to form a constitution for the state of Pennsylvania, with reference to the notions of the south; whether we are to be asked to form a constitution with reference to the high-toned demands of the south upon the north; and whether we were to be asked to deliver up our northern citizens to be hanged and bleached upon the first tree that may chance to be in the way—because such instances are upon record. I ask whether, in view of the demands made by the legislatures of the south upon the legislatures of the north, to put down the free expression of our sentiments by the force of legal enactments, there is any gentleman in this body who will rise in his place and say, that we should form such a constitution as will have the effect of putting down this excitement in the south? We have not only seen these high and haughty demands made at the south, but we have seen public meetings held in the north—aye, sir, even in this very city in which we are now assembled, in which the course of another portion of our fellow-citizens who entertained certain opinions has been denounced, and in which their conduct has been held up to public reprobation as dangerous to the existence of the Union.

But, Mr. President, I regret to say that this is not all. We have been compelled to witness even more than this. We have seen the petitions of the citizens of this free and enlightened country—citizens residing in the north—presented to the federal legislature, asking for what they, in their hearts and consciences, believed that that body, had a right to grant, under the provision of the constitution of the United States, which gives to it "exclusive legislation in all cases whatever, over such district—not exceeding ten miles square—as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States,"—that is to say, the exclusion of slavery from the District of Columbia. We have seen petitions and memorials of this kind presented year after year—in the exercise of a right which the petitioners believed to be guarantied to them by the constitution of the United States, and in obedience to what most, if not all of them, deemed to be a solemn duty—I say, we have seen these petitions and memorials presented to congress,

and how have they been received? In the senate of the United States—a body of men composed of a an equal number of northern and southern men, you have found these petitions and memorials rejected. Yes, sir, absolutely rejected; spurned from the door—not listened to—although the sacred right of petition is guarantied to all.

And how has the case been at the other end of the capitol! In the house of representatives, we have seen a resolution adopted, for three successive sessions, which in effect restrains the right of petition in the citizen; although you have not yet found in that body a man so destitute of all claims to integrity and to intelligence as to say, that he believes it is unconstitutional for the citizens of this republic to petition the legislature. What we may have to witness in this respect at some future day, I will not undertake to predict, and yet, Mr. President, you find those very men—some of these very representatives of the northern states—voting with the slave drivers of the south, to lay all such petitions and memorials on the table, without being referred to a committee, or printed—without any action of any kind being allowed upon them, and even without the poor privilege of being read for the information of those to whom they are presented. Such, sir, is the state of things which we witness at the present moment in the halls of our national legistature. We have seen this infraction on the right of petition in the north—and yet it has scarcely aroused the attention, or excited the fears of your representatives, except, it may be, in a very few instances.

Nay sir, we have seen more than this. We have, I regret to say, been compelled to witness even greater innovations on the rights of our citizens than this—gross and flagrant as it is. We have almost seen petitions from our constituents—from those who sent us here to revise the constitution of the state, and to propose such amendments as we believed would the better tend to promote their welfare and happiness—I say, we have almost seen petitions from such a quarter rejected in this hall. We have seen the petitioners denied the privilege of being heard here; and I say this with reference to the fact, that when a respectable petition has been presented here, argumentative in its character, in favor of the right of the negro to vote, we have seen the power of a majority of this convention exercised to prevent the printing of that paper, and to prevent the members of this body from reading it at their desks.

In view, then, of the course of the southern states—in view of the course which even northern men have pursued on this vexed question of slavery—it may not perhaps be a matter of any great astonishment, that most of the members of this convention should be found ready to minister to these bad desires; it may not be astonishing that most of the members of this convention should be found ready to do precisely that which the slaveholders of the south may condescend to direct them to do, for the purpose of cooling that excitement in the south, which they have chosen to get up against themselves. And I may as well say, in taking leave, as I now propose to do, of this part of the subject, that I entertain some very strong doubts whether any thing that can be said, either for or against the introduction of the word "white" into this section of the constitution, will have the slighest effect upon the minds of the members, in relation to the votes they may give. I will here take occasioa to say that

in the remarks which I have offered on this branch of the subject, I have been actuated solely by a sense of the high and solemn duty which I owe to myself and to my constituents, and with no other object in view, than to discharge that duty faithfully, and to the best of my ability.

I have, Mr. President, some further remarks to offer, which I will submit with as much brevity as possible, and at the expense of only a very little more of your valuable time.

I come then to the question, has the negro a right to vote under the existing provision of the constitution of 1790? Some gentlemen have thought proper to argue the question here, as though the negro never had a right to vote, and as if we, the members of this convention, in adopting the amendment proposed by the gentleman from the county of Philadelphia, (Mr. Martin) were simply about to pass a declaratory law, making no alteration whatever in the operation of the existing provision. I can not agree with these gentlemen in the views they express. To my mind the case is free from doubt or difficulty, and, if any thing is wanted to make it clear, I think it is obvious that the arguments of the gentlemen who have preceded me in this discussion, would remove every vestige of doubt or difficulty.

The third article of the constitution of 1790, provides that "in elections by the citizens, every freeman of the age of twenty-one years, having resided in the stete two years, next before the elections, and within that time paid a state or county tax, which shall have been assessed at least six months before the election, shall enjoy the rights of an elector," &c. These are the terms of the constitution. One of the gentlemen from the city of Philadelphia, on my left, (Mr.) has argued this question with much ability, assuming the ground that the constitution was not designed to include free negroes, when it speaks in the term "freemen." Another gentleman who sits on the other side of the house has taken an opposite view of the case.

There are one or two facts in relation to this matter, which I beg leave to bring to the notice of the convention, for the purpose of showing upon what ground I have been led to the conclusion that, at the present time and under the provision of the constitution as it now stands, every man in the commonwealth of Pennsylvania, be his colour what it may, who is governed by the laws of the commonwealth, has a right to give a vote in the choice of those who were to make and administer those laws by which he is to be governed.

It has been stated upon the one hand, and denied upon the other, that in the convention which framed the constitution of 1790, an effort was made to introduce the word "white" in the same manner as an effort is now made by the amendment under consideration. The learned judge from the city of Philadelphia, (Mr. Hopkinson) took occasion to advert to the fact that, in the minutes of the proceedings of the convention of 1790, not one word was to be found upon the subject, and that the fair and just presumption was, therefore, that no such attempt had been made. With entire respect to that gentleman, I feel compelled to differ with him in opinion, and to doubt the accuracy of his conclusions.

In the first place, I will beg leave to refer the members of this body to

the minutes of the convention of 1789,-90; with a view to show that all that was done in that convention, does not appear on the printed records which each member has before him.

At page 163, of the proceedings of the convention of 1790, you will find that, on the 23d of December, 1789, the report of the committee to whom had been referred the ninth article of the constitution, was referred to a committee of the whole convention.

After stating that the convention remained in committee some time on the business referred to them, that the committee rose and reported progress and asked leave to sit again—which leave was granted, and that the convention then adjourned—we find the following passage:

"On Thursday, December the 24th, Saturday, the 26, Monday the 28th, Tuesday the 29th, and Wednesday the 30th, the convention, in committee of the whole, reported further progress in the business referred to them on the 23d."

Thus, continued Mr. D. we find that during a period of time embracing from the 24th day of December, up to the thirtieth day of the same month inclusive, there is no record of the proceedings which took place in the committee of the whole.

But, sir, I do not stop here. At page 164, of the same book, you will find the following statement:

"On Saturday, January 2d, 1790—Monday, January 4th—Tuesday, January 5th—Wednesday, January 6th—Thursday, January 7th—Friday January 8th—Saturday, January 9th—Monday, January 11th—Tuesday, January 12th—Wednesday, January 13th—Thursday, January 14th—Friday, January 15th—Saturday, January 16th—Monday, January 18th—Tuesday, January 19th—Wednesday, January 20th—Thursday, January 21st—and Friday, January 22d, the convention, in committee of the whole, made further progress in the business referred to them on the 23d December."

Now, continued Mr. D. in this state of things, I deny the accuracy of any conclusion which may be drawn from the fact that this book contains all that was done in the committee of the whole, as to the amendments to the constitution in 1790. If regular minutes had been kept of the proceedings, from day to day, during the whole session of that convention, and those minutes were now before us, it would be strong evidence to shew that that which was not there did not take place. But all of us know from occurrences which have transpired here in this body, that many things may have occurred which are not recorded in the minutes of the day.

We know, for instance, that under a rule of this convention, gentlemen may submit a motion which may be debated for a considerable length of time, and that if it is withdrawn at any time before an adjournment takes place, no record of it is to appear on the journal. And there have been many motions submitted and debated, which have been subsequently withdrawn, and in reference to which no record is to be found on our journals. So much then, for this point; and so much for the observations of the gentleman from the city of Philadelphia, who says

that because this record is not to be found in the journals of the convention of 1790, he is more willing to believe that it did not exist, than to trust to the memory of any gentleman who might have happened to be in the gallaries at the time.

But, Mr. President, it has been stated, (not on this floor, but the fact is well known to many of his fellow members) by the gentleman from the city of Philadelphia, (Mr.) that an attempt was made in the convention of 1790, to introduce the word "white," and that it was struck out by the vote of that body,

As regards this statement I have to observe that, in conversation with a gentleman of high respectability, the father of a member of this body, he informed me that he recollects the fact being publicly talked of the next day, after it occured—that an effort was made to introduce the word "white," and that it was struck out on the motion of Mr. Gallatin. But I am so fortnnate as to have further testimony on this subject, which I think will be conclusive to the mind of every gentleman who hears me. I hold in my hands a letter from a venerable man, Albert Gallatin, under date of the 21st of December last, which with the permission of the convention, I will take leave to read for general information. It is as follows :

NEW-YORK, December 21, 1837.

SIR—Yours of the 19th instant has been received. You apply to me for informatiou respecting the share I took forty-seven years ago in framing that article of the constitution of Pennsylvania, which regulates the right of suffrage.

I have already been addressed on that subject, in a general way, but not particularly in reference to the point to which you allude. I cannot, in my seventy-seventh year, sufficiently rely on an impaired memory, to assert positively what took place in the course of a discussion embracing a great variety of amendments approved, rejected, repeatedly modified or withdrawn. Yet I have a lively recollection that, in some stages of the discussion, the proposition pending before the convention, limited the right of suffrage to "free white citizens," &c., and that the word "white" was struck out on my motion.

Permit me, however, to observe that the minutes of the convention, both proper and in committee of the whole, were published at the time, and are incontrovertible evidence of all the facts on which information may be wanted. It seems almost impossible that some copies should not have been preserved amongst the legislative records, or in some public or private library.

I am respectfully,
Your obedient servant,
ALBERT GALLATIN.

Mr. JOSEPH PARISH, Philadelphia.

Now, continued Mr. D., although we have been told that the minutes of the proceedings of that body, as published, are incontrovertible evidence; yet here we are without the original minutes; and although I have no doubt that the proceedings from Saturday, January 2d, to Friday, January 22d, were faithfully kept, yet it appears that those minutes never have been published.

I take it, therefore, from all these facts, that a doubt can no longer exist in the mind of any gentleman, that the effort was made to introduce the word "white," and that it was struck out on the motion of Mr. Albert Gallatin, as that gentleman declares it to have been.

So far, therefore, Mr. President, I sustain myself in the opinion there expressed, that the word "freemen" means every freeman in the commonwealth of Pennsylvania, who is governed by the laws of the commonwealth, without reference to the colour of his skin; and I set myself upon this as the starting point, that the great and good men who framed the constitution of 1790, were of the same opinion.

It was no part of their plan, to exclude coloured persons from the right of suffrage, and hence it is, that they so framed the provision as to suffer "every freeman" to vote in the choice of those who should represent him.

In addition to all this, we have had the opinion of a learned and eminent judge of the court of common please. I allude to Judge Scott, of the county of Luzerne.

On this point, I derive my information from the gentleman from Luzerne, (Mr. Woodward) and I am sure that no member of this body will be disposed to question the authenticity of the information which is derived from such a source.

I learn from that delegate, that the opinion of Judge Scott, is in accordance with the opinion of the convention of 1790, that the word "freeman" means every freeman, without distinction of colour.

That question is said to be pending, at this time, before the supreme court of the state of Pennsylvania, and I was astonished to hear the learned judge, from the city of Philadelphia (Mr. Hopkinson) state, that the court were divided on the subject. From information subseqnently received, however, I am able to state that no division of opinion does exist, or, at all events, that no one is authorized to say that such a division exists.

In addition to the opinion of Judge Scott, whose authority is highly respected in this state, we have the opinion of the judge of the district court, who has a seat on this floor, (Mr. Hopkinson) and whose legal opinion I respect as much as any other gentleman in this hall or out of it—that, under the existing provision of the constitution of 1790, the free negroes have a right to vote. We have then, this array of authority on the one side, and what have we opposed to it on the other?

We have, on the other side, the opinion of Judge Fox, of Bucks county, and if the name of this gentleman had not been introduced from another quarter, in the course of this debate, I should not have made any allusion to him. But since his name has been introduced, and as his opinions have been put forth as law, I will take the liberty to state freely what I think, and in which, I am inclined to believe, all will agree with me, that the opinion of Judge Fox is, what is properly termed a mere *dictum* —a mere expression of opinion, the necessity for the delivery of which, did not arise on the facts presented to him; that he went out of his way in the case before him, that he might give an opinion—that he went out of his way in a manner that was not called for nor justified, for the purpose

of writing out an opinion, and no doubt, having it printed and spread before the public; an opinion, I regret to add, which does very little honor to him, either as a man or as a judge.

I do not speak this unadvisedly, nor with any disrespectful motive. I have not the honor of his acquaintance, and, in the remarks which I make, I wish to be understood as speaking merely of his opinion—and of that I say, that he has delivered it, without having before him any facts to warrant such a proceeding.

What then has been the extraordinary course which this judge has pursued? A question had arisen in the county of Bucks, in relation to the right of some of the county commissioners and auditors, to their seats. It was alleged by the party press, that these gentlemen held their offices by the votes of negroes.

No man was found who dared to put that opinion on paper in the form of an affidavit, and present it to a court. What was presented to the court? I will refer, in the outset, to the opinion of Judge Fox, in which he states the substance of the petition on which he was called to decide. It is entitled "an opinion delivered by Judge Fox, December 23, 1837, on the matter of the contested election of Abraham Fretz, returned as elected commissioner of Bucks county."

The substance of the petition is thus set forth:

"Your petitioners believe, that said election was undue, and that the said Abraham Fretz and Richard Moore, were unduly returned as highest in vote, for the respective offices aforesaid, inasmuch as between thirty and forty votes were received from, and polled by negroes at said election, who, it is believed, have no legal right to vote, the said thirty or forty being a greater number than the apparent majorities of the said Abraham Fretz over the said Jacob Kachline, and the said Richard Moore over the said Dr. F. L. Rodder, and which, if deducted from said Fretz and Moore, would place said Kachline and Rodder in the majority."

I will invite gentlemen, continued Mr. D., to reflect for one moment on this state of facts. Two gentlemen have been elected to office by a small majority—some thirty or forty negroes have voted—and if these votes were to be deducted, the persons elected would have been left in a minority. Does any man deny that such would have been the case? The proposition which I assume, is, that the judge was wrong in acting upon this petition, until it had been alleged, upon oath, that these thirty or forty votes were given for those who had the highest returns. But no man was found who dared to assert this, nor has such an assertion been made down to this time.

Why should the judge go on to deliver an opinion, in relation to the right of the negro to vote? What was there to call forth such an opinion, or to warrant its expression? Nothing at all. But the judge chose to consider, and to express an opinion on that question first, and he winds up the opinion with the following declamation:

"For the reasons given, the court are of opinion, that a negro in Pennsylvania has not the right of suffrage, and, therefore, they will now take the means necessary to ascertain the truth of the facts alleged in the complaint'

The truth of what facts? continued Mr. D. The truth of the fact which might as well have been ascertained by Jack Downing, with his slate pencil, that if thirty or forty votes had been taken away, this individual would have been left in a minority. This was the fact, the truth of which the court was about to take "the means necessary to ascertain." And, let me ask, what respect is this opinion entitled to receive at the hands of the people of Pennsylvania, when it is thus thrust upon them by the judge himself, without any regard to the course which is usually pursued by gentlemen, who grace the judicial benches of our country? To what respect is such an opinion as this entitled, when put in the scale against the weight of authority which I have laid before this convention, and which opinion has its foundation in a complaint presented to to the court in the form of a petition, to which complaint the petitioners dared not even attach their oaths.

I have been informed, upon authority which I consider unquestionable, that the same Judge Fox, who has condesended thus patiently to enlighten the public mind, in relation to this matter of negro suffrage, and who heretofore has been known as a very active politician, has himself been the leader to the polls of negroes; yes, sir, of negroes—of that very race of men who, according to his opinion thus delivered, "have not the right of suffrage in Pennsylvania." I say I have been so informed upon authority which I dare not question.

In view of all these facts, I ask again to what respect is the opinion of this judge, when put against such authority as that which I have given?

I am sorry, Mr. President, to consume so much of the time of this body upon this point, but I was not the first to introduce it here, nor should I have alluded to it, as I before stated, if it had not been first introduced here by another gentleman, and had it not been made the basis of so much excitement in Bucks county. I hope, therefore, that I shall be excused for having expended so much time upon it.

But, sir, the gentleman from the county of Montgomery (Mr. Sterigere) who has been made the recipient, as we are all aware, of these slave petitions from Bucks county, and who seems to be the advocate of slavery doctrines here, says that he can not reconcile it to his ideas to insert the word "white," because it gives colour to the idea that there are black freeman, and that there are none such within the meaning of the constitution.

Mr. Sterigere asked leave to make an explanation. In the remarks which I made, said Mr. S., I asserted that I was in favor of inserting the words "every free white male citizen" shall be entitled to vote, &c., and that I was not in favor of the word "white" alone.

I did not like the phrase "white freeman." The term "freeman" includes white persons, and not negroes. To my mind, therefore, the expression "white freeman" was a solecism. Besides, the introduction of the word "white" only, would be, as I conceive, tantamount to an acknowledgement on the part of this convention, that heretofore and under the provision of the constitution of 1790, negroes had a right to vote—a right which I have attempted to shew by the charters, laws and

constitution of Pennsylvania, never was intended to be given to them, either under the provincial or state government. These are the views which I expressed.

Mr. Darlington resumed. It appears then, Mr. President, from the explanation of the gentleman from Montgomery, that I did correctly understand the purport of his observations.

I understood him to say, that there were no such men as black freemen. In opposition to his opinion, I will take the liberty to quote a few words from an authority which I think he will not be disposed to deny, and which goes to prove that, at all events, in the states of Louisiana and Alabama, there are such persons as black freemen. I refer to a proclamation issued by the hero of New Orleans—good authority, as I take it, in the estimation of the gentleman from Montgomery.

It is a proclamation issued by General Andrew Jackson, at his head quarters, seventh military district, Mobile, September 21, 1814, addressed to the free coloured inhabitants of Louisiana.

It holds this language:

"As sons of freedom you are now called upon to defend our most inestimable blessing."

And again:

"To every noble-hearted freeman of colour, volunteering to serve during the present contest with Great Britain, and no longer, there will be paid the same bounty in money and lands, now received by the white soldiers of the United States."

Again, in another proclamation addressed to the free people of colour, the date of which I do not find, there is the following language:

"Soldiers!—When on the banks of the Mobile, I called you to take up arms, inviting you to partake the perils and glory of your white fellow citizens, I expected much from you; for I was not ignorant that you possessed qualities most formidable to an invading enemy."

Now, will any gentleman have the kindness to inform me what is meant by such language as this?

Mr. Sterigere wished to be informed, whether the gentleman from Chester, (Mr. Darlington) was reading from a proclamation, or from a negro memorial?

Mr. Darlington resumed.

I am glad that the gentleman has asked me the question, and I shall cheerfully answer it.

The last document from which I was reading, is a proclamation signed by "Thomas Butler, aid-de-camp," and, of course, I suppose he was aid-de-camp to General Jackson—which proclamation speaks of the free people of colour being called upon to "partake the perils and glory of their white fellow citizens."

I hope the gentleman understands now that I was not reading from a negro memorial. But I can not take up further time on this point. I

will leave it, therefore, expressing a hope that the gentleman from Montgomery is now satisfied, that in Louisiana at least, there are such people as black freemen.

Mr. STERIGERE, interruptiting Mr. Darlington, said he was not satisfied of any such fact; because the constitution recognised nothing of that kind.

The CHAIR called the gentleman from Montgomery to order.

Mr. DARLINGTON resumed.

If then, Mr. President, as I have endeavored to prove, the coloured population of Pennsylvana are freemen, and not slaves, I ask in the name of God and of our common country, is this the age—is this the time—is this the day in which we, the people of Pennsylvania, having gone so far in the glorious march of civilization, improvement, and christianity—is this the time in which we will take away from any portion of our fellow citizens, the rights which they have enjoyed for a period of fifty years? Rights which they have enjoyed with benefit to themselves, and with advantage to us? Rights which they have enjoyed without injury to the country, to the constitution, or the laws under which we live? Rights which, I say, they have enjoyed for the last fifty years, and which, I trust, they will long continue to enjoy under this free republican government of Pennsylvania.

I ask the members of this body, shall we retrograde in the march which our forefathers commenced in the year 1780, in the abolition of slavery in Pennsylvania? Shall we, their descendants, surrounded by all the evidences of a more enlightened civilization, take measures not to give freedom to the slave, as they gave it, but to draw the links of his chain more closely about him? Sir, I trust that no such unworthy office is reserved for any of us.

There is one other point to which I feel compelled to turn your attention for a single instant. I do it reluctantly, and with feelings of perfect respect to those of whom I am about to speak. I allude to the memorial which has been laid on your table, against the right of suffrage in the negro, and which comes from the merchants of the city of Philadelphia. On referring to the signatures, I find that there are many names I know, among many which I do not know.

The memorial is calculated to give much importance to this aubject, and I therefore ask your attention to one of the remarks which I find in it:

Extract from a memorial to the convention, assembled in Philadelphia, to propose amendments to the constitution. Speaking of the coloured people, the memorial says:

"If they have the right of suffrage by the constitution, as it now stands, their not having been permitted during the long lapse of half a century, the exercise of it, in the most portions of the state, is of itself conclusive proof to the minds of your memorialists, that they ought not to have it."

Do these gentlemen, said Mr. D., know what they say? Did they mean to assert the doctrine that, because the negroes have a right to

vote under the provision of the constitution of 1790, and because their fellow citizens have deprived them of it, that, therefore, they ought no longer to have it?

Did these gentlemen know what was the name of the document which they signed? And does that document, in truth represent, not only the feelings and the wishes, but the intelligence of these gentlemen? I have said that I intend no personal disrespect to any of the signers of this momorial; but I must say that, to my mind, the ground assumed by them is any thing but an argument, that we ought now to interfere to deprive these people of their rights. And they had been deprived of that privilege through—what? Ought we not to restore it to them? Why, should we not guaranty to them this right? "No," says the memorial, "it is a conclusive proof that they ought not to have it—that we ought to interfere, and deprive them of it, because, having the right, they refused to exercise it. They, therefore, ought not to have it." Now, his (Mr. D's) mind, had not brought him to any such conclusion, nor could he reconcile himself to such notions of justice. It was said that this doctrine leads to amalgamation.

He begged now to advert to a subject which he had not noticed before —he meant the subject of abolition. He disclaimed being an abolitionist himself, though he knew, and lived among, manv that were, both men and women, and he would cheerfully bear testimony to their upright, intelligent, virtuous, and excellent characters. Citizens of more sterling worth and integrity, did not exist in the United States, or elsewhere.

It had been asserted that they were favorable to an amalgamation with the people of colour. The assertion was entirely false, and had not a single iota of truth to sustain it.

He, himself, was an unworthy member of the society of friends, or lately had been, and the delegate from the county of Philadelphia, (Mr. Martin) who introduced this amendment, had, also, been a member of that society. For the last fifty years, the society of friends had been the ardent advocates for the amelioration of the condition of the blacks, and for abolition, in every shape and form. It was a gross and infamous libel on them, to say that they either sought or desired such a consummation.

Let the principle be adopted, of exclusion on account of colour, and where. he asked, did gentlemen expect to stop? If the principle was unjust, why should it be adopted? What security was there that, perhaps, at no distant day, the majority might take it into their heads to exclude another portion of our citizens, who might be a few shades darker? He wished to learn what security there was, that this foul spirit, and the prejudice now existing against the negro, might not be brought to bear against some other portion of the community? What security, he should like to know, could there be to any portion of the people, when the majority once adopted the principle of "might makes right?" In his opinion, the principle was fraught with the most dangerous and evil consequences. Let the opinions of the world be what they might, he really could not bring his mind to the perpetration of such an act of injustice as he conceived the amendment contemplated.

Mr. Scott, of Philadelphia, said he was desirous to explain his views, and to express his opinions, with respect to this highly important question, as they might be looked upon hereafter, by some with curiosity, and by others, perhaps, with regard.

The question was one of great interest, inasmuch as it was supposed to affect the existing rights of the white population of the commonwealth of Pennsylvania, and also, deeply to involve the interests of the people of colour residing therein. The subject was one which admitted of being discussed with entire coolness; and he was happy to say, that up to the present time, at least, it had been calmly, dispassionately, and deliberately discussed.

He would be willing to vote for the amendment proposed, if modified in the manner he would shortly point out, for he believed such an alteration of the constitution, as he had in contemplation, would be regarded as both wise and judicious.

When he should have read the modification he was about to propose, the gentlemen would perceive that he was willing to insert the word 'white,' but with a qualification attached to it.

The language of the first part of the section now before the convention, ran in this way:—

"In all elections by the citizens, every white freeman of the age of twenty-one years," &c., "shall enjoy the rights of an elector."

Now, he would move to add the following to the section:

"Provided, also, that the legislature may, at any time after the year 1860, by law passed at two successive annual sessions, extend the right of suffrage to such other persons, of whateaer colour, and upon such conditions as to them may seem expedient."

Mr. S. said that this was an amendment which he should like to see adopted, modified, perhaps, but still retaining the principle of confining the elective franchise to the whites, with certain guards and checks.

He would now proceed to state the reasons why he desired such an amendment as this; and those reasons would be appreciated best, probably, if we looked, first to the change proposed to be made in the section under consideration; in the second place, to the inducement which may exist, to make that change; and, in the third place, to the practical result and operation of such a change.

He proposed, then, first, to call the attention of the convention to the change which would be created in the present constitution, by the adoption of this amendment. It was necessary that each member of this body should thoroughly understand the constitution, to enable him to give an honest and conscientious vote on the amendment of the delegate from the county of Philadelphia.

If it was true that the constitution of Pennsylvania, as it now stands, confers on the coloured man the right to vote, and that he is a citizen, then no delegate could vote either for his (Mr. S's) amendment, or that of the gentleman from the county of Philadelphia. He would say that no man who entertained this opinion, if he was a freeman in heart and sentiment, could conscientiously vote for either of the propositions. And why could he not?

If society, when forming itself into the social state, had conferred upon any body of men a right, they specified the grounds upon which they hold it. If, then, under the social compact, originally adopted, men had become members of that society for life, and had brought up their children under it, he held it to be politically and morally impossible for that social body, in, or out of, convention, to disfranchise those men. It was politically and morally, but not physically, impossible. He would freely admit, that if the great majority of the people of the commonwealth were to insist on such a denunciation, they could deprive a body of men of their rights. But, they would have the political and moral right, and the right of man, to resist any such attempt, at the point of the bayonet. And this would end in a civil war. He would, therefore, say, that he who believed that coloured men have the right to vote under the constitution of 1790—that they are members of the social compact—must vote against his (Mr. S's) proposition, and also that of the delegate from the county of Philadelphia. But that was not his opinion. He did not think they had a right under the existing constitution. He, however, might be mistaken. But, he felt himself bound to frame an opinion—to come to some conclusion.

He could not satisfy his own conscience, and fulfil his duty to his God and to his country, unless he made up his opinion, one way or the other, on a question of such vital importance as the present. He would state briefly, his reasons, for entertaining the opinion he did, in relation to this subject.

The right to vote, depended upon two requisites. The man who should present himself at the polls, must be a freeman and a citizen also. It was not sufficient that he was as free as the air we breathe—more than that was required of him, before he was permitted to vote.

He must, as he (Mr. S.) had already said, be a citizen. And, it was somewhat remarkable, that though the constitution of 1790 includes the two requisites of "freeman" and "citizen" too, the constitution of 1776 contains but the single requisite, that the individual presenting himself at the polls, shall be a "freeman."

The language of the constitution of 1776, was, "every freeman," &c.; but that of the constitution of 1790 was:

"In elections by the citizens, every freeman," &c.

Now, what had transpired between the adoption of the constitution of 1776, and that of 1790? The legislature of Pennsylvania had passed the act of 1780, in relation to freemen, and which contains this strong language:

"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," &c.

No man, therefore, it would be perceived, after the passage of the act of 1780, let him be, of what nation or colour he might, except the negroes and mulattoes who should be registered, would be regarded in any other point of view, than as freemen.

The language of the act of 1780, was "freeman." And, in 1790, the framers of the present constitution, did not merely use the term "freeman"—they said:

"In elections by the "citizens," every freeman," &c. "shall enjoy he rights of an elector."

They adopted both qualifications. There were, also, other qualifications.

In the year 1790, when this constitution was adopted, what, he would inquire, was the extent and character of the black population in Pennsylvania? He did not know, accurately, what the extent of it was; but, judging from the ratio of increase, and carrying back the calculation to 1790, it could not have exceeded four or five thousand. What was their condition in 1790? They were still bondsmen, notwithstanding the act of 1780. Yes! the badge and stamp of slavery was still upon them. We had, in 1790, those who were slaves before the act of 1780 was passed, besides their children, who remained in slavery until the age of twenty-eight.

The black man, then, in 1790, was in a condition of slavery, but with the prospect of freedom before him. But, he apprehended that it was the intention of every one of the white population of the state of Pennsylvania, and of the framers of the constitution of 1790, to call every man belonging to, and residing in the state, a "citizen" of this free government.

What, he asked, was the language of the constitution of 1790?

"We, the people of the commonwealth of Penasylvania, do make and ordain," &c.

This followed the constitution of the United States, which had passed a few years before, and the language of which, was:

"We, the people of the United States," &c. "do ordain and establish this constitution for the United States of America."

Now, it was unquestionably true, that the people of the United States, assembled in convention, did not mean to say that the coloured population of this Union, formed a portion of that people, who were competent to frame a constitution. They did not mean to include them as having participated in framing the constitution. Neither did the framers of the constitution of Pennsylvania, in 1790, mean to say that the four or five thousand blacks, comprehended a portion of that people, who were competent to frame a government.

For these, and other reasons, (which he had not time to express, because of the oppression of the rule limiting delegates to a certain number of minutes to speak) he had become satisfied that the blacks were not entitled by the constitution of Pennsylvania, to the right of suffrage. He had arrived at this conclusion, after deep and anxious reflection, for he must avow, that no question had ever before, pressed upon him with such deep and awful responsibility, as this had done. He would repeat, that he had come to this conclusion, after deep and anxious reflection—after days of thought, and nights of almost agony. He believed it, and must vote accordingly.

Then, according to his interpretation of the existing constitution, we have the case of a coloured population among us, who are not permitted to vote—not because they are not "freemen," but for the reason that they are not "citizens." Now, from this disposition of matters, two results followed, and to which he earnestly invited the attention of the convention. He contended that negroes cannot vote, because they are not citizens. Now, he would ask the friends of the coloured population, to observe his first result, which, if it was right, and they adopted his proposition, they would do so in a spirit of kindness to that coloured population. If, then, it was true that they have not the right, because they are not citizens, then was his amendment in entire accordance with the past glory and policy of Pennsylvania, for it looked to a prospective amelioration of the present condition of the blacks.

This was the result of his first proposition. The other result was this:

They cannot vote, because they are not citizens. If that was true, and the ground of that opinion correct, we might, by a provision which shall look to a prospective amelioration of their condition, confer upon them the right of voting, without the right of being elected.

It had been said all round the convention, that the right to elect, gave the right to be an elector. He denied it. The constitution of Pennsylvania prescribes, as a qualification for office, a citizenship of the state of Pennsylvania. And, to that, was to be added the qualification of an elector.

The right to be an elector might be conferred, and the right to be elected, withheld. The right might be conferred, under any restriction, for it was entirely under legislative control.

The question, then, was, whether we could give, at a future period, this power to the legislature, and whether there was any thing in it, which would be to their prejudice?

He would now state what he conceived to be the inducements which presented themselves to adopt this course of action. He felt conscious that he, in common with every member of this body, had a serious duty to perform, for which he was responsible, not merely here, but hereafter. Every member lay under a deep responsibility to the great Creator of the Universe, for the manner in which he discharged his duty.

I am inclined to think, said Mr. S., from my observations of the world, and from a knowledge of history, that Heaven smiles or frowns upon nations, according to their course of conduct. I think that the nation which pursues a course of general benevolence, of general humanity—of regard for the whole human race, would be more likely to receive the smiles of the Most High, than that nation which disregards those considerations, and looks only, in its legislation, to present indulgence, present passion and prejudice.

In my opinion, we owe something to the cause of liberty, and to the cause of freedom. We owe much to that cause. We are, beyond all dispute, the only republic upon the face of the earth; the only people—the only nation professing to be governed by the will of the people, and

adopting that will as the corner stone of our institutions. We are trying an experiment, on the final result of which, the fate of the world, either for the permanency of republican institutions, or those of a despotic and monarchial character, depend.

As a republican people, we are bound to respect every rank—are bound to elevate to the scale of humanity, all human beings who come within the limits of the commonwealth of Pennsylvenia. The eyes of other nations are upon all your legislation in this particular; and the Republic may be more interested than we imagine, in our proceedings on this important question.

I do not ask you to give the coloured population of this commonwealth the right of suffrage, nor to confer upon them the right of citizenship; but merely to hold out, prospectively, that they may earn, by good conduct and actions, the right of suffrage hereafter.

The commonwealth of Pennsylvania should so nurse all her resources, as, at all moments of future peril and of contingency, to be prepared for the worst. And among her greatest resources, as one of the greatest nations on the face of the earth, is her population. She is so to deal with them—so to treat them, as at all times to be able to exact from them all that their intellect can give, and all that their life's blood can bestow, if it should be necessary to ask it of them.

We should not forget that we are dealing with a class of men who have sensibilities like ourselves—who have minds like ourselves, which came from the Great Creator; who are to be judged by the same Great Being as ourselves,—and whatever may be said here, will go to mother earth, and perhaps be laid side, by side, with us.

We say the blacks are a degraded people. A degraded people! I doubt whether the term is true. They are a despised people, that is certain. So were God's own chosen people, when in a state of captivity. They are a despised people; but, are they a degraded people? What constitutes the presence or absence of degradation? Degraded is he who has no knowledge of the true God—who has no knowledge of the rights of man.

But, look at a man who has a knowledge of the true God, of free government, and of the rights of man, and I ask you whether you can call that man a degraded man? I ask you whether the coloured population of Pennsylvania, have not sprung from the same Great Creator as we ourselves have? I ask if the coloured population have not the same knowledge of God, and of the rights of man; he meant those who had raised themselves, by their industry and morality, to respectability? Their churches and creeds are the same, we know. I would appeal to their memorial which has been laid upon the table of each member of this convention, as a proof that they have a knowledge of the rights of man, and of the laws of freedom. I say, therefore, that they may be a despised people, but as a whole, they cannot be regarded as a degraded people. If so, how? By the oppression of the white man; reduced to slavery by ourselves—trampled upon by us, and then reproached for the result of that act.

Man will always perpetrate this species of violence, and add insult to injury. There is no flower so fair, of animated creation, that man does not

trample in the dust, and then treat with scorn. And, thus after having subjugated, trodden down, and enslaved the blacks, we now turn round upon them and say, they are a degraded people.

I call upon this convention to repair, as far as possible, the wrongs that they have done. To do so, would be in conformity with the whole course of Pennsylvania feelings and policy.

This commonwealth was founded in peace, and upon the basis of philanthropic sentiment. She is as free from the stain of blood, as any nation upon earth; and she was the first among the people of this land, to repudiate slavery. She, however, stopped before she reached the goal, and the empire state has, at least, in this race, gone before us, and declared, in her constitution, that black men are among her citizens. I do not ask that of Pennsylvania. And, I do not ask it, not because I think Pennsylvania ought not to grant it, but because I am of opinion that, at the present time, our passions and prejudices are opposed to it. I am perfectly willing to admit, that in legislating for men, we must have reference to our passions and prejudices. We must take them as they are, with all the weakness and infirmities of their nature upon them. We must legislate accordingly. I feel prejudices in common with vast numbers of my fellow citizens. I acknowledge them to be deeply rooted. They came fresh from my heart. They try to keep down, what I believe to be the better sentiment of humanity, which is raising up and warring with these prejudices. I feel unwilling to tolerate an association with the blacks, or to exchange civilities with them. I, therefore, dare not vote, under these prejudices, for giving them the right of suffrage.

A word more on the third branch—the practical effect of the measure I propose. It will be observed I propose no plan which will be agreeable to the coloured man—to give him nothing which he does not possess to day; but, at the end of twenty years, from the day of the adoption of the constitution, that it shall be competent to the legislature, to admit him to the privilege of citizenship, and to admit such of the coloured population to exercise the rights of suffrage, as they may think expedient; and under such restrictions, and conditions, as the legislature of that day may deem to be wise and proper. And this is not to be done by one legislature, but by two legislatures. It is not to be within the power of a single legislature, to make this change, because it will be necessary to consult the existing prejudices of the people at that time. But it shall be in the power of two legislatures, sitting regularly, to give the right of suffrage to the coloured man, under such restrictions, and on such conditions, as they may think proper.

I will not propose a freehold qualification, on the New York plan, because the freehold plan is repugnant to Pennsylvania feelings, and she would not consent to it. I object to it also, because I do not wish the coloured man to come into our political family, on apparently higher footing than ourselves. I would not put it in the power of the coloured man, to turn round on the white man, and say to him—"I have a freehold privilege here, while you have no such dignity." I would not place the coloured man in a situation in which he could be enabled to arrogate a superiority over the white citizen. I would merely make him an elector, leaving it to the legislature to determine what rule shall be applied

to him; by what qualification it is that he may claim to exercise the right of suffrage; what description of persons shall be entitled to it, and what shall be regarded as a disqualification.

He put the period at twenty years. Why did he do this? Partly, to comply with the prejudices of the present day; and partly, for another reason. In twenty years, our state will be filled up in all her borders, with a vigorous and dense population, and we shall be more able than now, when the population is sparse, to keep a check upon the coloured people. Yet I have no fear, if an earlier day were agreed on, that any injury could result from the operation. This system has prevailed in the eastern states for some years, yet we do not hear that the effect has been to fill up those states with a coloured population. Still I am willing to say we will wait until the population of the state shall have become dense, and the disproportion altogether in favor of the whites.

Another reason which had its effect upon his mind, was this. The coloured people are not now fit to be at the polls. There are some who are educated, and well lettered, but the ignorant mass are not now fit to exercise the right of suffrage, not constituted to turn their attention to public offices, or to judge of the qualifications of officers.

For these reasons, then, he would not ask this extension of the right of suffrage at present. By making the provision to admit the coloured people hereafter, you give them a motive and an inducement, to make themselves worthy to appear at the polls. In this proposition, he had not forgotten the south. He looked to the south, and regarded her feelings, in every vote which he was disposed to give. We are a part of the same family. Their interests are dear to us. Their interests cannot be injured, the ties which bind us in family feeling cannot be broken up, without causing tears and anguish. He would not be ready to yield himself to the visions of every rash politician of the south, nor, on the other hand, to lend himself to measures of hostility against his southern brethren. The south are gallant, and brave, and wise. Many citizens from that section, have presided over the destinies of our land, and we must not forget that they are of the same family. Their men are without fear; their women are without reproach. He would not be willing by any rash legislation, to alienate such a valuable portion of our family. The citizens of the south could pardon excitement, and hasty, and intemperate language, in the discussion of the question. It is not their property that they fear the loss of; not the value of the property of the slave. They look to their sparse white population, and to the danger to which they may be exposed. They know that if rebellion and a servile war should ensue, the result would be the destruction of the white men, and sorrow and degradation to the women. The southern citizen goes not for the mere preservation of his property; but for that for which he would willingly sacrifice both property and life, the preservation of those who are dependent on his protection from infamy. This he would not consent to risk, nor to permit the rash and inconsiderate folly of others to put in peril. While, therefore, we endeavor to be wise and prudent in the regulation of our affairs at home, we should be careful, not, by any unwise and precipitate course, to cause dissatisfaction and misery in other states.

If it was in order to do so, he was prepared to offer his amendment

now, and to take a vote on it. He wished it were possible, by the power of persuasion or entreaty, to get the convention to adopt any modification, which, without alarming southern feeling, might hold out to the coloured people the prospect, remote though it might be, of being admitted to the exercise of the right of voting at the polls.

Mr. MARTIN said, he could not consent to modify his proposition, to suit the views of the gentleman from the city. In May, 1837, he had introduced this amendment into the convention, pretty much in the form in which it now stands. Proposition after proposition had been made to him, and he had refused to modify his amendment in any shape or sense whatever.

Mr. SCOTT said, as his amendment could not be presented, he would withhold it for the present. But if the convention should agree to insert the word "white," in the constitution, he hoped to be permitted to offer his amendment, so as to have an opportunity of placing it on record, and not to be cut off by the previous question. If the word "white" should be inserted, he would offer his amendment, and he hoped the convention would allow him the opportunity he asked.

Mr. FLEMING, of Lycoming, wished to say a few words, for the purpose of justifying the course he was about to take. He did not know why there should be any excitement in this, more than on any other simple subject. It was merely a question as to the right of suffrage. At this late period of the session, he would not enter into an argument, to shew that the constitution acknowledges the natural right of all to vote. This had been contended for by some. He felt that the question was quite exhausted, and any thing that he might have to say in relation to it, would be of little importance. His opinion had been made up for many years. But he had never, at any time, had any feeling on the subject, so far as concerned his opinion on the question, which appeared to him to have been settled by the constitution of 1790. He had consulted all the authorities, and had not found that the coloured people had any right to vote. To himself, it was a matter of little consequence, as regarded his action on the subject before the convention. But he would advert to one fact, in relation to it, and then leave it to the convention to act as their wisdom might suggest.

The United States constitution has said "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

He would then ask this question—if any of the black population of this state, after their admission to citizenship, should change their residence, and go to the south, will the south receive them, and grant them the rights and privileges of citizens of other states, in the manner prescribed by the constitution of the United States? Without following the idea out, he would merely call the attention of gentlemen to the difference in the situation of the blacks in the south, as compared with it in the north. He was not, at this time, disposed to make half-way work of the constitution. He was not now disposed to insert a provision in the constitution, that black men, who held an estate, may come to the polls and vote for the officers of the government. This he would consider a stain on the

record! The record of those who had, or who had not real estate, would be a stain on the history of Pennsylvania. He had never thought that property was necessary to constitute the man. "Wealth makes the man, and want of it the fellow," was a principle on which he could not consent to act. If any blacks are to be allowed to vote, let them all vote. If any are to participate in the right of suffrage, then admit them by wholesale, and not half way. He would not permit those individuals only who held property to vote. All had the same interest, were under the same government, and property should not be the criterion of political right. A fugitive from other states may come here. He may acquire property, embark in the politics of the day, and be found one of the busiest men on the day of election, while the coloured man of respectability, who had lived in the commonwealth, and felt all the state pride of a citizen, would be excluded, and he might also have a vote from which the white man might be excluded.

What would be the effect of introducing the word "white?" We have been told that the word itself is undefined and undefinable, and that, if all were not pure white, they would not come within the exposition. It would have to be determined what was meant by the use of this word. So long ago as 1775, when this state was under the proprietary government, the word "white" was used several times in the public acts. It was introduced in an act of 1775, in this way:

"If any free negro marry with a white, such negro shall become a slave during life."

So that they made use of, and understood the word, more than a century ago. The word "white," has been used in the legislation of the United States, from the first act down to the present time. In the act of congress of 1802, we find the word "white" occurs. In the act of 1804, we read the words "any alien, being a free white," &c. In the act of 1816, we find the phrase "free white persons," and, in the act of 1824, the phrase is used again. It will be a very strange inconsistency in our action on this subject, if we introduce into our constitution a provision, giving the blacks a right to vote, and go so far as to say that those blacks born in the state might acquire a right to vote in Pennsylvania, without extending the right to all. All foreigners, who are not white, can never be naturalized under the laws of the United States. Then it would be a strange inconsistency in our action here, that, in relation to a race of people never contemplated in the constitution as a portion of our political family, and who had nothing to do with the compact entered into with Pennsylvania,—we should be asked to admit this race, but few of whom, could ever obtain the right. We expressly exclude blacks, in complying with the provision of the law, under which foreigners, who are not white, must forever remain aliens. Under the express provision of the constitution, there is no way by which they can be permitted to participate in the right of suffrage.

The very argument of the gentleman from Philadelphia, and which was also used by the gentleman from Franklin and others, implies a difference between the black and the white races of men, and how then could they reconcile it to themselves to destroy this distinction, by providing that some of the blacks should enjoy the right of suffrage, and that others should be excluded from it. They make a broad distinction between the

two classes, and yet do not carry out the principle in their argument; when they attempt to shew why some should be permitted to have certain rights, and others be excluded. No man would attempt to say, on this floor, that there had not always existed a vast and wide difference between the black and white population, and between the rights which each should possess. The difference was so marked that no one could help seeing it. If it were necessary for him to go back, and trace the different legislative proceedings on the subject, he could shew the convention that the statute book points to a broad and glaring distinction between the rights of these different classes of people. Yet, with all these facts before us, we have been asked to do—what? Are we about to do any injustice to these people by introducing the word "white?" Are we committing any crime? It has been declared that to be guilty of such inhumanity, and injustice, would be a barbarous act. These are hard words, but, in this case, they had no application whatever. He could view the act in no other view than this—that it would be an express declaration of what the constitution is, so as that it should be clearly understood by every one what the constitution of Pennsylvania now means. If we are now putting into the constitution a clause declaratory of what it means, where is the glaring impropriety of the act which is about be done? We are merely asking of the convention to settle a question which has been but recently agitated in the commonwealth, which has existed among us but a few years.

He would ask gentlemen to shew where it has ever been admitted that the blacks have a right to vote? He would ask gentlemen what had been the practice? From the formation of the government to the present day, he found that this right had been uniformly refused, uniformly and invariably denied. Such, then, had been the practice, so long as he was conversant with it. The action of the people, in relation to these rights, has been invoked now, not by fanatics—he would not make use of that word—but by those who make it their peculiar study. By these, the question has been started, and, within a very short time, it has created no small excitement. In two courts, decisions have been given against the right of the coloured man to vote, in judicial form. As to these opinions, however, he cared nothing. He acted here, on his own responsibility, and it was a matter of perfect indifference to him what was the course of any legal or other opinions. He did not know how the people of Pennsylvania were going to act in this matter, but he could not be blind to the efforts making to produce an excitement on the subject.

[Mr. F. then read an extract from an address, which appeared in one of the newspapers of the day.]

Mr. Brown, of Philadelphia county, said a few words in relation to the article, but they were entirely inaudible to the reporter, owing to the noise which prevailed in the hall.

Mr. Fleming said, that he knew nothing about it. He had found the statement in a little newspaper, called "The Public Ledger," and the gentleman from the county of Philadelphia, had better examine it. The principal object which induced him, (Mr. F.) to take the floor now, was for the purpose of drawing the attention of the convention to the fact of the manner in which the word "white" had heretofore been introduced into the legislation of the country.

The term "white" had always been used, but with no explanation of its meaning; and no doubt or difficulty, as to that, had ever arisen. The individual signification of the word, was perfectly well understood, and in the legal application of it, no difficulty had occurred. He would ask, if it was intended by gentlemen here, to give that wide and extensive latitude, in regard to the application of the term "white," which the gentleman from Franklin, (Mr. Dunlop) contended for? That gentleman had certainly displayed much knowledge of the various complexions of the nations of the earth.

He, Mr. Fleming, wished to know, whether the gentleman wished such a modification of the term "white," as might lead to the transplanting of some of those bright ornaments of which he had spoken, to the soil of Pennsylvania, in order that we might have the benefit of their valuable services. If that was the laudable object which the gentleman had in view, he (Mr. F.) thought that the convention had better insert the words "black," "copper," or "yellow," in addition to the term "white," or even more colours than these, for the number the gentleman enumerated, with such rapidity, were nearly as many as composed the rainbow.

Yes! if the gentleman from Franklin would provide for all, or any of those people whom he had mentioned—by giving them a right to participate in our elections, and to become officers of the government, he would advise him to move a special amendment setting forth, which of the races he had named, should be admitted to a share of the rights which we enjoy.

He would conclude, by repeating what he had already said, that no man could be at a loss to understand what was meant by the word "white," as proposed to be used in the constitution.

Mr. FULLER, of Fayette, said, it was quite apparent, that a call for the previous question could not be sustained, and for the simple reason, that it would cut off the amendment of the delegate from the county of Philadelphia, (Mr. Martin.) It was evident, then, that the convention was determined to insert the word "while." And, although, there were gentlemen opposed to the adoption, desirous of an opportunity of expressing their sentiments, yet, he thought, that as the body had only eleven days, in which to complete their labors, they ought to refuse to adjourn until the question should be taken. He hoped they would continue in session until a decision should be had. While up, he would avail himself of the opportunity, to advert to a remark or two, that was made by the gentleman from Allegheny, (Mr. Forward.) The principal argument that had been urged against the insertion of the word "white," was by that delegate, whose arguments were generally characterized by their soundness and strength.

But, he Mr. F., thought, that in the present instance, the gentleman had failed in carrying conviction to the minds of those around him. The gentleman in the outset of his speech, told the convention that he was not an abolitionist, in the modern sense of that word. He immediately afterwards, directed the attention of the body—to what? Why, to colonization—to the means of getting rid of the black population—of sending them out of the United States.

Now, if the gentleman meant to advocate, as he undoubtedly had done —the right of suffrage, why introduce the subject of colonization? If he believed, that they possess the right of suffrage, in common with the white man, why talk about colonizing them? According to what the delegate had said, they had equally as much right to vote here, as members of this body. But, the drift of the whole argument of the gentleman, proved, if it proved any thing, that the negroes ought not to have the right of suffrage. To his mind, the argument throughout was an entire failure. And, there were few, if any gentlemen in this convention, who made more forcible and able arguments than that delegate generally did. This only went to show that the foundation—the basis upon which his argument rested, was frail—unsound—untenable. Although, the gentleman was willing to admit, that the blacks could not be permitted to participate in the social rights and privileges of the whites, yet he would grant them the right of suffrage, which he contended, might be done, without any danger whatever.

The negro race, in his (Mr. F's.) opinion, ought to be kept separate and distinct from the white. He contended that, if the negroes were debarred from participating in the social rights of the whites, although allowed to exercise political rights in common with them, they would, as they grew in strength, endeavor to get up an interest separate and distinct from that of the white population. He thought that the gentleman's argument, must have entirely failed, to convince any one of the propriety of granting the negroes the right of suffrage. The question ought now to be decided, and should no longer be left unsettled. The judicial tribunals having acted on the question, and given two different opinions, it was very important that it should be left no longer in doubt; and such he believed to be the desire of the people of Pennsylvania. Although his sympathies for the black race, were as strong as those of any man on that floor, yet he was only discharging what he conscientiously believed to be his duty, when he said it was the true interest and policy of Pennsylvania, to exclude the negroes from the right of suffrage.

The gentleman from Lycoming, (Mr. Fleming) had said, he knew of no instances, of that right being exercised by the blacks.

He, Mr. F. however, could tell that delegate, he was not in possession of all the information on the subject, for the blacks had voted in several counties—Fayette among the number—within the last five or six years. They had been prompted by the abolitionists, to claim and exercise the right of voting, but which he (Mr. F.) insisted they never were entitled to, and ought not to have. He repeated his hope, that the convention would not separate until they should have settled this question.

Mr. Forward, of Allegheny, said, there were two or three delegates who were opposed to the amendment, and desired to express their sentiments on this important question. He hoped that an opportunity would be afforded them of addressing the convention, the question being one of the greatest importance, and deserved to be farther considered. He, himself, also wished to show that the blacks have a right to vote—not having said any thing on that point, when he last addressed the body. He trusted that the convention would now agree to adjourn, and devote the whole of Monday to the discussion of the question. He then moved an adjournment.

The motion was lost—ayes 51; noes 53.

Mr. Dickey, of Beaver, said, that he would like to hear the gentleman from Allegheny, (Mr. Forward) who, doubtless, if permitted to address the convention, would endeavor to be as brief as he could, consistently, with what was due to the question. The question pending, was on the insertion of the word "white," so as to make complexion a qualification of an elector. Heretofore in other countries, and in this, men who were opposed to an equality of privileges, and of rights, and who thought every one ought not to possess a common interest in their country, desired that there should be some qualification of property, to entitle a person to the right of suffrage. In many of the states of this Union at the present day, property was required as a qualification. It had always been the doctrine of the democracy, that property does not qualify a man to vote, and that it was sufficient that he was a freeman and a citizen.

If, then, the convention should adopt the amendment of the delegate from the county of Philadelphia, this state would have gone farther than any other member of this confederacy had done, in restricting the right of suffrage.

The framers of the constitution of North Carolina—a slave state—in order to attain the same object, as the gentleman from the county of Philadelphia, and to avoid the doubts and difficulties which it was apparent, the term "white" would give rise to, inserted a provision that no free negro, free mulatto, or free person of mixed blood, descended from negro ancestors, to the fourth generation inclusive, &c. should be allowed to vote. They had taken a different mode of excluding the negro race from the right of suffrage, than that proposed by the delegate, which it might have been well if he had followed. Thus, it would be perceived, that in North Carolina, freemen of the fifth generation, are permitted to exercise the right of suffrage. But, here insert the word "white," and Pennsylvania would have fallen in the scale of states, below that of a slaveholding state.

The operation of the delegate's amendment would be to exclude men from the right of voting, although their complexions might be as white, and their hair as straight, as that of any member of this body. He (Mr. D.) would never give his consent to the insertion of the word "white," nor rest satisfied to be behind the slave holder himself in extending the right of suffrage.

The introduction of it would lead to other difficulties. It would be necessary to set forth the exact construction that must be given to the term, so that no doubt could arise as to the true meaning of it. He would ask if gentlemen would have it left to the arbitrary decision of the inspectors and assessors? He imagined not. It might happen that a man might be excluded from the exercise of this right, because he did not happen to have as fair a skin as the inspectors and assessors required at his hands, although his ancestors might have had more pure white blood in their veins than these men.

There were numbers of men in Pennsylvania whose complexion was not the whitest, yet they were of the white race, while, on the other hand, there were men of the negro race whiter than some of the white

race. Supposing a man to go to the polls for the purpose of voting, and the inspectors to say they could not receive his vote because he was not in their opinion, a white man, how was he to establish his ancestry? These were some of the difficulties which surrounded the subject, and which would arise if the amendment should be adopted.

If the object of the delegate from the county of Philadelphia and others, was to exclude the negro race only from the right of suffrage, let the convention adopt the course of North Carolina. This would be much better than having to decide at the polls, whether a man was entitled to vote.

A white man might be excluded from voting, under such circumstances as he had referred to. What chance would a white man, but of dark complexion, have at the polls in a time of great political and party excitement? For this reason, if no other, he could not vote for the amendment. Again, when elected a delegate to this convention, so far as he knew the wishes of his constituents, the amendments they required were but few and simple.

He had frequently told the convention that they were confined to the county officers—to an alteration of the judicial tenure, and to an alteration of the time of meeting of the legislature. He had not been instructed by his constituents, and every vote he should give would be according to the dictates of his conscience, and the duty he owed to his constiuents and his God.

He had hoped that as none of the good citizens of the commonwealth had called for any restrictions on the right of suffrage—for he had not heard a whisper on the subjeet—that none would be introduced. The convention had hitherto gone on to require a longer residence—which had been one of his complaints—than was required by most other states —two years—when, they required but one year. It had been somewhat complained of that the right of suffrage had been too much restricted. But, not a syllable had he heard anywhere in relation to imposing any restrictions on the right of suffrage.

He had not come to this convention for that purpose. Indeed, so far from its being the wish of his constituents to restrict the right, they would much rather enlarge it. Whether the free coloured people of the commonwealth of Pennsylvania were entitled to vote under the constitution of 1790, seemed to be a disputed point among judges and lawyers. It was not for him to set up his opinion against their's; it was sufficient to say, that the practical effect of it had been to exclude them. He knew that they had been refused the right, when they asked it, in that part of the state from whence he came.

He, however, would not exclude any one that had a right, under the existing constitution. There was a large portion of the people, who believed that a man born on the soil of Pennsylvania—no matter what might be his complexion—whether dark or fair—was a freeman. What, he would ask, was the test of a freeman under the constitution? Why, the payment of a tax and a residence of two years in the state.

[Mr. D. having given way for that purpose,]

Mr. Scott, of Philadelphia, moved that the convention adjourn. Lost.

Mr. Dickey resumed.

There are a great many in Pennsylvania who believe that every one born in this state, has a right to vote. He did not concur with the gentleman from Philadelphia that it was not in the power of this convention to require other and different qualifications from those rendered necessary to entitle a man to the right of suffrage, under the constitution of 1790.

It was undoubtedly in the power of this convention to insert the word "white." Power and right were not conventional terms. Power might be just, or unjust. With regard to his own feelings on this question, he had no hesitation in avowing that he would permit any man to enjoy the right of suffrage, who was born in Pennsylvania of free parents, no matter what his complexion might be. He (Mr. D.) would therefore, vote against the amendment of the delegate from the county of Philadelphia.

In most of the New England states, all free persons are entitled to vote. And, in New York, under the amended constitution of that state, people of colour can vote, who possess the requisite qualifications. An attempt was made in convention to introduce the word "white," but the proposition was voted down. A most distinguished member of that body was the gentleman who now fills the presidential chair.

Some gentlemen, in the course of this discussion, had expressed their opposition to granting the right of suffrage to the blacks, on the ground that they might become so numerous as to obtain the ascendency and control of the government of Pennsylvania. Now, he apprehended there was not the slighest cause for alarm, and so gentlemen would discover by referring to the statistical tables, in reference to the past history of the country.

There was, perhaps, less danger to be apprehended at the present time than there had been at any former period. The condition of the blacks in the slave holding states was now much worse than it had been, which was attributable to the abolition excitement that had been gotten up, and consequently the danger of an influx of negroes into Pennsylvania at this time, was infinitely less than formerly.

He did not speak of English abolitionists; but, of persons born on the soil of Pennsylvania, and entitled to all the privileges of freedom, who believe it to be a sin to hold men in slavery; and, they do not inquire whether an individual has a black or a white skin. They believe that all have a common right in our common country.. They believe it to be a sin to hold men in bondage, and that it was their duty to preach up the doctrines of emancipation and delivery from bondage, and to convince those who held slaves that it was not their interest to keep them in bondage, and they should let the slave go free.

In his section of the state there were many such men of principle, men who entertained as high and as just a sense of civil and religious duty as any in the commonwealth of Pennsylvania. These men had thought it their duty to combine and form themselves into a society, called the anti-

slavery society. If he understood their principles, they were not willing to emancipate slaves by force of arms, or by encouraging insurrections among them. It was their wish to persuade the slave holder to set his slave free, and to make him the recipient of wages. They had no desire to let loose a million and a half of slaves, to cut the throats of their masters and mistresses. They were anxious to relieve the slave from bondage, and to impose on him such restrictions as would make him subject to law and order. They did not propose to bring about their object by other than constitutional means. They did not contemplate any interference with domestic institutions, but to reach the minds and hearts of persons in the congress of the United States.

They believe that congress have the right and power to abolish slavery in the District of Columbia, and in this belief he concurred with them. They believed that it was in the power of congress to terminate the slave trade in the states. He was not prepared to give an opinion whether they had this power or not—whether or not it extends so far. The people in his section of the state believe that congress have no right to refuse to receive petitions; but, that it was their duty to receive them, read them, and give them respectful reference and consideration. He entertained the same opinion. The freedom of the press and the liberty of speech are involved in this matter. He hoped the original language of the section would be retained.

There, doubtless, may be fanatics and abolitionists whose course is to be regretted. But, when ever was the time, when the country was free from fanatics and abolitionists? And, when, ever was the time when the advocates of freedom were more numerous. It was not to be questioned that fanatics and enthusiasts were to be found among them. No doubt, there are men who are fired with an ardor in the cause of human liberty which nothing can extinguish.

But, these are men, than whom none are more devoted to the interests of the commonwealth of Pennsylvania. They are under the influence of no imported abolitionist. They advocate, and have always advocated, the right of an American citizen to discuss this or any other subject. They love the Union as much as any one, and more than many who talk more. Every penny post may issue incendiary productions, but even these are identified with freedom of discussion and the liberty of the press. When the sacred right of petition, and the freedom of discussion and the liberty of the press are denied by the free representatives of the citizens of free states, then it is time—then it is indeed time, to calculate the value of the Union.

For the reasons he had given, he should feel himself compelled to vote against the motion to amend; acting under a similar sense of duty as that which compelled him to take the same course in the legislature on the section which had been referred to.

Mr. Hiester, of Lancaster, moved that the convention now adjourn, which was decided in the negative.

Mr. Ingersoll, moved that there be a call of the house, and the motion being agreed to,

The secretary called over the names of members, when eighty-seven were found to be present;

Mr. INGERSOLL called for the yers and nays on the question before the convention, and they were ordered.

Mr. CHAUNCEY, of Philadelphia, moved that the convention now adjourn, which was negatived.

Mr. CHAUNCEY, then said, he would ask permission to make a very few remarks; and, he begged that the convention would indulge him so far as to give him a hearing. It was his desire to make a full argument. But he was sorry to see that there was a spirit in the convention which went beyond the mere violation of order; that there was a determination, on the part of members, to force the question on this great subject, yet to shut their ears to all argument.

This is a question which demands the exercise of the intellectual powers. He did not flatter himself, in the present state of feeling in the house, that he should be able to work much conviction. The convention were not in that state of mind which is necessary to receive argument; but, yet he would throw himself on their indulgence, while he gave the reasons which after much anxious deliberation, had brought him to the conclusion to vote against the motion. What is the question before the house? In order to come to this, he would state what he considered it not to be.

There have been many matters gone into, in this discussion, which are not the question before the house. It is not the question, whether we are about to surrender the government, the rule of the commonwealth, into the hands of the coloured population. That is not the question. It is an important question, but it is one of a different character. Neither is it the question, whether we are about to introduce into our constitution a clause admitting a certain portion of our population to the right of suffrage. This is not the question before us. But, the question before the house is, whether after the lapse of fifty years, during which the existing constitution has received the strong, clear and practical construction of the people of the state—whether we shall, in this late period of human affairs, admit into the constitution a clause which amounts to an actual prohibition of the right of suffrage to a large portion of the people of this commonwealth.

It is a question then of no ordinary magnitude. It is one well deserving of a little of the waste time of this body. It would be well before we despatch this subject to look into our powers. We are about to be forced into a decision, which is to settle the rights of a portion of our citizens, perhaps, forever. This is not a question concerning natural right. He agreed in so much of the argument of gentlemen as related to the character of a political right.

But, as it appeared to him, there was a question which ought to present itself to the house—what is the situation of these coloured people under the existing laws? Have they this right of suffrage, under the constitution, or have they not? I may entertain my opinion on this subject, but, from the view I have taken, I do not deem it necessary to decide it for—*qua cunque via*—whatever way it is placed, on either ground, it is inexpedient for the convention to adopt this amendment. Suppose that the coloured man has the right; does it not then become a question and a

great question, whether this convention are competent to take away any existing rights?

Have we come here to resolve society into its original elements? We have a constitution before us, and it is our duty to see if this constitution can be amended or not. Is it within the purview of our power to make it a question whether a portion of our citizens shall have their political rights taken from them? Before gentlemen undertake to say so, let us test it, and try the effect upon another portion of our citizens. Look at it, in reference to Irish emigrants. Is it competent for us to say, that, because the Irishman comes from the Emerald Isle, he shall no longer enjoy the right of suffrage? Take any other section of society. Apply this conclusion to the young men of the commonwealth, between the ages of twenty-one and twenty-five. Let gentlemen then say, is it competent for this convention to disqualify those who have heretofore been deemed qualified. He might deal with the question in a variety of shapes and modes. Where is the power in this body to take away a political privilege? He went for the argument that the convention have no such power. Where is the power to deal with this subject, unless the convention shall arrogate it by declaring that the people shall resolve themselves into their original elements, and that this body will proceed to tear up every thing by the roots?

He had understood it to be the will of the people that the rights of all classes of the people should stand, as they always have done. Suppose that you were to take away the rights of any class, or any individual, by the great power of the constitution—what would it be considered, but, as an arrogant assumption of power?

But, suppose, for the sake of argument, that it is within the powers of the convention. It becomes, then, a question of grave consideration —he did not state the question—it had been proposed here whether you shall cut off a certain class of your population from the enjoyment of a great political privilege, and from all possibility of acquiring it, until such time as your constitution may be changed again. And, is not this a grave question? These persons are inhabitants of the soil of Pennsylvania. They are men like ourselves. He would not waste the time of the convention by going into an inquiry, whether they are an intermediate link. They are men. He would call on gentlemen on every side of him, to say in what political character are they to be viewed? Are they citizens?

Is a human being—a part of the community—born upon your soil, any thing but a citizen? What else can you make of him? He is not a slave, he is a freeman born within your jurisdiction—born within the circle of your political privileges. He is a human being. And, I ask, where is the law—where is the principle—where is the standard of morality by which you can determine that he is any thing in the world else than a citizen? Who is a citizen, if he be not a citizen? I ask gentlemen in regard to their own rights—how you acquire them? Do you not take the book and swear that you were born on this soil, or that you were born on another, but will become a good citizen of this commonwealth? Certainly you do. I ask what else can you make of a human being, but a citizen? The law is universal—it tells you who is a citizen and who is not. It tells you that those born in a foreign land, may become

citizens. But, does it not make a difference, between a man born on your soil, and a man admitted to the rights of citizenship? If it does, tell me how you will establish, that a coloured man is not a citizen, as much so as any body else? I mean one born in a state of freedom—one born in the United States.

Suppose, then, this to be the case, that here is a section of your people—a portion of your people who were citizens—citizens by right of birth, you cannot, in justice, be called upon to show their degradation. Where will you find authority to say in relation to this, or that person, that he shall, or shall not, have the right of suffrage? You take a portion—a class of the community, and say—you shall not be citizens of the United States. You shall not have a voice in our elections, nor shall you hold office, because you are not fit, on account of something, but for which, however, you are not to blame. I would ask, what is it? Gentlemen have not been able to show us, as I conceive—no argument has been made to satisfy my mind at least, that a citizen is not a man entitled to citizenship, by virtue of his birth.

What, sir, is the objection? It is said to be their prejudices, and prejudices we all feel to some extent—some more than others,—prejudices which we cannot surmount, and prejudices which must lead to the exclusion of this class of the community. It is so; but, why should this argument be presented in a body of men, selected for the purpose of amending, revising, reforming, if you please, the constitution of the state? Are we to bow before this idol? Are we to acknowledge our own weakness? Are we to confess in the face of an enlightened world, that we are the victims—*we*, who triumphantly claim to be the wisest and freest people of the earth—the victims of a selfish prejudice?—a prejudice that not only forbids us doing what is right, but urges us still further, to close the door of justice against a large class of our community and say, they never shall have justice granted them!

Is this an argument in favor of the continuance of these people, in a state of privation of political rights, supposing that to be their condition? Because it is a prejudice we cannot surmount—because it is a prejudice this community will not get rid of—therefore, a certain class of it, is to suffer all the pains and penalties resulting from it. Are we here on this lofty ground? Do we stand here to proclaim this to the whole world, and yet refuse to do justice to a portion of our citizens, because of a prejudice entertained against them? I cannot assent to it; I cannot agree to it; I cannot bow to the idol. The argument is untenable. What else? Why, it is said by my learned friend, (Mr. Hopkinson) who, almost always, says that which has my most hearty acceptance, that such is the state of our social relations, and social intercourse, in reference to the coloured population of Pennsylvania, that they ought not to be admitted to the right of suffrage.

My learned friend from Allegheny county, (Mr. Forward) has completely met the argument of the gentleman from the city. It may be that the blacks are in the condition he describes. It may be they are in that condition; but, as far as the argument goes, does it show that it is just, to deprive them of the right of suffrage? Are there not multitudes of voters in this state—men who are in the enjoyment of the right of suffrage,

and who have satisfactory reasons, to themselves, why they cannot make companions of others, exercising the same right? Is it any reason, that we should deprive men of the political privilege of voting, because, we cannot associate with them?

My learned friend says, if you give them the right of suffrage, under present circumstances, you introduce an enemy amongst us. In this opinion I cannot concur; I do not think that such would be the case. What is the condition of the coloured people? Diverse as our own—some being landholders—freeholders—holders of personal property to a large amount, whilst some, are carrying on one species of business, and some another, and others in stations of domestic service. I deny that the conferring of the right of suffrage, will convert them into enemies.

I believe it to be our duty, to do every thing that lies in our power, to elevate, and to improve the condition of the coloured race, and to make them fit to enjoy the benefits of our laws, instead of cutting them off. If we stand on this 'vantage-ground, that they are to be considered as native-born citizens, then I say, it is no longer a question of mere expediency—it becomes a question of right. And, I insist upon it, a question of political expediency, is a question of right. Let us not separate it; it is not a question simply, whether it will accord with popular feeling. It is not a question, whether the men are your constituents, or any other member's constituents. It is a question to which we are to refer in future times. It is a question to pass upon, on reflection, whether we have forgotten rights—transcended power, or placed on a people, an exclusion, which is to continue for centuries to come.

This convention has been urged to a decision of this question, even by gentlemen who have expressed their regret, that it has been brought forward. It is said that the question must be decided now, as it is before the body, whether the word "white," shall be inserted or not. It is expressing something or other, as to the construction of the existing constitution, which is seriously to affect, hereafter, the great rights of the people of this state, for good or for evil I do not understand that such would be the legitimate conclusion, or that it is the inference, in or out of this convention. It is to be recollected, that it is now forty-seven years, since the framers of the existing constitution, had the subject under their consideration. There has been but little light shed on the subject, from that period down to the present.

We know, that in the convention that formed the constitution, the word "white," was inserted, and that it was afterwards stricken out, on the motion of Mr. Gallatin. And, yet who has heard of, or could point to the evils which have resulted to the state, from its omission. It may be considered the practical construction of the constitution—that in the condition in which the people were, it was not intended, or expected that they would vote. They have acquiesced in it. I do not take notice of the few straggling votes that have been given, perhaps five hundred in number, since the adoption of the constitution.

Well, it is said, that the action of this body, is to clear away all ambiguity for the future. To clear away *ambiguity!* Is that the movement? To clear away ambiguity from the constitution! While it appears to

me, there are scarcely two men here, who agree in sentiment, as to the amendments that should be made to the constitution, they surely do not agree in opinion that this convention was called for the purpose of clearing away ambiguity. We have all heard the arguments in relation to the understanding of the word "white"—some gentlemen saying, it is perfectly clear to their apprehension. But, you have heard it said, from other quarters of the body—that the term conveys no precise meaning. They cannot tell whether it means a man, whose complexion is a pure white, as well as a man whose skin may be a little darker. Who, or what is to be embraced by this amendment? And, yet this is the word, and this is the argument: it is for the purpose of clearing ambiguity away from the constitution. It appears to me, that the work would be very imperfectly done, if this was the case. But, is it expedient? What will be the effect? It is impossible, I apprehend, for the convention to foresee what will be the result of these amendments, before the people.

I will ask gentlemen, what will be the fate of all the other amendments to be submitted to the people, supposing they object to the insertion of the term "white?" What will be the inference of gentlemen then? But, I apprehend, it is entirely inexpedient to put in the word, and on this ground alone—that you have had no trouble on the subject, for forty-seven years past. It cannot be a political grievance, which leads gentlemen to move in this matter. Such is the moral, intellectual, and political condition of the blacks at present, that they do not attend the polls. They avoid doing so; and it is expedient for them. And, are not gentlemen doing execution upon them? Are they not content to rest here? Would it be wise on the part of this convention, to place before the people of the commonwealth of Pennsylvania, a question of such deep interest as the present, at this moment, and one, too, of so exciting a character? Why, we cannot discuss it now with sufficient calmness. And, we all know, it is a question which agitates every portion of this Union at this time. It is, too, connected with questions, which threaten the very existence of the Union itself.

What, I ask, is to be the consequence of engrafting such a provision in the constitution? Why, that every man who thinks differently on the subject, will contend that the coloured man has the right—the political right, secured to him by the instrument, as no distinctions are made in it, with respect to colour. And, this division of opinion, will create scenes of contention, and contention and discord will ensue.

In every point of view, in which I have been able to consider the question, whether they have or have not the right to vote, it appears to me, in the first place, that it would be an assumption of power, if they have the right, to take it from them. And, in the second place, it would be inexpedient, at this moment, to put in the constitution a perpetual exclusion to the exercise of the right. I cannot yield my assent to the motion.

Mr. Chandler, of Philadelphia, said that the question then under consideration, had been so elaborately and ably discussed, that it was scarcely worth while for him to state his sentiments in regard to it. It was highly probable that he would give his vote against a large majority of the convention. He could not consent, instead of meeting this great

question, openly and fairly, to place himself in the position of the Indian, who, on approaching the falls of Niagara, and seeing he was about to be swept over, composedly covered his head with his blanket, and was whirled into the gulf below. No; he was in a just cause, and he could not permit the present opportunity to escape without assigning his reasons for the vote, which it was his intention to give. He did not expect by any remarks that might fall from him, to gain one convert. That would be hopeless, for, in the month of June last, when the question was up in committee of the whole, he found that the vote stood 49 yeas, and 61 nays.

Well, unless time and light had wrought a change, since that period, his feeble voice would have little effect, in an attempt to bring back the strong minds of those, who had yielded to an impulse he did not understand. He certainly had not heard one argument, which went to convince him either of the expediency, policy, or justice of making the proposed amendment.

He regretted, deeply regretted, the turn which the argument had assumed, in debate, within the last few days. On one side, the undue prejudices of our nature have been appealed to, and the meanest thoughts that could enter into the mind of man, have been conjured up. While, on the other side, he was afraid there had not been that delicacy and regard paid to the sympathy and prejudice entertained, which he could have desired to have seen.

Believing thus, he would vote, though, perhaps, from different motives than those who had resorted to a different kind of argument. The members of this convention ought to eschew all extraneous matters, and appeal to their own experience, if not to those who had gone, as to the truths upon which they should act. It had nothing to do with the argument that the Circassian race was regarded as the best, or that it was superior to the African. It was nothing to him if it should be proved that the white race is inferior to the black. He considered the appeal that had been made was wrong, and that the argument was impolitic.

The argument of his colleague (Mr. Hopkinson) was one addressed to the prejudices of the members of this body. It was an argument directed to their feelings; and if it had been carried out, tended to perpetuate, to fix prejudices, and carry them into effect.

He, Mr. C., would say that those prejudices were wrong, and that more time ought to be allowed for discussion and deliberation, in order to obliterate a portion, at least, of them from the minds of members before the convention should decide on this important question. It had been said by his venerable friend and colleague, (Mr. Hopkinson) that there was one reason—one very important reason why the blacks should not vote.

He, Mr. C., hoped gentlemen would understand him distinctly, when he averred now, that he did not say they have a right to vote, nor did he express a wish that they should vote. But, it had been said that there was one reason why they should not be admitted to the privilege of citizenship. That reason was this: that they had been slaves—had been degraded. And, to use the language of another gentleman—that they

would come reeking from the stripes of their masters, to enjoy the privileges of freemen.

The learned Judge (Mr. Hopkinson) knew as well as he did, at least, that there was a maxim of law, that no man shall plead his own error against another. He had yet to learn that a man lost his citizenship, on account of his being placed in an unfortunate condition. He would ask whether our fellow citizens, who were released from the galling chains of Africa, and returned to their native land, were deprived of their citizenship? On the contrary, were they not received with open arms? —were they not recognized as our brethren, who had been freed from chains of slavery? Most unquestionably they were.

But, there was a worse slavery here than that to which he had referred. There was a much more degrading bondage than that which was said to have debased the mind of the negro. The galling manacles of *party* slavery have been rattled within the walls of this convention—and the cry of traitor was shouted at the heels of a man, who, for a moment, lifted up his arm to work the freedom of truth.

You, Mr. President, have seen the lash drawn, and the torture applied to the man who, on questions of lesser public import, has dared, in this assembly, to think that he was born free and equal, and to utter a sentiment that was at variance with the party plans and party discipline, prescribed for his course. This is the wretchedness of slavery—this the bondage that bears down the human mind—and degrades the sufferer—whatever may be his position or his office—degrades him far below the state of the man, who, in involuntary slavery, mourns the condition which he would avoid, and exercises a mental freedom wide as his wishes, and boundless as eternity. This man knows that there is a degradation in his chains, that bind his body; but he feels that there is a spirit on his *mind*, and the inspiration of the Most High giveth it understanding.

It had been said that bloodshed and violence would happen if the blacks were to attempt to vote. Perhaps, that would be the consequence, at present, and hence the necessity of postponing, until a future day, the granting of the privilege. Let it be given when the community are prepared to allow the blacks to attend the polls. Let us not, then, degrade the community and ourselves, by granting a privilege, which could not now be enjoyed, and which, if any attempt were made to carry it into effect, would only result in melancholy consequences.

The gentleman from Luzerne, (Mr. Woodward) who so eloquently addressed the convention the other day, intimated that the question had been brought forward before by the abolitionists. He, Mr. C., denied that the proposition was brought forward by any man who had voted against the word "white." There was no truth in the assertion. All that he, Mr. C., and others wanted, was that the constitution should not be amended in this particular. Let it stand as it is. He desired to see the conservative principle carried out.

He thought that gentlemen who had promised to do so, would have stood by him. He was astonished to see it violated—to see the flag struck. He was surprised to find himself in a minority, because he did not per-

ceive any essential difference between his own sentiments and those held by the gentlemen to whom he alluded. He would repeat that he advocated the conservative principle—to keep that which is good—to hold fast to that which time and experience had shown to be worth preserving.

It was said by the same gentleman, that the same independence was achieved for the whites, that was achieved for the blacks. And, so it was. His mind also led him to what was done during the second war, that of 1812, commonly called the second war of independence, and not without some degree of truth and propriety—when every day the coloured man gained victories for his country. He mentioned these facts merely as a set off to matters which had been referred to. He was no advocate of the rights of the blacks to vote. He had no sympathies with them beyond those entertained by any other gentleman on this floor. They had little intercourse with his family; he did not see them often. He was always happy to hear that they were comfortable and happy, and rising in the scale of civilization and intelligence.

The gentleman from Luzerne seemed to think that the framers of the constitution, carried in their bosoms prejudices against the blacks. Indeed they did, but he doubted not that their descendants had arrived at that degree of knowledge which taught them that the Creator of the Universe made all mankind of the same flesh and blood.

Some gentlemen had referred to the feelings of the south; and his colleague, (Mr. Ingersoll) who addressed the convention so eloquently this morning, no doubt, expressed the feelings of every gentleman on this floor, in what he said, and which he, Mr. C., now said in less glowing language, that he respected them and their prejudices—that he admired them, and would legislate, with some regard, for their welfare, happiness and prosperity. So would he, Mr. C.

Men living together, as one family, must accommodate themselves to the feelings and prejudices of that family. But, while he, Mr. C., could feel all proper respect for the prejudices and feelings of the south—while he would give them all they might ask and wish to enjoy—while he would not interfere with any of their vested rights in their slaves—while he would not go and tell them not to teach the black man the word of God, and while he would not do any thing to injure them by word or deed—he would ask that free Pennsylvania—free in character and feeling, might be allowed to legislate for herself and her freemen—that they might not be dictated to on this floor by the slave holder—that the representatives of the free people of Pennsylvania, might not stand up here, in fear of the lash, like their own blacks. This was what he would ask as a Pennsylvanian, and which he would demand as a Pennsylvanian.

It had been remarked, in the course of the argument in favor of the blacks, that they were endowed with a knowledge of God, and a sense of the rights of man. Now, while it was only proper that every human being, accountable to the Almighty, should know his ways—that every man walking with a countenance erect, should have some knowledge of the rights of man,—it was making doubly galling the chains by which a man was bound, to tell him that he shall not be instructed in the ways of the Almighty although he has some knowledge of Him; and it was

an insult, and an injury to chain a man down—to deprive him of his rights, when he understood them.

Some gentlemen seemed to suppose—when the question was argued as to the propriety and justice of permitting the blacks to vote,—that it was an unanimous practice for them to vote. This, however, was not the fact, for they vote in many of the eastern and northern states. In New York they vote under a property qualification, and in Massachusetts they vote under the same restrictions as other men. He had seen blacks vote at Boston, and never knew of any disturbance having taken place. In the east, where liberty was first known in this great continent, there, no sooner did the white man declare himself independent, than the black man became so.

It is not, as he had before observed, nothing new for the blacks to vote. He intended to vote against the insertion of the word "white" in the constitution. He would do so, because he had imbibed the opinion, entertained and expressed by those on his left, who had so ably and eloquently addressed the convention in the morning, against the right of the blacks to vote under the existing constitution. He would not now stop to inquire whether an error had been committed, either in the spirit or letter of the law. Sometime since, it had been a matter of doubt in his mind, as to whether they had the right. But now he was convinced that it was not the intention of the framers of the constitution, that they should vote.

He would not, therefore, as he had already said, vote to insert the word "white." He would never vote for an alteration of the constitution, unless it was to get rid of an evil—never to introduce one.

He, Mr. C., would say, that the prejudices of the white man must be respected—no matter how he came by them. He is the lord of the soil. They would be respected, so far as his vote was concerned, at least. He would never do anything to violate the good sense of the people of this commonwealth.

Let us not throw any impediment in the way of the people, granting the blacks the right of voting, at some future day, if they should think proper to do so, But, if the word "white" must be inserted—as it was probable it would be—this convention should be prepared to insert a clause, which would leave the people to minister their affairs in their own way.

While we ask for ourselves the right of changing our minds, let us not prevent others from exercising the same right. It might be asked, whether he had not prejudices in relation to this question? His answer was—that he had—that he could not help it—that he had imbibed them in his earliest infancy. He could not consent to hold social intercourse, with a class of people, such as had been referred to, although they might be as good as he was—perhaps better.

While the prejudice entertained by the whites towards the blacks existed, we were bound to respect it—"to render unto Cæsar, the things which are Cæsar's."

He was not an abolitionist, though he must say, he did love some members of that society. He respected their motives, and admired their deeds, if he did not go with him. It might be, perhaps, because he was not

quite so well informed. He, however, was disposed to act according to the information he possessed, and would not act without it.

He was not for cutting off, by his vote, what might be hereafter deemed expedient and proper. He was for giving a prospective right. He could have said much more on this subject, but he knew how impatient gentlemen were to have the question taken; and, therefore, he would not trespass further on their time.

Mr. FARRELLY, of Crawford, said that at this late stage of the debate, it was with much reluctance he presented himself to the notice of the convention; but such was the magnitude and importance of the question, that he was unwilling to allow the vote to be taken before stating the reasons which governed him in voting as he should do.

In the first place, he regretted the introduction of the question into this convention, because he thought the agitation of it would be productive of no beneficial result, in any point of view whatever, and that it would create an undue excitement in the minds of the people of this commonwealth, injurious to the welfare of the coloured race, whose condition we should endeavor to improve and benefit. However, as the question had been brought forward, we must meet it in some way or another.

Gentlemen had been asked here, if they possessed the moral courage to vote against the word "white." He would ask if gentlemen would permit the multitude, or the clamors of a mob, to prevent them from doing their duty. He put it to gentlemen to say, which side had the greatest degree of moral courage, and whether they would suffer themselves to be driven into the insertion of the word?

A gentleman had remarked, that he would not vote for the constitution, the framers of which, had not moral courage enough to vote for the insertion of the word "white." Now, who cared whether he did, or not? He, Mr. F., would say he valued not the vote which carried with it such a sentiment.

The decision of this question ought to have been left to the judicial tribunals, to which it more appropriately belongs. It was their province to declare what was the supreme law of the state. He regretted its introduction into this body, thus to interfere with the functions of that department of the government. This convention was called upon to act in a judicial capacity, and to decide what are the rights of the coloured population of the commonwealth of Pennsylvania.

Delegates had been told it was necessary that they should make up their minds in regard to the question before them, consequently they were to be compelled to act in a judicial character. He sincerely wished that the matter had been left to the decision of the supreme judicial tribunal, and that it had pronounced what was the supreme law. It would then have been time enough for the people to have taken it under consideration, whether the decision was right or not. There would also have been time enough to consider the expediency and propriety of reversing their decision.

But what, he would ask, was the question in reference to which this convention were now called upon to vote? Why, it was with respect to the insertion of the word "white"—to deprive the coloured people of the privilege of voting. He maintained, that whether or not they had the

right, could only be ascertained by the highest judicial tribunal of the commonwealth. There existed no necessity for the insertion of the word. If the blacks have the right to vote, then it became a grave and serious question, with those who voted for the introduction of the word "white" into the constitution, and for which they would be responsible hereafter.

He would ask delegates the question, that, supposing the coloured population to be entitled to vote now, whether they would be guilty of such a violation of justice, as to deprive them of that right? Was the convention assembled for that purpose? Did the good people of the commonwealth of Pennsylvania, who voted in favor of calling this convention, do so, in order that it might deprive any portion of the community, of the political rights which they had enjoyed? Let other gentlemen answer the question, for his mind was made up, and he would support no such unjust act. He could not conscientiously, and would not, vote to deprive the humblest or meanest individual in the state, of any of his rights. He respected the rights of every citizen. What was the principle involved in the question? It was neither more nor less, than one of physical power. It was that, and that alone. It was the introduction of an arbitrary power. He repeated, that he would not contribute to the consummation of such an act.

The gentleman from the city, had truly remarked, that he who believed the coloured population have a right to vote, ought not to vote that he be deprived of his vote by this amendment. He most heartily concurred in the justice of the remark. But he, Mr. F., went a little farther, and said if there was any doubt connected with the question, he could not vote for the amendment. It might perhaps, turn out, that the coloured population have a right to vote, admitting that they have not, under present impressions: and thus, an act of great injustice would be omitted. He, therefore, would not, for these and other reasons, vote for the amendment.

If there was any doubt on the subject, what did it become the duty of this body to do? Why, its duty was to leave the solution of the question, to that tribunal whose province it was to decide matters of this kind. No delegate ought to undertake to decide it for himself, under these circumstances. He would reiterate the assertion he had already made—that he could not vote for the word "white," inasmuch, as by so doing, he might be depriving a portion of the population of Pennsylvania of their rights.

The question was asked the other evening, by the gentlemen from Mifflin, (Mr. Banks) where was a coloured man to look for justice, if not in Pennsylvania? Now, that was a question of great importance, and worthy the serious consideration of every member of this convention. He was glad to hear the question put by the gentleman, for, from his, Mr. F's., observation of his character, if he was called upon to select a true specimen of the character of a Pennsylvanian, he would select that delegate.

Let, then, gentlemen consider this important question—if the negro population of Pennsylvania, were not to obtain justice in this great commonwealth, where were they to look for it? He trusted that delegates would weigh, ponder and reflect, upon this serious and important question, in which the character of the state was deeply involved. If we deprived the negro population of the right of suffrage—if we no longer

recognized them as citizens, to what country, he would ask, do they belong, and where were they to look for protection and justice? Why, they were let loose to the wide world, and were under no government, and without protection. He trusted that the convention were not prepared to go this length, and that they would act fairly and justly towards this unfortunate race.

Mr. PAYNE, of M'Kean, said he thought with the gentleman who had last addressed the convention, that the question ought to have been left with the judiciary; but, as it had been brought before this body, it should now be disposed of. He was happy to have it in his power to say, that this question had been treated in a manner due to its magnitude and importance. Ever since the introduction of the proposed amendment, he had devoted his mind almost wholly, to the consideration of the question which it involved. So great had he felt the responsibility resting upon him, in reference to the decision which must be made of the question, that he could neither sleep nor eat. This, perhaps, might be attributable, in a great measure, to his inexperience as a member of a public body, and his having been suddenly and unexpectedly called upon to fill a seat in this convention, consisting of men distinguished for their wisdom, and talents, met for the grave and solemn purpose of revising the constitution of Pennsylvania. When he perceived around him so many men whose experience in public life, was infinitely greater than his own, and saw with what intense anxiety they looked to the decision of this important question, he felt more deeply the unpleasantness of his situation, and the awful responsibility which attached to him in the vote he should give. The political rights of thousands, were involved in the issue of this discussion.

The question, as he had before remarked, was now before the convention, and he had no disposition to dodge it. He regretted that there was such a manifest disposition in the majority of this body, to force a decision of the question, before an adjournment should take place, in fact to sit out, and starve out members—to compel them to decide the question to-night. He would now tell his political friends—the friends of reform, of which he was one—that he did not come here to give a party vote, on a question involving constitutional considerations, and he was determined not to be driven into any such thing. He would decide the question for himself, in a cool, calm, and independent manner, and vote accordingly. This was what he had always done, ever since he became a freeman. He had never given any vote in his life, but a democratic vote, and had always voted just as he pleased. Now, this he called democracy.

The question, as to whether or not negroes are entitled to vote under the constitution, was one which, to the best of his knowledge, had not been mooted in the district from whence he came. It was a question in regard to which his constituents could not feel much interest. Indeed, a negro would excite as much curiosity among them as a comet. He did not believe there was one in the county of M'Kean. He would say, that in the vote he was about to give, he was uninfluenced by any prejudices, or sectional, or party feelings. He would vote in accordance only with his sense of duty, and in pursuance of the dictates of his conscience; and whether that vote, was approved or disapproved of by his constituents, he flattered himself, they would at least, ascribe to him honest and patriotic motives.

He thought that those gentlemen who desired to express their sentiments, on this grave and important question, ought to be allowed an opportunity of doing so. He had hoped, when his friend from Allegheny, (Mr. Forward) rose and said, that he wished to say something, that the convention would have granted him leave. He, Mr. P., had conceived this question to be one of such an interesting character, that gentlemen would have been anxious to listen to whatever could be said in relation to it. He had been born and educated, in the native state of the venerated Walter Forward and Charles Chauncey. And, since he removed from Connecticut, he had travelled through it, and had heard those gentlemen spoken of there, and claimed as a matter of pride, as natives of that state. He was pained when he saw the gentleman from the city, put his hand on his heart and say, that he could not vote on the question, as he had not an opportunity afforded him of expressing his sentiments—the convention manifesting great impatience to put an end to the discussion.

Now he, Mr. P., would take the liberty of telling the members of this convention, that the people are not so impatient about this body closing its business, as to wish to deprive them of a week or two, which might be necessary to enable them to arrive at a just conclusion. They would not wish them to decide hastily, on so important a question as this undoubtedly was. Indeed, it would be absurd to do so. Here were men of great legal knowlege and attainments, desirous of expressing their sentiments, and he could not see any plausible reason, why they should be denied the opportunity, particularly, when it was considered, that four or five weeks had been spent, in debating subjects comparatively of no importance.

He fully concurred in the remark made by the gentleman from Philadelphia, that if he entertained any doubt, as to the negroes having the right to vote, whatever might be the views of others, in relation to the question, he could not give his vote to exclude them. He knew very well that it was said, that the people have a right to abolish their government, whenever they think proper. Now, it was true in the abstract; but he denied that any portion of the people, are justified in depriving another of their rights.

Such a doctrine as that would subject the minority to the will of the majority at all times, and frequently would they be made to suffer under the grossest injustice and unfairness. He, however, had no doubt resting on his mind in regard to this question. In the language of General Jackson, he would say—"I will take the responsibility"—in regard to what he did.

According to his (Mr. P.'s) construction of the constitution, and after deep reflection on it, his mind had been brought to the conclusion that the framers of that instrument never intended to bestow the right of suffrage on the negroes.

He was of opinion that it would be both impolitic and inexpedient to permit the coloured population to vote. Let the question, then, be settled at once, and by this convention, as it was now before them. By admitting negroes to the right of suffrage, we should offer strong inducements to the renegades and off-scourings of other states, and particularly to the blacks on the other side of Mason and Dixon's line, to come into this state. We should be holding out the idea to them that they might become governors,

or aldermen, or mayors, or members of the legislature, &c. There could be no doubt but that they would flock here by thousands.

The venerable judge had told the convention that there were about 2500 in Philadelphia. Now, supposing that they possess the right to vote, not one out of a hundred would have a permanent residence. It might happen that a fugative slave from South Carolina, or some other state, after living in Pennsylvania sometime, might obtain a seat in the legislature—and what a spectacle would be exhibited, if his master was to come and drag him out of it, and then send him home? Would it not be a pretty spectacle?

He could not believe that the word "citizen" in a constitutional sense meant any thing more or less than a man who was entitled to all the civil and political privileges of the state, or country in which he lived.

Would Pennsylvania, he asked, permit a southern planter to come here and drag away to South Carolina, or elsewhere, a "citizen," according to the constitutional definition of that word? It could not be done without a violation of the constitution of the United States, the laws, also, of the United States, and of this commonwealth. But, the laws of the United States gave the right to a slave holder to go into any state and demand his runaway slave.

He would repeat what he had already said, and that was, he did not believe the framers of the constitution of Pennsylvania ever intended to confer the right of suffrage on free negroes. The phraseology of the amendment was not exactly what he could wish it to be; but still he would feel himself constrained to vote for it, even if it should not undergo any modification. Should the delegate from Philadelphia (Mr. Scott) offer his proposition at the proper time, he (Mr. P.) would vote for it.

Mr. MONTGOMERY, of Mercer, rose and said—

Mr. President—It is with great diffidence that I rise to say a few words on the question before the convention, and, which, has been discussed so largely by many gentlemen, much more competent to do justice to the subject than I am.

But sir, having been taught from my youth, to believe that even a mite given from pure motives is of great value; I have at this time been induced to make a few very brief remarks on the subject. And now sir, permit me to state, that after hearing all that has been said in favor of the motion under consideration, I have not been able to bring my mind to believe that it could either be just or expedient to adopt the alteration—I dare not call it an amendment—offered by the delegate from the county of Philadelphia, (Mr. Martin.) It would, in my apprehension, be unjust, as it would be taking away a right that every freeman is equally entitled to, and which cannot be forfeited or taken away in justice without the commission of some crime, which, has not even been alleged in the present case.

It has indeed been said that coloured people do not perform military duty, and therefore that they have no right to vote. But, sir, permit me to ask, whose fault is it that the blacks have not performed military duty? Have they, the coloured men, passed laws exempting themselves from such duty? or has it been the whites that passed these laws? The answer must be, the whites certainly.

This kind of argument, sir, is like knocking a fellow down, and then kicking him for falling. It is punishing coloured men for the fault of the whites, if it is a fault. I do not know of a single instance, where the blacks have been called on to perform military duty, where they have refused to do it.

But we have the testimony of "the hero of two wars," as has just been shown by the delegate from Chester, (Mr. Darlington) to prove that the blacks volunteered to perform military duty, at a very critical time when their services were much wanted, and that they fought bravely when they were called on to do so; if their doing so is a good reason why we should now deprive them of their votes, then it is our duty to adopt the motion of the delegate from the county of Philadelphia; but sir, it strikes me that it would be a poor way to p y them for fighting the battles of their country, to deprive them of their votes. And I do not believe that the gentleman who made the motion, now under consideration, or any other delegate in this convention, would like to be paid for their services in the same coin.

And, as to the payment of taxes by coloured men, it has been stated by my venerable friend of the city, (Mr. Hopkinson) and others, that the blacks have no cause of complaint on that account, as females have to pay taxes, and they are excluded from the elective franchise; this kind of talk, in my apprehension, is mere sophistry, as not being at all applicable in the present case, as all females are set on an equal footing in that respect;—white females who pay taxes are not free to vote and black ones excluded.

This, however, will not be the case with men, if the motion of the delegate from the county prevails; some men who pay taxes will have a right to vote, while others that will do the same, and perhaps to a greater amount, will be excluded from voting. This, in my opinion, would be the height of injustice; indeed, Mr. President, if we are to make a white skin the qualification of a voter, then females will have a permanent right to vote, as we have only to open our eyes and look at females to be convinced that their skins are much finer and fairer than men's.

In vain does our Declaration of Independence and our bill of rights say that all men are created free and equal, and have inherent and unalienable rights, if the present motion is adopted, for, if the motion, now under consideration, is agreed to, then to be consistent, the declaration that all men are created free and equal, ought to be stricken out of our bill of rights, as that motion declares that all men are not created free and equal.

But it has been stated that a distinction has been kept up ever since the foundation and settlement of our commonwealth. And the delegate from Montgomery county, (Mr. Sterigere) has told us, in order to prove that the present motion is right, that there was one code of laws for the whites and another for the blacks. Admit, Mr. President, these things were so, and I regret that there is too much truth in the statements, what do they amount to? Why, sir, they just amount to this, that if we have done wrong at one time, we must continue to do so forever. This is a doctrine that I am not yet prepared to assent to, notwithstanding the high authority it comes from, as it is one thing to admit that a distinction has been kept up to an unreasonable extent, and another to prove that the distinction, has been founded in justice, the latter of which no one has yet attempted to do.

If the principle is admitted to be right, that because some things have taken place, we ought to continue them, then it will not be difficult to prove that murder is right, for we have an account given us, that in the very first family of mankind, that one brother rose up and murdered another, and, mothers, whose hearts in ordinary cases are tenderness itself, have imbrued their hands in the blood of their own offspring. We are also told that some barbarous tribes feast on human flesh, and, that others put their parents to death when they become so feeble that they are unable to help themselves.

Now, sir, if it is a sufficient reason, for us to continue to practice what has been practised by others, then it is right for one brother to murder another, for mothers to imbrue their hands in the blood of their own offspring, for one human being to feast on the murdered flesh of another, and for children to put their parents to death when they are too feeble to provide for or support themselves. For all the atrocities that have been enumerated have been practised by others, and I know not whether any of them are more barbarous than to deprive a freeman of his vote, as it is more merciful to put a man to death at once, than to be trampling on him every day of his existence.

But as I am confident that there is not an individual within the hearing of my voice, unless it be the delegate from Montgomery, that would justify the practices before enumerated, because they had been practised by others, I will only state that I deeply regret that any thing connected with the name of Montgomery, could be found advocating practices, which, in the view that I have taken of them, are at such variance with every principle of humanity.

But, Mr. President, we have been told by the delegate from the county of Philadelphia (Mr. Brown) that if the blacks in his district would attempt to vote, the whites would rise up and massacre them in a day; and he said, if I heard him right, that there were two thousand coloured people in his district. Now, sir, I firmly believe that the gentleman just alluded to, has been conjuring up phantoms in his own imagination, that have no existence in reality, and, Mr. President, I have a better opinion of that gentleman's constituents, than to believe that they would rise up, and murder two thousand human beings in a single day, merely because they, or some of them, had attempted to hand in their tickets at on election district.

If there is, indeed, such a strong antipathy existing between the whites and blacks, in his district, it is doing too little to put the word "white" into our constitution. There ought to be something introduced into it, that would prevent the coloured people from walking in the streets, a privilege that they are now entitled to and practice every day, for you can seldom walk a square in the streets of this city, but you will pass and re-pass, people of colour, and, these people, as far as I have noticed, behave very civilly; and sir, I have no doubt, that if the people of colour were in the habit of going to the polls, to hand in their votes, they would do it in as civil a manner as they walk in the streets, and the whites would, in a very short time, think as little about their going to an election to give their votes, as they do now to see them walking the pavement. And that they would then join with me in saying that the coloured people have a right to vote.

if they have complied with the constituted authorities that give a right to free white men to vote.

It is matter of astonishment to me, that the venerable delegate from Juniata, (Mr. Cummin) has gone to the Bible to prove that it is right to oppress the people of colour. I am afraid that that gentleman, in his unholy opposition to that people, has forgotten that they are human beings, that they are men, and that they have rights as well as the Irish. And that the middle wall of partition, that the Divine and All-wise Being had raised up between the Jews and Gentiles, is now broken down, and that all mankind are now entitled to equal privileges, both of a civil and religious nature. And that we are all now bound to walk in conformity to that humane and christian rule, "do to others as you would that others should do to you."

And, Mr. President, if we follow this rule in the present case, there will be few votes in favor of the proposed alteration in our constitution, as I do not believe that there is an individual in this assembly, that would vote that he should be deprived of voting, merely on account of the colour of his skin.

I might, sir, have given my views of the proposed alteration in our constitution, in a single sentence, with which I will now conclude, and that is, that I am utterly opposed to a skin qualification for voters, as I am fully persuaded that it is oppressive, as well as unjust. Having thus cast in my mite in favor of what I believe to be an oppressed and much abused people. I take leave of the subject, and them, leaving them in the hands of Him who will hear the cry of the oppressed, and who has promised to deliver them when they cry unto him.

Mr. STERIGERE, said, having occupied the attention of the convention on a former occasion the full time allowed by the rules, although I was then prevented from concluding the remarks I intended to make, I do not now intend to resume the argument. I rise merely to notice some of the remarks which have fallen from some of the gentlemen opposed to the amendment, and more by way of explanation than otherwise. I feel this to be a duty I owe to myself, notwithstanding the impatience of the convention to have this question disposed of, and in doing this I shall occupy as little time as possible.

The gentleman from Mercer, (Mr. Montgomery) who has just taken his seat, after adverting to the severity of the laws relating to negroes, to which I called the attention of the convention, has imputed to me that I justified the exclusion of negroes from voting because they had always been oppressed. He says that if depriving a man of his rights can be justified because it had been done before, then murder may be justified, and any thing may be justified, and expressed his regret that such sentiments should come from any quarter connected with the name of MONTGOMERY.

The gentleman has entirely misinterpreted me. I did not justify the amendment by putting it on any such grounds. I did not justify the oppression and restrictions imposed by the colonial government on the black population. I think they were unjust and cruel. I referred to the charters and laws relating to negroes and those relating to the white population, to show that the former did not possess the same political rights and privileges the latter did, and that in the understanding of the people, and by the charters and the laws of the province, negroes were excluded from all par-

ticipation in elections and in the government of the province, and were not intended to be comprehended in the term *freemen*, used in all these charters and laws, and in the constitutions, to designate the electors.

I will say to that gentleman the name of Montgomery is as dear to me as to him, because it is the name of the county I in part represent here, and long represented elsewhere, and also, because it is the name of a gallant hero who periled his life and shed his blood to obtain the liberty and privileges we now enjoy. But this was Irish blood—not negro blood, and was part of the price paid for the rights his countrymen are here enjoying. No Pennsylvania negro periled his life or shed his blood to acquire the glorious privileges secured by the revolutionary war, and which we are now asked to share with negroes of the state, and those who may come among us.

I have no prejudices or unkind feeling toward the coloured inhabitants, as those of them who know me best will testify. I have as much sympathy for them as any man. I have always been ready to aid them when necessary, and have frequently rendered to them my professional assistance, always gratuitously. Not, to be sure, with the ability of the delegate from Franklin, but to the best of my power. I am for extending to them all their natural rights and protection for their lives, their persons, their liberties, and their property, which may be extended to the white inhabitants of the state, and for allowing them all the privileges for acquiring reputation and property, and pursuing their own happiness that the rest of the community enjoy, but I have no idea of amalgamating them with the white people in the government of the state.

The gentleman from Lancaster (Mr. Reigart) has taken exception to some remarks made by me, in relation to the natural inferiority of negroes and the rank they occupy in the chain of being. I repeat; this matter has been settled by naturalists and philosophers, and to show that I do not speak without book, I refer him to the opinion of a man who has occupied a high place in the political, literary and philosophical world.

Mr. Jefferson in his notes on Virginia, page 204, &c. on the subject of incorporating the blacks, into the state, says in opposition to that policy:

"Deep rooted prejudices entertained by the whites; ten thousand recollections, by the blacks of the injuries they have sustained; new provocations; *the real distinctions which nature hath made;* and many other circumstances will divide us into parties, and produce convulsions which will probably never end but in the extermination of the one or the other race. To these objections, which are political, may be added others which are moral. The first difference that strikes us is that of colour. The difference is fixed in nature and is as real as if the cause were better known to us. And is this difference of no importance? Besides those of colour, figure and hair, there are other physical distinctions proving a difference of race. Their griefs are transient. Those numberless afflictions which render it doubtful, whether Heaven has given life to us in mercy or in wrath, are less felt and sooner forgotten by them. In general their existence appears to participate more of sensation than reflection."

"Many millions have been brought to, and born in America. Most of them have been confined to tillage, to their own homes and their own society; yet many of them have been so situated that they might have

availed themselves of the conversations of their masters. Many have been brought up to the handicraft arts, and from that circumstance have always been associated with the whites. Some have been liberally educated, and all have lived in countries where the arts and sciences were cultivated to a considerable degree and have had before them the best works from abroad. The Indians, with no advantages of this kind, will astonish you with touches of the most sublime oratory, such as prove their reason and sentiment strong, their imagination glowing and animated. But never could I find a black that had uttered a thought above the level of plain narration. Misery is often the parent of the most affecting touches of poetry. Among the blacks is misery enough, God knows, but no poetry. The improvements of the blacks, in body and mind, in the first instance of their mixture with the whites, has been observed by every one, and proves that their inferiority is not the effect merely of their condition in life. *It is not their condition then, but nature which has produced the distinction.*"

These opinions are not the speculations of a man who knew nothing personally of the race he was writing about, like those concerning the American Indians at an early day, but opinions founded on observation and reflection by one who lived among the negroes, knew their character, and was fully competent to form a judgment. Against such a judgment the few pebbles which the delegate from Franklin has cast into the scale, can weigh nothing. The few instances of negroes of capacity which he has mentioned, (not one in a million of the race) selected from all countries, do not establish the natural equality of that race with the white or Caucasian race. In the same manner you might prove by the superior agility and sagacity of a trained monkey or an ape, that these tribes were negroes.

He (Mr. Reigart) says "the true cause of negro degradation is the manner in which they have been oppressed. Give them equal privileges, and they will rise in the scale of moral, political and intellectual importance."

How have negroes been oppressed? For sixty years nearly the black population have enjoyed all the rights and privileges which the white citizen did, except merely the right of voting, and in some places even that. The field of industry, enterprize and science has been equally open to them.—And what instances of successful industry or enterprize, and intellectual superiority have the 40,000 negroes of this state produced? None worth notice. In these walks, what have the white population, originally equally destitute, in the same time produced? You could not select 40,000 white people from the lowest ranks of society, and of the most worthless character who would not in the course of sixty years produce thousands of instances of successful industry, enterprize and intellectual powers. This comparison and view alone must satisfy every one of the natural inferiority of the negro or Ethiopian race.

The gentleman from Allegheny, (Mr. Forward) asks, "will you take from them [the negroes] the right which God and nature gave them."

I would ask, is the right of voting one of these rights? The gentleman himself on a former occasion established that this was not a natural right. He himself asserted that the idea was an absurdity. And does he now pretend that this is one 'of the rights which God and nature gave negroes?' What are "the rights which God and nature gave them."

The right of life, liberty, conscience, of acquiring property, &c. &c. &c Now who has proposed taking away any of these rights? No man on this floor has ever talked about taking them away. All these I desire they may enjoy to as full an extent as any of us. It is idle to talk about taking from the negroes the right which God and nature gave them on this question.

It is said difficulties will take place when you are to decide on a man's right to vote by his complexion. This seems plausible. But it is not the complexion that is to settle this. The word WHITE here has reference to blood not complexion, No man who is of African blood, or whose blood partakes of the African, is a WHITE MAN. The objection, however is a strange one to make at this time. Twenty of the constitutions of these states make the distinction of white and black in their population. The same distinction was made in our test laws. It is in all our militia laws, and naturalization laws, yet no difficulty has ever occured. It is as easy to ascertain the distinction between a white and a black man as the right of property by descent, or the difference between different kinds of animals.

I am opposed to authorizing the legislature to confer the right of suffrage on whom they may think proper. This should not be fluctuating. We may have minority governors, and minority or faithless legislators as we have had, who, to subserve some political object, might extend it to a class, on such terms as would be disapproved by the people. This is not a proper subject of legislation. The right of suffrage should be fixed and certain, and the qualification of voters clearly defined in the constitution, and ratified by the people.

I have but a word for the gentleman from Chester, (Mr. Darlington.) If he will refer to the constitution of the states of Louisiana and Alabama, he will see that white persons only enjoy the right of suffrage in those states, and not blacks, as he has asserted. I think he has very improperly and unjustly introduced Judge Fox into this debate. The statement that he (Judge Fox) had led negroes to the polls himself, from what I know and have heard, I am confident is destitute of any foundation in truth, and I am bound to declare I do not believe a word of it. He is also mistaken in saying that Judge Fox's opinion on negro suffrage was a mere *dictum*. This question was argued and fully considered. It was the very point at issues before the court, and one that was necessary to be settled before any other proceedings were had. It would have been useless to have instituted an inquiry into the facts of the case till this was decided.

Mr. DARLINGTON explained. He said Judge Fox had no authority to act on the cause at all—it was not therefore judicially before him.

Mr. S. resumed. If the gentleman will look at the act of assembly of 1823, he will find the court was authorized to act in this matter, and that it was their duty to do so on the complaint made.

Mr. FORWARD, of Allegheny said, he rose to show that coloured men were entitled to the right of suffrage. He would show this by a series of facts and arguments which no man could fail to carry out to that result. We must look to the condition of the African race in 1790, when this constitution was framed, What was their condition at that time? In 1780, an act was passed in this state, which was introduced by an eloquent

preamble. This act must be put down in Pennsylvania before we can deprive these people of the rights it guaranties to them. It began by the abolition of hereditary slavery, providing "that all servitude for life, or slavery of children, in consequence of the slavery of their mothers, in the case of all children born within this state from and after the passing of this act as aforesaid, shall be, and hereby is, entirely taken away, extinguished and forever abolished"—thus embracing the grand children of the slave of 1780—and ensuring the final abolition of slavery.

The act then goes further, and requires that all slaves held at the time of the passing of the act should be rejected, and then continue as servants for life, and such servants are declared to be freemen, unless they are registered as specified and required by the act of assembly. In case the owner neglected such registry, the servants were declared freemen. That was the act of the assembly of 1780. All these acts which constituted the era of oppression in this state are by this act repealed. The owner was required to register his slave before the first day of the next November, or he became free; so the grand child of the slave of that period is, under this, declared free. He would ask, what was meant by all this? He could expound the act. It is well known throughout Christendom, what is meant by freemen. No man, (said Mr. F.) no lawyer can tell me it does not mean freemen in the most liberal sense of the word.

In the constitution of 1776, voters are called freemen. What are the attributes of freedom? I call on any one to point them out. There are none. The coloured man is as free as I am, or as you are. Where do you find the idea of political freedom? There is no authority, no apology for the term. The act of assembly has prescribed for the coloured man footing and character of a citizen of the state. That is the rule of construction. It must be in favor of liberty, and against bondage and oppression. He would like to hear the opinions of lawyers on this point. He would like to hear from any one who had a professional reputation to lose if their could be any other rule of construction. There was no rule of construction on the face of the earth, which could consign the coloured man to bondage.

A man born in England, if his skin is black, is free and entitled to protection; and the right of suffrage is extended to the black, as well as the white man. In the act of 1780, they are called freemen, as well as freewomen; and what does this mean? Does any gentleman deny the power of the government to set free the slave? Is the act of assembly void? Under that act would they not be entitled to elect their own representatives? He was astonished to hear how able and learned men entangle themselves in this question. These persons are freemen. How do you make out that they have no civil rights? How do you deny them rights? You deny that they have civil rights. My assertion is as good as yours. You deny them political rights, and cut them off from every right of freemen. They are born freemen, and are entitled to the protection and privileges of freemen. What is the answer given to all this? That there are some held in bondage under the cruel tyranny of masters. And shall it be continued? Shall these people resort to the condition in which they were prior to the act of 1780? Are they to be judged and enslaved by the laws which that act repealed? Is this the rule to be imposed on us?

Why, then, not make all the coloured people slaves, and subject them to the whip? They are as free, as you or I. What right have we to restrict them, and to deny them the exercise of civil and political rights? There is no reason which can be given for keeping up this distinction between our citizens. It is true, we may assert that they have no political rights. But what reason can be advanced to sustain this assertion? These men have been born on the soil. Did not our ancestors bear with them? Did not they all attach themselves to the commonwealth? It is the universal rule of law that the child of a free mother is a free citizen. It is birth which gives the right. By birth, the child of the freeman becomes a citizen. Why then should we go so deeply into research, and labor through a labyrinth to find some apology to our conscience for taking away from these people their sacred rights?

It has been said, that the introduction of the word citizen into the constitution of 1790, shews the intention to exclude these persons of colour. He denied that such a construction could be sustained. He then adverted to the period when foreigners in Pennsylvania, under the original government, were naturalized and admitted to the rights of free citizens, in a short period, until congress afterwards took the matter in hand.

The United States constitution was formed in 1787, by which the whole power over the subject was given to congress. It then became necessary to provide that our elections should be made by citizens, as aliens could not vote, under the laws of Pennsylvania. We had thus been brought under the action of the general government. Now all citizens who have attained the age of twenty-one years are entitled to a vote.

[Mr. F. continued his remarks for some time amidst such noise and confusion, in consequence of the weariness and impatience of the house, that it was impossible to gather the argument into any connected form, or even in many instances to catch the drift. He was understood to contend that without putting the English language to torture, to force such a construction, it could not be shown that there was any authority in the constitution or laws for the disfranchisement of the coloured man; but that on the contrary, he derived the rights of political suffrage, from those sources. He described the progress which the coloured man had made in education, under the benignant laws of this state, and its benevolant policy. He introduced an apology for the enthusiasm of those individuals who felt for the millions of their fellow creatures still held in bondage and who—even if they were wrong—are entitled to all the credit due to kind and human feelings, and to that spirit of indignant resistance to tyranny and oppression, increasing hope, by which they were animated.]

It was a hard condition for these coloured men. The sins of all around them were visited upon their heads. They were to atone for the faults and crimes of others; and they were mobbed. This was the language which had been reiterated here—that the blacks would not be permitted to go to the polls. And, he would ask, why? There were persons in Pennsylvania—but they were not members of this convention,—for no decent and well behaved citizen would do so—who would scoff at, or beat a black man, if they should happen to meet one at the polls.

The only pre-eminence between them and the blacks, was their colour. Take away that pre-eminence, and they possess no advantage over

them, and have nothing to say. And, there lies the cause of the jealousy, and of the mobs. Yet, those who assail, and maltreat the poor blacks, were not to be held answerable! No, those who were injured, insulted, and treated with violence, were to suffer. On their heads, punishment was to fall! Yes! they were to suffer through the brutal, arbitrary, and intolerant conduct of a band of white men, who, perhaps, were not in the enjoyment of the right of suffrage themselves, and were determined, therefore, that the black man should not exercise it. And you would give authority and sway to these arbitrary ruffians! What, he desired to know, was the situation—the condition of the coloured people at this time? Why, we found mobs gathering about their houses—insulting the inmates, and sometimes knocking down their houses. This was done in the light of day—in defiance of law—in the midst of a civilized community, innocent and unoffending, and industrious as they might be! And, good God, for this you are to take away the rights of those black men! Instead of bringing the ruffian aggressors to condign punishment, you are about to deprive the black man of an invaluable right! This is your apology—your reason. And, meet the world with such a reason, and such an apology if you can. The matter will not bear argument. The reasons which have been given for depriving the blacks of this right, are, to my mind no reasons at all. I am not speaking of suffrage entirely universal. You may restrict it, if you please. I am not ashamed to go to the polls with such men. I will not disturb them in the exercise of this right, nor will any honorable or decent man do it. If the law permits them to go to the polls, why ought they to be disturbed? But, as I have already said, they are disturbed by men who are not willing to submit to the law, and who merit the very stigma, the very deprivation they would carry out in regard to the black man. We have been reminded of the petition sent to us from a number of respectable men in Philadelphia, requesting us not to grant the right of suffrage to the blacks.

Now, suppose the question were to be put to them—why do you allow men, not possessed of property, to vote—and there are thousands who do object to white men, without property, enjoying the right of of suffrage to the extent they do—what could they say? It is the very argument that is urged here in reference to the blacks—some gentlemen contending that those only, who are possessed of property, shall be permitted to vote. This is precisely the argument we put on this floor.—Will you entrust your government in the hands of an ignorant mob? Will you suffer your property to be put into the hands of men without virtue, honor or principle? Shall they hold the balance of power in your elections? How, if an argument of this kind was to be addressed to us? Shall the abandoned—the poverty stricken race, as they are characterized as being, hold the balance of power? Shall they elect your representatives? An argument of this kind may make an impression on some minds; but it has never convinced me. The argument that has been urged in reference to a certain portion of the white population, is now to be directed to the blacks. Is it fair, and does it apply with the same force and truth in the last case, as in the first? I contend that these men ought not to be deprived of their rights. Let us not be intimidated by such an argument as this. "Let us do justice though the Heavens should fall."

I have heard in this debate, sentiments, such as would be addressed by

the commander of an English vessel, to the master of an African slaver. The man is appealed to, and asked the question—why do you hold human beings between your decks, chained and manacled as they are? Why do you bear them from their homes to a distant shore? It is an act of inhumanity.

What is the reply? It is, that they are an inferior race; they are born to obey, and we to govern them. Yes! the very argument we have heard, would be that of the captain of a slave ship. Ask the slave dealer why he chains these poor creatures by the legs—why he is trafficking in the flesh and blood of his fellow men, and you would hear the same argument that you have heard on this floor. Are not gentlemen startled at it? Was it not literally true? And, has it not been said that the prejudice entertained by the whites, is so strong that they cannot have social communion with them? And, because we are prejudiced against them, and because they are born to obey, we will scoff at them. On this occasion we may gain a triumph over the poor negro. We may boast, when we return home, that we have deprived them of the right of suffrage; we may go into arguments, such as I have stated, to justify our course, or, we may repeat such sentiments as I have heard in different parts of the country, in defence of out conduct—and then they may ask you the question—"why did you not enslave them? You have gone one step: if you have a right to take away all their political rights; if they are an inferior order of beings, why not enslave them?" Just contemplate this state of things for a moment.

Here is a population increasing rapidly in numbers, they have no suffrage, and they feel themselves aggrieved at the act we have perpetrated, and we know not that at no distant day, they might find themselves leagued with some political demagogues, and thus danger and violence ensue.

How long will it be before the arguments we have heard, will be carried out in favor of enslaving these people? One set of men here, contend that they are an inferior race of beings, and bound to obey, and must be reduced to bondage. And, another endorses the assertion, by saying that the slaves of the south are better off, and happier, than the freemen of the north. He is a freeman whom the truth makes free.

Let the gentleman who has thus argued, if he really does think his argument perfectly sound, bring forward his proposition to enslave them. It would be perfectly consistent with his views, and carrying out his own principles. Why, then, not make them equally as happy as the bondmen of the south?

Another set of gentlemen in this convention, have delivered arguments entirely in favor of slavery, and all against liberty. If these arguments are heard long, they will prevail by and by. Let me put it to intelligent gentlemen, to say whether the slaves of the south are better off than the freemen of the north. Or, rather, have they not heard it said a thousand times, that it would be well if the coloured people of Pennsylvania were enslaved.

I do not impute any language of this sort, or the sentiment, to any member of this convention. Far from it. But, I have heard it, and every member has heard it. When we hear a glowing picture drawn of the

patriarchal government of the south—of the slaveholder's tender care of his slaves, and the bond of intimacy in which they live, some persons would be apt to think that the slave is the happiest man in the world—that he has no fear of what is to come—no dismal anticipations as to the future. He has merely to pick corn meal in summer and winter. He is only liable to be separated from his wife and children, and sold again and again, and sent to different parts of the Union. This is all seen in the beautiful sketch of the patriarchal south. And, yet, some gentlemen imagine that the negroes of Pennsylvania would be better off, if in their former condition of bondage, and be more industrious and more happy.

I will briefly recapitulate the position I take. I contend, that by the constitution of 1790, that a man born of a free woman in Pennsylvania—whether black or white, is a citizen. I contend that that is perfectly clear. I contend further, and adduce this as an additional proof of the fact, that in the militia law, the word "white," is inserted, not citizen, or freeman. And, did not the legislature know what they were saying? Is it not a demonstration that where the word was omitted, it was in dispute? Besides, it will be found, on examining the naturalization law, that the word is also omitted in it. Does it not show that it was in dispute? Unless we unsettle all the rules of construction, we must come to the conclusion that before the revolution, there were freemen in the country. At the revolution there was a black regiment, under the command of the brave Colonel Green, which rendered essential service in achieving the liberties of the country, And, continental congress declared that the men who should serve in the army to the end of the war should be free. Let gentlemen bear in mind that there are black "citizens" of the United States, on board the American ships. The blacks are so regarded by the national government; and they are demanded as such from foreign governments, when impressed into their service. We are afraid of the south are we—that they will not recognize negroes as citizens. When have they said it? A black man votes in New York, under a property qualification. He is a citizen of New York. He was a citizen, too, from 1777, till 1821.

Suppose a black citizen to go to the south, and he is kidnapped and sold for a slave, upon the ground that New York would not qualify her citizens in a manner so as to suit the policy, and accord with the laws of the southern states—would it not be a gross violation of her rights? But such a case is not to be contemplated. No man could fairly attribute such conduct to the south. She is not so unjust—so faithless to the Union. We are too often cowering to what is called southern dictation and domination, and which they never have sought, perhaps, and to bow, with submission to southern pretension—all which is an argument that the southrons themselves would scout and repudiate. It is going too far. I do not impute it to any one here. But, there is too much disposition in some gentlemen to regard what is thought elsewhere, and we should be exceedingly cautious.

I shall vote against the insertion of the word "white" in the constitution of Pennsylvania. I came not here to take any man's right away—not to make any man less happy than he was before the constitution was amended. And, I know that if the amendment should be adopted great mischief will be done. Now, the coloured man's hopes are high; but they

will be broken when you tell him that he is to be deprived of the right of suffrage. His brow will fall, and his spirits will be depressed. He will at once see that his means of happiness have been abridged. You will inflict no such wrong on him. Others may, but I will not.

Mr. HOPKINSON said, that after the glowing and animated appeal made to human sympathies—he might say, to our best sympathies, by the gentleman (Mr. Forward) who had just taken his seat, he (Mr. H.) could hardly hope that the convention would willingly listen to a few cool words on the subject—such, however, it was his intention and desire to address to them. They may, perhaps, have the effect of cooling or abating the flame raised by the ardent language they had heard.

That in his opinion this was a question that should be quietly considered—rationally discussed and deliberately decided. It should be finally voted upon and settled according to its real merits, by the dictates of a very serious duty, and not by exciting the passions either of ourselves who speak upon it, or of those who hear us. A bad cause sometimes obtains support from good feelings; the heart yields to impressions which the judgment resists. We must guard against this delusion. We come here to exercise our judgment and not to indulge our feelings; we must be able to defend hereafter, by arguments of reason and sound policy, what we do, and we shall neither satisfy ourselves or those who sent us here, by inflammatory addresses or sympathetic decisions.

It must be borne in mind, said Mr. H., that a part of what we have heard, has not been applied to the question to be decided, but to the arguments which had been used by gentlemen who had spoken in favor of the introduction of this obnoxious word "*white*" into the constitution.

He (Mr. H.) would give his attention to the subject matter of the debate—and would not consider it to be incumbent upon him, to support or assail the arguments by which other gentlemen, thinking with him in the result—have thought proper to maintain their opinions. If in their endeavors to defend the cause he supported, they had surrendered it, as is asserted, it was for them to justify themselves and their arguments; he had to do only with the right and wrong of the principles he advocated; and if his opponents had obtained a triumph over some of the arguments brought to the support of his cause, it must not be considered as a triumph over the cause.

This distinction must not be overlooked by those whose votes are finally to decide the question—as in courts of justice, a judge must look to the cause rather than to the advocate; to the true merits of a question, rather than to the argument of the advocates on the one side or the other.

He would freely admit that satisfactory answers had been given to much that had been advanced by gentlemen who think as he does on the main question, but the matters that had been so answered had never met his approbation; he did not assent to them.

Mr. H. said, that in his view of the case, the convention had nothing to decide but a mere question of *political policy*—as applied to the state of Pennsylvania. With regard to the general question of slavery—with regard to the question of slavery in the south, or elsewhere; its history, its tendency, its justifications or condemnations—a field of controversy that has no limits, he had nothing to do, nor was this convention called upon to

express any opinion—nor should he inquire—or make it any part of his argument, whether the blacks were or were not, a degraded race—whether they were superior or inferior to the white man, in their capacity, their genius or their virtues. He was, for the purposes of his argument, willing to admit that in all these things the negro is superior to the white man.

He said that the members of this convention are assembled to make and establish the fundamental laws of this commonwealth, for ourselves and our posterity; this should be done on great and permanent principles of reason—wisdom and policy, and it is by those principles, as applied to the actual condition of the whole community—of the white as well as the black population; of the relations in which they stand to each other, that we should decide whether the negroes shall or shall not have the right of suffrage in common with ourselves. This is the question and the only question we have to determine, and every inquiry or argument foreign to that question is beside our object.

What have we to do with the law or policy of England on this subject? They have no application to a people in our condition. We have here a coloured population of fifty or sixty thousand, rapidly increasing. We have in our neighborhood, sister states overflowing with this population, who may pour them in upon us in countless numbers, and who are now doing so to an alarming extent, without the encouragement now proposed to be given to them.

He reminded the convention that his argument had been and now is, that in the actual relations now subsisting between the white and black population of this commonwealth—which is not likely to be changed—for nobody here—even the most zealous advocates for equality—has proposed or anticipated, or desired any such change—it will be unwise, it will be dangerous to us and to them, to admit them to political rights on an equality with ourselves—and what is the difficulty? what the objection? It is here—that while you exclude them, as you actually do, and as you mean to continue to do, from any approach to a social equality, you cannot wisely or safely confer upon them political equality and rights. Has any attempt been made to meet this view of the case? to answer this argument? He had heard none.

Have the gentlemen who have made such stirring appeals in behalf of the blacks, who have claimed for them all the virtues and all the talents that man is capable of—have they denied, that this feeling, whether natural or acquired—this prejudice, if you will call it so—is so strongly rooted in our white population—nay, in their own hearts and bosoms—that there is no expectation—no hope, I may say no desire, that has been expressed here to remove it.

Has any gentleman on this floor, the boldest and the warmest advocate for negro equality and suffrage, gone so far as to say—to insinuate that he is willing to extend to the blacks his social equality and rights; to receive him in his family or at his table, on the same footing and terms with his white friends and acquaintances; allow them to marry with his children, male and female?—not a word of the kind. They will give them the rights of the people—of the commonwealth—but not of their own houses and homes.

Mr. H. said, he wished to be distinctly understood, that he wished to say nothing reproachful or derogatory to the black man; he did not think it necessary to say, whether this aversion to his society was just—was natural, or was the effect of habit, accident or education. He spoke of it only as it was. His argument had no reference to the colour of this race.

If it were possible that 50,000 white men could be placed in relation to the rest of the population of the state, consisting of a million and a half of people—as these negroes are—he would exclude them also from the right of suffrage, in the same manner—for the same reasons that he would now exclude the blacks. Remove the social barrier that separates them from us, and he would at once consent to remove the political; but to take away the latter and leave the former in full force, would be to bring an irritated and bitter enemy into the body politic, who could never be reconciled by a vote for the insult to his feelings and pride, in his exclusion from your society.

How then would his political power be used? Certainly to extend its influence; certainly, to avenge the affront which meets him at the front door of every house where he might present himself. If he votes—he will expect and demand to be voted for; he will claim the right, and who can gainsay it, to a competition for every office in the commonwealth, executive, legislative and judicial; and although their own strength amounting to twelve or fifteen thousand votes, may not of itself be able to obtain such places for them, yet, in the conflict of parties so equally balanced as they sometimes are, and the reckless eagerness often displayed for victory, their votes may be more than sufficient to turn the scale, and they may be obtained by compromises and bargains with them, that will bring into your halls of legislation—upon your judicial benches and into every place and appointment in the commonwealth, men whom you will not receive at your tables or in your houses as friends or acquaintances. Will not this be a strange state of things? What must it lead to? Can it possibly exist without very serious consequences to both parties? Let as pause on the threshhold; let us be satisfied to let this subject rest as it has heretofore rested without any general dissatisfaction; without any dissatisfaction loud or extensive enough to have created any uneasiness, to have been heard as far as I know.

Mr. H. reminded the convention that at the outset of the debate, he had expressed the opinion advanced by the gentleman from Allegheny, (Mr. Forward) that by the true construction of the present constitution of Pennsylvania, the coloured man has a right to vote; although he could not go with his friend so far as to join in his challenge to name any man who pretends to be a lawyer to deny it—on the contrary, he knew that able judges had differed on this question—and an elaborate opinion had been given from a judicial bench, which denied this right under the constitution. But what is gained in the present argument, by proving the existence of the right under the present constitution? He could see nothing, because it is for the purpose of revising that constitution, that we are now assembled; and if this convention, admitting the present existence of the right, shall believe that the great interests of the commonwealth, the general welfare of the whole, require that this right should be taken away, what is there to prevent our doing it? Mr. H. would submit his view of this constitutional question in a few distinct propositions.

1. He thought that under the plain words of the constitution—"every *freeman* of the age of twenty-one years" &c. "shall enjoy the rights of an elector;" a free negro being unquestionably a *freeman*, unless it is denied that he is a *man*, has a right to vote. That there is no obscurity or ambiguity in the meaning of these words, and that this meaning cannot be rejected or changed by a construction, derived by a course of argument and conjecture, from the history of slavery in Pennsylvania, and a reference to the rights and condition of the black population in the early periods of the province. Such however, were the means resorted to to get rid of, or overlay the plain language of the constitution.

The constitution of 1790, was made with as full and accurate knowledge as we now have, of all this history and these circumstances, and if —which I can neither affirm or deny—the constitution by a clear interpretation of its language, worked any change in the condition and rights of these people, we must presume that it was so intended, and we cannot throw them back to their former condition and rights, by a forced and argumentative construction, not drawn from the language of the constitution, but from extraneous circumstances and ingenious suppositions. He would not undertake to say, as his opponents had done, what was the *intention* of the framers of the constitution on negro suffrage, further than as he found it in what they had said and done. It may be, that this portion of our population was not immediately in their view, when they were regulating the elective franchise. At that time this right had never been claimed or exercised by that population, and it had by no means the importance which it has since assumed, from the increase of the numbers and power of this class of people. But this is all surmise and conjecture; it may be true, it may not be so, and we must now take the instrument as they have given it to us, as the true expositor of their intention, and not force a construction upon their language, which is not warranted —or rather which is repudiated, by its plain and fair interpretation; and especially, when to do this we go out of the instrument, and seek for the intention in remote history and extraneous circumstances. We have had abundant reason to know that the language of this constitution was as carefully considered as its principles; and I doubt our ability to improve either. Some gentlemen have suggested, that it will be better for us to pass by this subject, and leave it as it now stands under the constitution of 1790. Perhaps this course might have been eligible if the question had remained at rest; but it has been agitated here and elsewhere; we cannot suppress or avoid it; it has been brought upon us by petitions and memorials, and presented to us by a direct motion on which there must be a direct vote. In this situation we must meet the question fearlessly, and decide it honestly. There is another reason why we should put this question to rest, so far as we have power to do so. Since the determination of the people to have this convention, the question of negro suffrage has been publicly agitated. Previously, it had drawn but little attention; it was scarcely spoken of. But few of these people claimed the right, and there was no excitement or difficulty felt or apprehended about it. It has since that period assumed a different character and aspect. Attempts have been made in some counties to bring these people to the polls, and unpleasant excitements have attended them; different opinions prevail and are in conflict, and serious difficulties

may be foreseen. It is, therefore, our duty to prevent these evils, by settling the question on one side or the other. The people will pass their vote on our decision, whatever it may be, and then the question will be at rest. To leave it now on the construction of the constitution of 1790 —when we know that judges, lawyers, and statesmen, as well as the citizens at large, differ about that construction in diametrical opposition, would be to make uncertainty more uncertain, inasmuch, as it would seem to be an admission that we neither know what the constitution is, or what it ought to be on this subject.

We know that in different counties of the state, different practices obtain; in some the black population are permitted to vote as their right; in others it is denied to them. This must not be continued; the right must be the same throughout the state; it must be admitted or refused every where. The presiding Judge in Bucks county, had given an elaborate opinion against the right.

He, Mr. H. did not agree with him, he was by no means satisfied with the conclusions of the Judge from his premises; nor with his arguments in support of the right.

Mr. H. recollected, that soon after the adoption of the constitution of 1790, at a heated election in their city, the question of negro suffrage was raised. The judges of the election were at fault, and took the opinion of eminent lawyers—two of them were, Mr. Lewis, and Mr. Rawl, and Mr. H., thought that a third was Mr. Ingersoll; and they concurred in affirming the right of suffrage to the negro. It must be remembered that two of these gentlemen were members of the convention, who made the constitution. It has been said on this floor, that a motion was made that convention do insert this word "white" and it was negatived. Nothing of the sort—not the least allusion to it, appears in the minutes of that convention, which was kept with remarkable accuracy and detail—every thing was noted with extreme precision, and yet, neither in the minutes of the committee of the whole, or of the house—have we any trace of any such motion. The recollection of no individual, at this distance of time, can be safely put in competition with such recorded proceedings of that body.

Mr. H. contended, that, admitting that the negro population now have the right of voting under the present constitution, it will by no means follow, as some have argued, that it is not in the power of this convention to consider and determine whether it is expedient, on principles of general policy, and consistent with the general welfare of the citizens of the state, to continue this right to them—that the question is as open to the convention, as any question on any other article or provision in the constitution, and as it was to the convention which made the constitution. If, in the opinion of this convention, the members and condition of these people, and the increasing influx of them from the southern states which touch our borders, or from any other causes and circumstances, duly and deliberately considered, it will be dangerous to the harmony and peace of our commonwealth; it will be seriously detrimental to the rights of the whole population,—who are in the proportion of a million and a half, to fifty or forty thousand,—who are the true and primary proprietors of the state, and its political powers and rights—whose fortunes, and labor, and

blood, have made it what it is—if we truly and deliberately believe, that the welfare of this vast majority, under such peculiar circumstances, which entitled them to our regard, will be essentially diminished or endangered by permitting this comparatively small negro population to hold this right of suffrage, we may, consistently with our powers, and with a wise and honest use of them—we may, on the principle of self-preservation, on the rights of a majority, take from them this right.

Mr. H. argued, that this elective franchise is emphatically one belonging and interesting to the whole people, and which the people have, at all times, a right to regulate and limit, at their pleasure, and as they shall believe the general good requires. If the convention has no power over this subject, if they may not change or touch it, it is difficult to say what we have power to do; indeed, we have already made changes and imposed restraints upon it without a suggestion that we were transcending our powers. He said that he held as strong doctrines as any body for the sanctity of *vested rights*, but he had never imagined that this was one of them; it went far beyond his opinions on that subject. He had never considered a right to vote, to be in the class of vested rights, but to be the subject of constitutional arrangement in this state, and of legislative enactment in others. In France there are about eighty thousand voters, for thirty millions of people; in England it was no better until the elective franchise was lately enlarged by act of parliament, and he belived nobody thought that it might not be again changed by the same authority. Yet vested rights are sacredly preserved in England. I shall be satisfied if we shall hold them equally inviolate.

If we may make no alterations in the constitution which will affect and diminish the present existing rights of any citizen or class of citizens, we had better surrender our trust at once, for it is hardly possible to make any change that will not in some way, or to some extent, affect some right now enjoyed. Have we not made changes which deeply and vitally reduce rights and interests solemnly guaranttied to individuals and classes of individuals by the present constitution? He mentioned, as instances, the cases of the judges of the supreme court; the presidents of districts, the associate j udges of counties, and the justices of the peace, all of whom, by the present constitution, are enabled to hold their offices during good behaviour, and under that assurance they accepted their offices. You have not hesitated to change this tenor, to take away this right—not for future, but from the present incumbents, and to reduce the tenure to a term of years.

Mr. H. also referred to the example of New Jersey, to shew that this right of voting was considered there, to be under the will and direction of the legislature. This could not be, if it had been considered to be vested right, granted either by the constitution, or by an act of the assembly. At no distant period, females and negroes were entitled to vote in New Jersey, and both freely exercised the right. It was found, or thought to be expedient, to deprive them of this right; and it was done without relieving them from taxation, and simply on the ground of public policy. This change was made merely by enacting in their law to regulate elections, that, from and after the passing of that act, no person should vote, unless he were a *free white male* citizen of the state, thus

introducing but two words, *white* and *male*, to effect this important alteration. This convention has already abridged this franchise, by requiring a residence in the county, not now required, thereby depriving persons of it who now enjoy it.

Mr. H. asked whether it could be doubted, that the convention, confirmed by a vote of the people, may not declare that, hereafter, the age of a voter shall be twenty-two, or twenty-five years, instead of twenty one, and yet such a change would take the right from, or disfranchise a much greater number of white persons, than will be disfranchised of the black, by the introduction of the word "white" into the constitution as proposed. Might not a freehold or other qualification of property be required of a voter, without a violation of vested rights, or exceeding the authority of the convention.

Mr. H. said, it has been proposed, by our opponents in this argument, to put a qualification of property to a considerable amount, and some others, upon the right of the negro, although the white man is exempted from them. If, however, the right is vested in the negro, as the same gentlemen contend, without such qualifications and conditions, how can you impose them upon him? Where is the difference, in principle, between taking away the right, and loading it with heavy conditions?

It would indeed be a strange novelty in our constitution, to have voters with different qualifications depending upon their colour.

Mr. H. said, that, in his opinion, there was no middle ground; these people must be admitted on the same terms with ourselves—or be excluded; there is no principle on which a different course can be taken. It is computed that there may be fourteen or fifteen thousand black voters in the state, if admitted as we are. The qualifications proposed would probably reduce them to five hundred. What is gained for the black population by this? Where are the sympathies so eloquently urged upon us for the thirteen or fourteen thousand who will be shut out by this arrangement? What has become of that equality which has been claimed for them? Will they not be uniformly more dissatisfied and offended by this difference among themselves; by being put under men of their own colour, than by having a common fate, and continuing to be as they have been, distinguished from the white population only by their exclusion from this right. Mr. H. said, that we must not consider that the negroes are the only persons in the commonwealth who are denied this franchise—aliens must undergo a probation of five years, and produce proofs of their good conduct. In the mean time they may have been paying heavily in taxes—may have been engaged largely in business, contributing their wealth and industay to the common stock. So single women who may be worth common estates and pay large sums in taxes; they cannot vote, —and why? On a principle of public policy. So persons under the age of twenty-one years; who, in like manner, may have large possessions.

Mr. H. said that, after all we have heard of our injustice to the blacks, of the hardship of their case, the truth is, that by introducing this prohibition into the constitution, we shall not practically change their condition, or deprive them of any right they have actually enjoyed,

or, as far as I know, attempted or desired to exercise. They appear to be contented on this point, with perhaps the exception of a few ambitious individuals, for where does not ambition creep? They have a fair equivalent for their loss in their exemption from personal taxes—from militia duties and various other burdens that are imposed upon the white people. In the mean time they have a perfect security under the law, and Heaven forbid they should ever be deprived of it—for their lives, persons, liberty and property, to the same extent with any member of this convention. Their condition, then, is not a hard one. They have not the right of suffrage, and does not every one who hears me know how little it is valued by those who have it? How difficult it is to coax, I may say, to force them to the election ground.

Mr. H. said, that this has been, and now is, a vexed question in the state; different opinions are held about it. This difference arose soon after the adoption of the constitution of 1790, and still continues. Judges and courts are now differing about it. It is incumbent upon us to settle it absolutely and clearly, by a positive, unequivocal declaration. He was aware that we stand in a delicate, responsible situation. We are at once parties and judges. We must endeavor to do justice to both parties; but that justice will not be found in ardent addresses to the passions —by vehement representations of oppression and suffering. We must look with cool deliberation, with assured reason, to the true state of the question; as one of political policy and expediency,—of the grant or refusal of a political privilege to be determined by large and rational views of the common good—of the general welfare.

Mr. H. said, it has been contended that there is an uncertainty in the signification of the word "*white*;" that it will be difficult to say who are to be excluded by it; and a pleasant story is told of Mr. Gallatin to this point. Mr. H. did not see that any serious difficulty of this sort could arise; and he judged from the past.

The constitution of Virginia, quoted by a gentleman for another purpose, has this word *white* as a qualification to a voter. So has New Jersey; so have thirteen or fourteen of the constitutions of our states, and I never heard of any difficulty in ascertaining what it means, or to whom it is to be applied.

Mr. MEREDITH, of Philadelphia, expressed his regret, that he should be obliged to rise at this hour of the evening, but he felt it was necessary that he should vindicate his course, and lay before the convention the views by which it was regulated; in order that they may be understood. It had not occurred to him, that any one would take the trouble to assail him in the position he had taken. He was charged with having taken a middle course on this question, in which there was no middle course, as if—like a fire in the woods, which was only to be put out by kindling another fire—the excitement of this question could only be put out by two blazes. He objected, however, to his course being called the middle course. He was willing to extend political rights as far as he could, with reference to the happiness, well being, and security of society. But he had doubts, as to the propriety of admitting the coloured people into our political family, on the footing of others. He was not ready to say to these coloured individuals, who come into this state—"we will not only

give you refuge, and the advantages of civil rights; but, after you shall have resided here one year, and paid a personal tax, you shall be admitted to all the priviliges of citizens, and entitled to vote as such." When he asked that the propriety of such a course should be shown, and advocated the necessity of making a distinction, he was charged, on one side, with taking a middle course; and on the other, he was told of the rights of man, of the equality of African blood, and of the wickedness of those who sell the blood and bones of their fellow men. During such excitement, we could hardly hope to come to wise and correct conclusions. This was not the first time he had been exposed to censure, which was unprovoked. Although he had been discreet as any who had preceded him, he had, in the development of his views, been so unfortunate as to offend enthusiasts on both sides, who had charged him with coming to a "lame and impotent conclusion." He would now repeat, that he considered any man, black or white, who was free in other points, a free citizen. This he had never denied; and when challenged to deny it, he would say, he had never asserted any other opinion than that the coloured people are citizens. But he would call on any man on this floor to stand up and say, it is enough to shew that a man is a freeman, to shew that he has a right to vote. There is something peculiar in the relation in which the coloured race stand to whites, which renders a distinction inevitable. It has been said, that it is enough to shew a man is a citizen, to shew that he has the right of suffrage. This is not the case. The white man who has not paid a tax—or who is a minor—or who has not been assessed, is not the less a citizen, not the less entitled to protection, yet he is not permitted to exercise the right of suffrage. Are we to be assailed, because we do not believe the admission of the coloured man to vote, to be in accordance with the feelings and history of our citizens? Are we to be compelled to stand in the position of denying that he is a citizen? He hoped this imputation would not be permitted to go to a foreign country, where it would be liable to foreign construction. He denied, totally denied, that we could refuse protection to a man born on the soil. Our attention had been turned to our common soil, to England, and we were told that blacks voted there. He was sorry he had not time, for a minute answer to the remark. He would not ask any thing in reference to personal right and property. He would only ask when, and where blacks had voted there? A negro may have settled in a county, and have been mixed up in the parish elections, but nothing more.

If we take the history of England, and trace a class of men now almost entirely extinct, who were among the original inhabitants, we shall find they are a different race of men. The Egyptians, who made a home there, are a wandering horde of barbarians on her soil, entitled to every privilege as freemen, according to their code. Would gentlemen see how they are sustained in their positions by the treatment of these people? Would they look to the oppressions, by which these people are bowed down to the earth? They are excluded from all the usual trades and occupations of business, driven from the ordinary pursuits of industry, and doomed to remain, in the midst of a civilized community, a horde of shunned and persecuted vagabonds. He did not hold this statement up as an explanation of his argument; but when we were told of the customs of England, he could not but refer to the laws and practices of England,

As to blacks, none are entitled to vote there. When we come to this country, there were none of this race. They have been brought among us, or are those, whose origin has been with us in a state of slavery.

[Here the noise was so great, that it was impossible for the reporter to catch the sense of the argument, during some five or six minutes. Mr. M., was undersrood, as replying to the statement that the act of 1780, in using the words "freemen" and "freewomen," conferred any rights of citizenship; but that the simple meaning was, that they should be exempt from compulsory servitude, as was clear from the residue of the tenth section.]

Why, if that was to be here established, it was for the first time. The history of England, from which country we derived our laws, afforded no instance or example or foundation for it. The case was not to be found in which it had been held that he was a slave, but he was not, therefore, entitled to the political right of suffrage. What, then, was the case in 1790? Had the act of 1780, wrought the change which had been spoken of? He wished to be permitted to advert also, to the use of the very important term "freemen," which had been held up as the term used, for the purpose of showing the political right of suffrage was extended to this class of our population. Let him call the attention of gentlemen to the fact, that the only persons who, by that act, are declared 'freemen" and "free women," so far as the slave population of the state, at that time, was concerned, were such as should not have been registered by their masters, according to the terms of the act—not the class at large of coloured men, but that every negro or mulatto, who should not have been registered. And, they, as might be expected, would be but few in number. If he was asked, if the statute ought to be construed in favor of liberty, he would answer, as a lawyer, that it was to be so construed. It was to be construed also, by some gentlemen, it would seem, as granting the most important boon, and which was worth all these, perhaps; and a totally different sense was to be given to it—by which every sort of privilege was to be granted, not touching their personal liberty—one, which was discovered, for the first time, fifty or sixty years after its passage: It was to be construed favorably. And, the supreme court of the United States had declared that slaves, under that act, were free entirely—that the grand children were free from their birth, and cannot be held in servitude for a term of years, provided there was no reservation in the act to the contrary, the court decided it to be in favor of liberty, as to all those persons who came within the spirit of it. It had not yet been decided, and he trusted, that it would be long before it would be, that the people of this commonwealth were desirous to revive such domestic slavery, or to obliterate the term "citizen;" or to take to their arms this persecuted race, whose condition they had endeavored to ameliorate.

He wanted to know, whether the act of 1780, did not extend certain privileges to this class of people? Whether it was not intended for their especial benefit? He wanted to know, why a different meaning and interpretation was to be attached to it now? Where, he asked, was the reason? He had been asked the question—why not make slaves of these coloured people? He pointed to the act of 1780, which declares that they shall not be slaves. If he was asked, where there was a distinction

made between one class and another class of people, residing in the same country, in regard to their rights and privileges, he would point to the history of every country besides our own. He could point to the numerous classes of whites, who enjoy liberty, and were not entitled to the right of suffrage, which is a political right merely. If the argument urged in behalf of the negroes, was a legitimate argument, why not apply it to females?

Look at the political rights of the people of England—they are totally different from those enjoyed here. Every man born in that country, no matter whether he be black or white—is a subject of the king. And men there are deprived of many of their civil rights. There are thousands of whites in the United Kingdom, who are not allowed the right of suffrage. If this momentous question, we are now discussing, was decided in 1790, as it had been contended by some gentlemen, that it had been, he asked for the authority upon which that assertion was founded. A letter had been produced in this convention, from a gentleman who was a member of the convention, that framed the constitution of 1790, in which he spoke of having made some motion himself, but which he does not seem distinctly to recollect, and refers to the minutes of the committee of the whole, as the best evidence of what was done. But when you look at those minutes, you find that he was mistaken from beginning to end. You cannot find a trace of the subject, except that the word "freeman," was inserted.

He, Mr. M., asked for the authority in regard to the introduction of the word "freeman" for the first time. We had been referred to the militia law, and told that the word "freeman" as used there, was a constitutional term. He maintained, that the term was not used in the sense contended for. The words of the militia law are, that every free white able bodied male person shall be trained, &c. The framers of the constitution, did not use this shibboleth of liberty, if he might call it so. At the period when the act in question was passed, there began to creep in some belief that the blacks were entitled to the right of suffrage.

He should have thought that the word "freeman" alone, if in the act referred to, meant either white or black That act, however, does not contain the word. It is a technical term. It was quite familiar to the people, and required no lawyer to explain it—the expression being free white able-bodied men, &c.

But, again, he would ask the gentleman from Allegheny, (Mr. Forward) who maintained that the militia law was passed in conformity with the terms of the constitution—who contended that it contained authority explanatory of the assertion of those terms—who maintained the right of the legislature to put the construction they did, upon the word "freemen," whence they obtained that right? Now, he (Mr. M.) would meet the gentleman on that ground, and he would call the attention of gentlemen to the language of the constitution, which is:

"The freemen of this commonwealth shall be armed and disciplined for its defence," &c.

And, it was a notorious fact, that the legislature felt themselves under a moral obligation to comply with the provision.

He (Mr. M.) contended that the legislature were bound to arm and discipline the freemen of this commonwealth—without distinction of colour—for its defence—unless the distinction arises in the word itself—unless it was to be found in tradition or history. He did not know where the legislature found authority for putting such a construction on the word "freemen," as that it meant only "free white male persons." Those were the terms which they used, and did not make use of the technical term "freeman." They had the clause of the constitution before them, and must have understood it. Every man among us, knew what it meant. The commentators on the constitution had shown its meaning, in terms of eloquence, and in terms of living light, and it was impossible to be misled as to the meaning of any clause in the constitution.

But, he would ask, what gentleman would maintain that, in the constitution of 1790, this important change was effected? If we were to believe that the legislature violated their constitutional duty, or were ignorant of the meaning of the term, then there might be some room for doubt. But such a supposition was not to be entertained.

He wanted to know the time when this momentous change was announced in our institutions, that a coloured freeman could come forward and claim to exercise the political right of suffrage? Were we, he desired to know, upon a question of this kind, to throw away all the lights, of our own history? Were we to be told that, although we had been living, for fifty years, amid the heat of party strife, and all the difficulties which had attended our elections—where one party or the other had been in the habit of making charges against the other, and when, too, those charges had been reciprocated, and men had been brought from a great distance, at a vast expense, to vote, in order to obtain, for one party or the other, the victory—yet, that there were, at the same time, four thousand legal voters on the spot, who might have gone to the polls? But, the authority for this assertion, was not to be found. The claim could not be proved.

Do not let us be regardless of the principles of civil liberty. Do not let us, by any false notions of humanity, and because our ancestors went so far as to pass an act that the people of colour should be no longer kept as slaves, but restored to personal liberty, be induced to confer upon these people, political rights. Let us look to the political history of every country, as well as that of our own, and see how this system would work. Let us not be led away by enthusiasm, but look soberly at this matter. We cannot give these political people rights—it would be inexpedient, impolitic and unsafe. To grant them these rights, it would be necessary, in order that they exercise them intelligently, to admit them to social intercourse with the whites. They must be received and cherished by them; they must become a part of the same family. There could be no intermediate space between the two races, under those circumstances.

He would now, in his turn, ask gentlemen who had been led away by the warmth of their feelings, in regard to the southern states, what effect those arguments and facts would have, which had been brought forward by them, to show that the blacks here, were once held in bondage—had

been emancipated, and ought to be admitted to a participation in our political privileges? Gentlemen made appeals to humanity, and, at the same time, held out this monstrous doctrine. He felt shocked. He believed it could lead to no good to the negro race, nor would it increase the peace and welfare of community. He had not been accustomed to consider that the blacks have political right—and, until he could find something in history—something in the statute book, to bear this construction, he could not believe it.

This was a question in which the people of this commonwealth are generally interested. He must have some better proof of the right claimed for negroes to vote, than he had yet seen, before he would consent to surrender his judgment as to the matter. He would not yield himself, or believe that his forefathers intended, to grant them what was now contended for. They were animated with a fervent desire to restore them to a portion of their liberty, which others enjoyed. He would not believe that, because they had used the term "free," they meant to bestow upon them the political right of suffrage.

He need scarcely say, that he regretted the difference of opinion which existed between himself and friends, with respect to this question. He need not say that it was with diffidence he trusted his own judgment on this occasion. But, he deemed it right to trust his own judgment, and abide by it. He might be wrong, but he had, at least, the satisfiaction of knowing that he spoke in accordance with the dictates of his conscience.

The difference between himself and the gentleman from Allegheny, (Mr. Forward) was, that he (Mr. F.) believed that the blacks have had the right to vote, for fifty years past,—but he was now willing to deprive the many of the right, and give it to the few. While he (Mr. Meredith) believed that they never possessed the right, and that it would be better to give it to those whose ancestors had been born and bred in this country, and who assisted in the struggles of the revolution. And, he could not see any practical result. This was the difference between the gentleman and himself.

If he (Mr. M.) could be brought to believe, that for fifty years past, they have had the right, and were now in the actual possession of that right, he would hesitate long before he would consent to deprive them of it. But, he did not. And, although other gentlemen, with the delegate from Allegheny, had come to a different conclusion—although other gentlemen might repudiate his (Mr. M's) arguments, still, this was the conviction of his own mind.

He appealed to our own records, and our own laws, in defence of the position he held, and on which his opinion was founded. It had found that there were documents to prove that the word "freeman," gave the equivalent, "free white male persons." He had looked for them, but had not been able to find them.

He cared nothing about striking out the word "white." It had been said here that it was unreasonable not to grant the right of suffrage, and that if the blacks had never had it before, they ought to have it now.

Now, he would ask gentlemen if we were not discussing a questi on

connected with which there was much prejudice? He would ask what was the reason that some of the gentlemen whom the gentleman from Allegheny knew to be respectable—men of education and standing among us, objected to their having the privilege of voting? The gentleman might as well ask him, (Mr. Meredith) why object to all, or none of them?

He could not, for good reason, support the claim made in behalf of the blacks. He desired to be guided by the wishes of the people of the commonwealth of Pennsylvania. He believed that the members of this body were bound only to advocate the wants and wishes of the whites. He considered that we had no right, under cover of the peoples' amendments, to grant the people of colour the right of suffrage—much less to introduce among them a body of men condemned, and not liked by them.

He regretted very much that he felt himself bound to make these remarks, in reply to the gentleman from Allegheny. He could not, however, be justly regarded as guilty of the crime of jumping to a conclusion, in reference to this question. He had given much reflection to it. The subject was not new with him, or with the gentleman from Allegheny. He recollected well what was the particular condition of this people among us, not many years since. He might now have come to wrong conclusions on this subject. but, nevertheless, he would act upon them. He cared not who thought him right, or who wrong. He believed that the course which he advocated, would be found best by experience. And, whatever course might be taken by this convention, he was ready to stand by the sentiments he had expressed, and to take the consequences.

Mr. INGERSOLL, and Mr. CURLL, asked for the yeas and nays; which being taken, the amendment was agreed to—yeas 77, nays 45, as follow:

YEAS—Messrs. Banks, Barclay, Barndollar, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Chambers, Clapp, Clarke, of Indiana, Cleavinger, Cline, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dillinger, Donagan, Donnell, Doran, Dunlop, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, Henderson, of Dauphin, High, Hopkinson, Houpt, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, Meredith, Merrill, Miller, Nevin, Overfield, Payne, Pollock, Purviance, Read, Riter, Ritter, Rogers, Russell, Seager, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Weaver, Woodward—77.

NAYS—Messrs. Agnew, Ayres, Baldwin, Biddle, Carey, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Clark, of Dauphin, Coates, Cochran, Cox, Craig, Cunningham, Darlington, Denny, Dickey, Dickerson, Earle, Farrelly, Forward, Hays, Hiester, Jenks, Kerr, Konigmacher, Maclay, M'Call, M'Dowell, M'Sherry, Meikel, Montgomery, Pennypacker, Porter, of Lancaster, Reigart, Scott, Serrill, Sill, Thomas, Todd, Weidman, White, Young, Sergeant, *President*—45.

Mr. SCOTT, of Philadelphia, moved to amend the section, as amended, by adding the following:

"Provided also, that the legislature may at any time after the year 1860, by a law passed at two successive annual sessions, extend the

right of suffrage to such other persons, of whatever colour, and upon such conditions, as to them may seem expedient."

Mr. DORAN, of Philadelphia county, said he was fearful that this amendment would give rise to a long debate; and as no time was to be lost—the second day of February being fixed as the day of adjournment, he would move the previous question.

The motion was not seconded by the requisite number.

Mr. REIGART, of Lancaster, moved that the convention adjourn.

Lost.

Mr. R. demanded a division of the question—when there appeared, ayes 39. Noes not counted.

The motion was not agreed to.

[Here Mr. SERGEANT, (the President of the convention) having been on leave of absence, returned, and was, on motion of Mr. BIDDLE, permitted to record his vote, as above inserted.]

Mr. HOPKINSON, of Philadelphia, moved that the convention adjourn,

Lost.

The question recurring, was on agreeing to the amendment offered by Mr. SCOTT.

The yeas and nays were required by Mr. SCOTT and Mr. BIDDLE, and are as follow, viz:

YEAS—Messrs. Ayres, Baldwin, Biddle, Chandler, of Chester, Chandler, of Philadelphia, Clark, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Coates, Cunningham, Darlington, Denny, Farrelly, Hays, Henderson, of Dauphin, Hiester, Kerr, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Reigart, Russell, Saeger, Scott, Serrill, Sill, Snively, Thomas, Young, Sergeant, *President*.—36.

NAYS—Messrs. Agnew, Banks, Barclay, Barndollar, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Chambers, Clarke, of Indiana, Cochran, Cox, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dickey, Dillinger, Donagan, Donnell, Doran, Dunlop, Earle, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, High, Hopkinson, Houpt, Hyde, Ingersoll, Keim, Kennedy, Konigmacher, Krebs, Lyons, Maclay, Magee, Mann, Martin, M'Cahen, M'Dowell, Miller, Nevin, Overfield, Purviance, Read, Riter, Ritter, Rogers, Scheetz, Sellers Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Sturdevant, Taggart, Weaver, Woodward,—73.

So the question was determined in the negative.

Mr. DUNLOP, of Franklin, moved to amend the section, as amended. by adding the following:

"But persons of this commonwealth, now citizens thereof, and their descendants, who may be excluded by the term "white," shall be entitled to the rights of suffrage, provided that every such person shall have been, for three years, a resident in the election district in which he shall offer to vote, and shall have been seized and possessed for one year next preceding such election, of a freehold of the value of ——— ——— dollars, clear of incumbrances, and shall have been rated, and paid a tax

thereon; and no male person, of full age, not entitled to the right of suffrage, shall be subject to direct taxation."

The said amendment being under consideration,

A motion was made by Mr. DUNLOP, that

The convention do now adjourn.

Which was agreed to.

Adjourned till half past nine o'clock, on Monday morning.

MONDAY, JANUARY 22, 1838.

Mr. CHAMBERS, of Franklin, moved that the convention proceed to the second reading and consideration of the following resolution, offered on the 15th instant, viz:

Resolved, That so much of the thirty-third rule of the convention, as dispenses with the yeas and nays on the question of daily adjournment, be rescinded.

The question being put, the motion was decided in the affirmative, and the resolution being under consideration, the same was modified by Mr. CHAMBERS, to read as follows, viz:

Resolved, That so much of the thirty-third rule of the convention, as dispenses with the yeas and nays on the question of daily adjournment, be rescinded: and the yeas and nays may be demanded by twenty delegates.

Mr. CHAMBERS explained, that he had submitted this resolution, because, on account of the disorder which prevailed in the house, about the hour of adjournment, it was more difficult to count the members, than at any other time. The modification required the call to be sustained by twenty members. In the house of representatives it required one-fifth of the members to sustain the call for the yeas and nays. He hoped the resolution would be adopted.

The question was then put, and the resolution was agreed to, without a division.

Mr. BIDDLE, of Philadelphia, rose to ask leave for his colleague, Mr. Cope, to record his vote, on the amendment of Mr. Martin, among the yeas and nays. He was necessarily absent on Saturday, when the question was taken, and his vote would not affect the decision.

Mr. SHELLITO, of Crawford, said he hoped the gentleman would not be permitted to change his vote. If such permission were given, it might become a precedent in some case, where the result might be affected by the change of a vote.

Mr. STERIGERE, of Montgomery, asked for the yeas and nays on the question.

Mr. CHAUNCEY, of Philadelphia, expressed his hope that the leave would be given.

Mr. SHELLITO said this vote would be carried to congress to show how nearly this state was divided on the subject of abolition.

Mr. CHAUNCEY thought it right every man should vote, that his sentiments might be known.

Mr. HIESTER, of Lancaster, adverted to two instances, in which the gentleman from Chester, (Mr. Bell,) and the gentleman from Washington (Mr. Craig) had been permitted to vote, after the decision was made, and he would therefore vote for the leave asked in this case. He was sorry the precedent had been adopted. The rule ought not to have been relaxed, in any instance, and then members would have been induced to keep in their seats.

Mr. INGERSOLL, of Philadelphia, said he had been surprised that leave should so often be asked. He had, himself, come into the hall half a dozen times, and asked leave to record his vote, and obtained it. But it was a bad practice. In congress, he had known leave refused to members who had been standing just out side of the bar. But, as we have already relaxed the rule in so many instances, we could not, with propriety, refuse the leave asked for the gentleman from Philadelphia. You yourself, sir, on Saturday asked leave to vote, and it was unanimously granted. I, said Mr. Ingersoll, could not vote against it. Let the leave asked for, be given, and let the rule hereafter be established and rigidly adhered to.

Mr. BROWN, of Philadelphia county, hoped that no such palpable violation of the rule would be permitted.

The thirty-fifth rule is—

"No delegate shall be permitted to vote on any question, unless he be within the bar, and when the yeas and nays are called, he be present to answer to his name."

And the fortieth rule reads thus—

"No rule shall be dispensed with, but by two-thirds of the delegates present."

The rule, therefore, must be dispensed with before the gentleman can vote, and that will require two-thirds. I, said Mr. B., might as well ask leave to record my name on any question which has been taken since the commencement of the convention, taking advantage of changes of circumstances.

Mr. BELL, of Chester, said, if it required two-thirds to grant the leave asked, he hoped there would be found that number in favor of it. He himself was also absent, and he wished to record his vote. If present, he would have voted in the affirmative, and his absence from his place was entirely unavoidable.

Mr. WOODWARD, of Luzerne, was disposed to grant this leave, if it could be done with propriety. But if this leave were given, he would immediately ask leave to record his name against certain resolutions which were adopted at Harrisburg, when he was not in his seat, and in which question he felt as deep an interest in recording his name, as the gentleman from Philadelphia feels in relation to this question.

My vote, said Mr. W., will not, in that case, change the result. There

is a wide difference between this case, and that of the President, who, on Saturday, had just stepped out of the hall, when the vote was taken, and was permitted to vote when he returned.

Mr. Cope, of Philadelphia, said he was obliged to his colleague who had made this motion. He would merely say, as an opposition had sprung up, which he was sorry to see, that he had attended here during the whole of the debate. On Saturday, it was indispensible that he should be absent a short time, and when he came back to the hall, the convention had just adjourned.

Mr. Hayhurst, of Columbia, said he, on Saturday, opposed a motion for leave, on principle. He entertained as high a respect for the gentleman from Philadelphia, as any one could. He had himself lost one vote on an important question, at Harrisburg. He was detained from his seat until the 19th of October, by indisposition, instead of being there on the 17th as he had intended. The vote on the question of justices of the peace was taken on the 18th, and his name was not there.

If the leave now asked should be granted, I may go home, said Mr. H., and come back and record my name on any vote taken during my absence, or my vote may be given by proxy. The result may, in this manner, be changed, in some cases. Granting leave, after an interval of two days, is, in fact, surrendering the whole principle, and may lead to the re-opening of the journal.

Mr. Biddle thought the question had been already settled by the Chair. The gentleman before him (Mr. Ingersoll) had shown that the leave had been granted in a great number of instances. The gentleman from Columbia should not have said two days elapsed. It was late on Saturday night when the question was taken, and the application is made early on Monday morning. In the case of an aged gentleman, who was absent from indisposition, he had hoped that the rigorous application of the rule would not have been insisted on. But finding that there was so strong an opposition to the motion, he would withdraw it.

Mr. Cope said, I would have voted in the negative on the amendment.

The motion for leave was then withdrawn.

Mr. Dunlop, of Franklin, moved that the gentleman from Chester (Mr. Bell) have leave to record his vote on the same question.

Mr. Bell expressed his obligation to the gentleman from Franklin for his motion, but expressed his wish that it might not be pressed.

The motion was accordingly withdrawn.

THIRD ARTICLE.

The convention resumed the second reading of the report of the committee to whom was referred the third article of the constitution, as reported by the committee of the whole.

The question being on the motion of Mr. Dunlop, of Franklin, further to amend the first section of the said report as amended, by adding to the end thereof, the following, viz:

"But persons of this commonwealth, now citizens thereof, and their descendants, who may be excluded by the term "white," shall be entitled to the rights of suffrage, provided that every such person shall have been, for three years, a resident of the election district in which he shall offer to vote, and shall have been seized and possessed for one year next preceding such election, of a freehold of the value of — hundred dollars, clear of incumbrance, and shall have been rated and paid a tax thereon; and no male person of full age, not entitled to the rights of suffrage, shall be subject to direct taxation."

Mr. STICKEL, of York, moved to postpone the further consideration of this amendment, for the purpose of enabling him to submit a motion to re-consider the vote which had been taken on the amendment requiring a residence of ten days.

Mr. MILLER, of Fayette, asked for the yeas and nays on the motion, and they were ordered.

The question was then taken on the motion to postpone, and decided in the negative, as follows, viz.

YEAS—Messrs. Banks, Barclay, Barnitz, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Cleavinger, Crain, Cummin, Curll, Darrah, Denny, Dillinger, Donagan, Donnell, Doran, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Helffenstein, Hiester, High, Hyde, Keim, Kennedy, Krebs, Magee, Mann, Martin, M'Cahen, Miller, Overfield, Payne, Read, Riter, Ritter, Rogers, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Taggert Weaver, White, Woodward—57.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Biddle, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Coates, Cochran, Cope, Cox, Crum, Cunningham, Darlington, Dickerson, Dunlop, Earle, Forward, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Houpt, Jenks, Kerr, Konigmacher, Maclay, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Royer, Russell, Saeger, Scott, Seltzer, Serrill, Sill, Snively, Sturdevant, Thomas, Todd, Young, Sergeant, *President*—61.

Mr. DUNLOP modified his amendment by filling the blank with the words "two hundred dollars."

Mr. HIESTER, of Lancaster, also suggested to the gentleman the following modification:

"Provided further, That none but free white male citizens, shall be eligible to offices of honor or profit within this commonwealth."

Mr. H. said, that although he was willing to vote to give the coloured population the right of suffrage, yet he was not disposed to allow them the privilege of being elected. He hoped the delegate from Franklin would accept this as a modification; if he should refuse, he (Mr. H.) did not know that he would vote for his amendment.

Mr. DUNLOP replied, that he could not accept it, because it was a proposition entirely distinct from his own.

Mr. HIESTER observed that his opinion was, that the gentleman's amendment would command a greater number of votes with the modification he (Mr. H.) proposed, than without it.

Mr. DUNLOP would prefer having a vote taken on his amendment, as it was. If it should be voted down, he would be glad that the two should be offered together. If his amendment should prevail, why then the gentleman could offer his amendment to it.

Mr. BARNITZ, of York, suggested that it would be better to strike out the words "clear of incumbrances."

Mr. DUNLOP accepted the modification.

Mr. DONNELL, of York, asked for the yeas and nays.

Mr. BANKS, of Mifflin, remarked that he would but express his hope that the amendment would not prevail. The gentleman from Franklin (Mr. Dunlop) had, in the course of his observations in favor of inserting the word "white," said, that there were many persons of light complexion, who had negro blood in their veins, and were not allowed to vote, though quite able and competent to participate in carrying on the affairs of the country. The delegate would give that portion of the coloured people, who might possess property to a certain amount, and have sufficient intelligence to enable him to vote intelligently—the right of suffrage. Now, he (Mr. Banks) would here say, that it did not follow that because a man possessed property—no matter what his colour might be, that he was a better or more deserving man than his neighbor, who might have no property.

Indeed, he regarded it as contrary to the spirit of our institutions, to prefer a man on account of his having property. That was not a proper and fair act. We should look only to the intelligence and information which a man might possess, and his knowledge of the manner in which the free institutions of this country work. If the gentleman from Franklin were to go so far as to say that no white man should be allowed to vote, unless worth property to the amount of two hundred dollars, the people of the commonwealth would look upon him as an innovator, and the county from which he came would know how to estimate him. He (Mr. B.) must say, that he was totally at a loss to see why the distinction proposed should be made between the coloured people. He could not see why those only of the respectable portion of the coloured people, possessing property, should be selected and allowed the right to vote, whilst those who did not, were to be refused.

Mr. DUNLOP here said, that he would ask his friend from Mifflin (Mr. Banks) whether he did not think half a loaf of bread, better than no bread?

Mr. BANKS resumed. He conceived that there could be no doubt about it. But he did not regard the proposition of the gentleman from Franklin, as going any thing like that length in reference to the coloured population of the commonwealth, for a very small portion of it, indeed, would be able to exercise the right of suffrage. The gentleman took occasion to allude to the yellow man—Fortune—who, by-the-by, had the *mis*-fortune to possess the wrong colour—and stated that he owned large real estate, and had money in abundance, at command. He (Mr. Banks) declared that this was a consideration which had no consideration with him. It did not, as he had already remarked, make the man a better man. This was not the estimate resorted to by white men.

Then why, he would ask, should the poor black man, who possessed sufficient ability to judge between right and wrong, be refused the right of suffrage? He imagined that the coloured people would not thank the gentleman for the proposition which he had made on their behalf. The few that were possessed of real estate might be pleased at having this privilege granted to them, and of their forming a sort of circumscribed circle—as they were equally as proud of their property, and desirous of possessing distinction among their own race, as we were. Those who held real estate would regard themselves as much better than the rest of the coloured men, if the amendment now pending should prevail. In his opinion, the amendment of the gentleman from Franklin was radically wrong in principle. It was unfair and altogether unjust to make any distinction between those owning property, and those who did not, in regard to the exercise of the right of suffrage. The right ought to be granted to all, or to none. He would ask the gentleman from Franklin how it was to be ascertained on the election ground, when a coloured man came forward to give his vote, whether his real estate was clear of incumbrances? Could that be done? He (Mr. B.) denied that it could. Were the officers of the election to go to the recorder's or the prothonotary's office for the purpose of ascertaining whether there existed any judgments against the property of those who would come to the polls and vote, so that they might be produced when the men offered to vote? There might also be certificates in other offices against the voter's estate.

Notwithstanding all the gentleman's astuteness in relation to business matters, he had certainly not given sufficient attention, or thought, to the operation of the amendment he advocated. It was not necessary that he should give his reasons why he would not vote for the amendment. He had no doubt that the convention would come to a right decision on this highly exciting, interesting and important subject. He knew that many gentlemen here had thoroughly investigated this subject, with a view to discover, whether, under the constitution of 1790, the coloured people have a right to vote. It was right, then, that the subject should be discussed, and closely examined.

Mr. SHELLITO, of Crawford, said that he had, after having made several attempts, at last succeeded in obtaining the floor. And, having done so, he would proceed to give his views on this question, in as brief a manner as he possibly could. The gentleman from M'Kean (Mr. Payne) had freely declared to this body, that he had almost entirely lost his sleep and appetite, in consequence of the thought which he had bestowed upon the question—whether the blacks should be allowed to exercise the right of suffrage. Such was the great importance which that gentleman attached to it, and the difficulty he found in making up his mind as to how he would vote, that he declared he hardly knew what to do.

Now, this was precisely his own case: he knew not what to do. He had received no instructions from his constituents. And, if his colleague (Mr. Farrelly) had, he ought, in common courtesy, at least to have informed him of the fact. When the question was up at Harrisburg, his colleague voted for the insertion of the word "white" in the constitution, but now he has voted against it. He (M. S.) had received some instructions, but they were so few in number, they were not worth mentioning.

The substance of them was, against allowing the blacks to vote. He must say, that if the gentleman had been instructed by his constituents, he had not acted a very friendly part towards him in not letting him know, and consulting with him on the subject. He did not know whether the gentleman was in his seat or not. He wished to learn if he had been instructed to change his vote. He supposed his colleague was something like Jonathan, who did not hear his father give a curse, and who dipped his rod in honey and put it into his mouth, and then said "How my eyes are enlightened!"

Now, he (Mr. S.) could humbly wish that his eyes were opened too. He repeated that he should wish to know how his friend came to change his vote.

The delegate from Allegheny (Mr. Forward) had referred to England, as making no distinction between the blacks and whites; and spoke of the liberality which characterized her political policy. England was about the last country he (Mr. S.) would think of citing, in reference to this question of suffrage, although most of us were of the same flesh and blood as the people of that country, and our ancestors had come from it. He would ask that gentleman how many of her manufacturers, and how many of her gallant soldiers, who had returned home, covered with wounds and glory, after fighting her battles, were permitted to vote? Let the gentleman answer that question, before he poured out his sympathy on these miserable blacks. He would ask if it was possible to prevent the blacks being voted for, if they were permitted to vote? He maintained that it was all a farce—all a mockery, to contend to the contrary.

Now, when many thousands of white men in Great Britain are not permitted to vote—where, he would ask, was the hardship in not allowing the blacks to exercise the right of suffrage? The commander-in-chief of the black forces—the gentleman from the county of Philadelphia, (Mr. Earle)—surely would not suppose that the blacks would vote for him and send him to congress, in order to overturn the government. He would ask if any man was prepared for such a state of things? If gentlemen were desirous to see the negroes on a level with the whites, give these negroes the right of suffrage, and your sons and your daughters will, by and by, become waiters and cooks for them. Yes! for these black gentry—that will be the result of it. They will overthrow the government, and the abolitionists will then throw themselves into their arms. The time will come, when every white, except the abolitionists, will be compelled to shoulder his musket, in order to defend his wife and children from the ruffian assaults and violence of the blacks.

He knew that the country, generally, was opposed to abolition, and every thing in the shape of it. The moment that the right of suffrage was conferred on the black man, that moment would he raise his head above the white, and he would shed his blood when the first favorable opportunity should occur. Let the delegates to this convention hesitate long before they put the means into the hands of the blacks, of destroying our happy government, and rendering wretched the descendants of those who purchased it with their blood. He trusted that so long as the ame of freedom remained familiar to every American ear, they would

take care of, and watch with a jealous eye over, the institutions which at present adorned and distinguished our happy land.

He hoped that the amendment would never be adopted, and that there was good sense enough in Pennsylvania to put down any attempt to incorporate it into our constitution. He regretted to have heard any remarks in relation to the south, and a dissolution of the Union. We had no business to interfere with the affairs of the south, and he trusted gentlemen would refrain from doing so. A friend of his had informed him that the blacks were very contented, and did not want to vote. They were quite satisfied with their condition. If the blacks are not content where they are, they had better go to the country from whence they or their forefathers were brought.

I will (said Mr. S.) not detain the convention with any further remarks, I am anxious that the question should be taken as soon as possible, and that this vexed subject should be finally disposed of. My own course is decided and I cannot depart from it. If I thought that my country wished me to vote against the introduction of the word "white" into the constitution of this state, I could not in my conscience do so. My conscience is the rule of all my actions in this body and out of it. I cannot disregard its distates, and whatever may be the consequence, I shall pursue the path to which it may point.

Mr. READ rose and said, that when a demand was made for the previous question on this section on Saturday morning last, it had not beed insisted upon and had not been sustained, in consequence of an intimation given by the gentleman from Franklin, (Mr. Dunlop) that this amendment would not give rise to any protracted discussion. This expectation, it seemed, was not to be realized. As I have understood, continued Mr. R. from various parts of the hall, that there are a number of other amendments yet to be offered, and as there is no probability that any of them will be sustained by the vote of this convention; looking also to the short space of time which now remains to us here—and believing that the gentleman from Franklin, (Mr. Dunlop) and all others who may have amendments to offer, will answer their purpose as well by voting against the section in its present form, I call for the previous question and I urgently invite gentlemen to sustain me in this demand.

Which demand was then sustained by the requisite number of delegates.

And on the question,

Shall the main question be now put?

The yeas and nays were required by Mr. HIESTER and Mr. FULLER, and are as follow, viz:

YEAS—Messrs. Brown, of Northampton, Brown, of Philadelphia, Clapp, Crain, Crum, Cummin, Curll, Darrah, Dickerson, Dillinger, Donagan, Donnell, Doran, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grennell, Hayhurst, Helffenstein, High, Houpt, Hyde, Keim, Kennedy, Krebs, Mann, M'Cahen, M'Call, Miller, Overfield, Pollock, Read, Riter, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Weaver,—46.

NAYS—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Barnitz, Bedford, Bell, Biddle, Bigelow, Bonham, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Clark, of Dauphin, Clarke,

of Indiana, Cleavinger, Cline, Coates, Cope, Cox, Cunningham, Darlington, Denny, Dickey, Dunlop, Earle, Forward, Harris, Hastings, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Ingersoll, Jenks, Kerr, Konigmacher, Maclay, Magee, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Nevin, Payne, Pennypacker, Porter, of Lancaster, Purviance, Reigart, Ritter, Rogers, Royer, Russell, Scott, Serrill, Sill, Sterigere, Stickel, Studevant, Taggart, Thomas, Todd, Weidman, White, Young, Sergeant, *President*—74.

So the convention determined that the main question should not now be taken.

And the amendment to the first section of the said report as amended, being again under consideration,

Mr. JENKS, of Bucks county, rose and said,

Mr. President, I was one of the minority of the committee appointed on the third article of the constitution, which minority made a report to this body in favor of an extension of the elective franchise. I was one of the minority who made a report qualifying the elective franchise so as to give to every individual coming into the state of Pennsylvania, and residing there for the space of one year, the right to vote. In that same report a question was decided which heretofore in this state had been a disputed question. The report of that committee which was adopted by this body, removed the difficulty. The sons of all qualified citizens whose fathers might have been dead for more than two years, will have under the amended constitution a right to vote.

Under these impressions, and with the opinion which I entertain as to the propriety of giving all proper extension to the elective franchise, I felt a disposition on Saturday last, to give my vote accordingly, and in favor of permitting the existing provision of the constitution to remain as it is —that is to say, that "in elections by the citizens, *every freeman* of the age of twenty-one years" should vote, &c.

What was the situation of the question which has been agitated here, at the time we took upon ourselves to decide it? Had it not been decided in a court of justice in a neighboring county, that a black man, under the constitution of 1776, and under the constitution of 1790, had not a right to vote in Pennsylvania? Upon that decision an appeal had been taken to the supreme court—that court whose decision, whatever it is, must be final. I for one, was unwilling to touch upon the duties of the judiciary, or to interfere with the decision by any action on the part of this convention. It was the duty of that tribunal to decide the question, and whether that decision should be against the black man or whether it should confirm the right of suffrage in him, I, for one, was willing to abide by the decision. But we have taken away, a little despotically as I think, the right of the black man to vote, thus settling a question which is pending before the supreme judicial tribunal of the state. It is not for me to give an opinion upon what might be the issue in that case. If the black man had a right to vote under the constitution of 1790—and I have great doubts upon the matter, although my impressions are rather averse to such a construction of the constitution—but if he had the right to vote, it is now too late for us to take away that right. To do so would be to retrograde in the cause of liberty—to go back in the cause of human rights.

In the consideration of this question, some gentlemen, improperly as I think, have brought in the south—southern feelings and southern interests. The question now under discussion is a Pennsylvania question—emphatically so; it is a question of policy in relation to ourselves and to our own system of government with which the south has nothing at all to do.

Mr. FULLER, of Fayette, rose to a point of order. He submitted that the remarks of the gentleman from Bucks, (Mr. Jenks) were not applicable to the question before the convention; and, therefore, that they were out of order.

The CHAIR not interposing:—

Mr. JENKS resumed. I am sorry, Mr. President, that a question of order should have been raised without ground or necessity for it, and that too, by a gentleman who never suffers an occasion to pass without fully expressing his opinions on every question that may present itself. But I suppose that as the gentleman is not himself in possession of the floor at this time, he finds it convenient or agreeable to interfere with the rights of others. If his mind had been gathered upon this subject, as I could have wished it had been, that the observations I have made as merely a preface to what is to come, have reference to the question now before the convention, I hope that hereafter he will ascertain that there is some real ground for exception, before he calls me to order for irrelevant remarks.

I was about to say, Mr. President, at the time I was interrupted by the gentleman from Fayette, that this is altogether a Pennsylvania question in which neither the north nor the south has any thing to do. I am willing to leave to the south their reserved rights. I am not disposed to interfere in any manner with any question, having reference to those rights. I am disposed, so far as any of my acts are concerned, to adhere to the compact upon which the general government was formed. But whilst I am thus willing to concede to the south their full right, an adherence to their reserved rights, I am disposed still as a Pennsylvanian to claim some privileges on behalf of my native state. I do then think that this question has nothing to do with the south. If we, who are assembled here in the name and by the authority of the people of the state of Pennsylvania, should believe that it is to the interest of Pennsylvania to adopt an amendment to the constitution, extending—in part or in whole—to any portion of our citizens the right to vote, it is our duty to do so, without reference to any other state of this Union. I say it is our duty, and we cannot disregard it without incurring a serious weight of responsibility. It is to be remembered that, for our acts in this convention, we are amenable to those who have entrusted their interests to our keeping—that we are acting not for ourselves, but for the whole people of the state, for years and it may be, for ages yet to come. I repeat, therefore, that if such an amendment is required at our hands, it is our duty to make it, without reference to other states whose peculiar local institutions may differ from our own.

There is, in relation to the constitution of the United States and the constitution of the commonwealth of Pennsylvania, one general leading principle. And now, if the gentleman from Fayette, (Mr. Fuller) is disposed to give me his attention, he will see the application of the remarks

which I submitted when I first rose to address the convention. I say, then, that there is in relation to the constitution of the United States, and the constitution of this commonwealth, one general leading principle. What is it? It is that taxation and suffrage shall go together. Although I will not take upon myself to say what I might be induced to do if the question before us were a question as to extending the right of suffrage to every class of the blacks, yet in relation to the amendment proposed by the gentleman from Franklin, (Mr. Dunlop) and which, if I correctly understand it, goes to say that a negro possessing property—real estate —to the amount of two hundred dollars, or possessing in personal estate the amount of three hundred dollars, shall be entitled to a vote, I ask is there any thing objectionable about it? What is there in such a proposition which need excite any alarm? Is it not in perfect consistency and keeping with the principles of our republican form of government? Nay, I will put the question to those who are disposed to frown upon such a provision, what becomes of their democratic principles when they go in opposition to it? I would wish, sir, to see those principles carried out upon all occasions. I like consistent democracy. If it is just in its application in one instance, it should be so in every instance, and I will ask if there is not some injustice in taxing a body of people, and in some instances taxing them heavily, when they are to have no voice in the selection of the representatives, through whom that taxation is to be imposed. I can not reconcile this to my sense of justice. Dose it not, on the other hand, savour of injustice? To my mind it does; and I cannot believe that our fathers in by-gone days, fresh as they were, from the ranks of the revolutionary army—impelled by that spirit of patriotism which was daunted by no terror and subdued by no obstacles—I say, I cannot believe that they, after all the efforts they had made in the cause of human freedom, would have ventured to say to any one of the human family—"we will tax you to any amount we please, but we will not allow you the privilege of a voice in the selection of those who are to tax you." I cannot believe, Mr. President, that there ever was a time in Pennsylvania when a body of men would have been found capable of giving their sanction to such an act of injustice.

Under these views then, I am disposed to give my vote in favor of the amendment of the gentleman from Franklin, (Mr. Dunlop.) If under such circumstances, I refuse to give my vote in favor of such a privilege, I believe that I should be violating a great principle in our government; I believe that I should be committing a great act of injustice towards those who are taxed for the support of our government; and who in some instances, are deeply taxed. I believe that I should be acting in opposition to that great republican principle to which we, as a people, owe so much, and which, I hope, will ever be the rule and guide of my political conduct. I shall, therefore, vote in favor of the amendment of the gentleman from Franklin. And, with these remarks, I take leave of the subject.

Mr. FULLER, of Fayette county, said that he had not risen to make an argument; and the more especially so, said Mr. F. because it was understood on Saturday last, that no debate, at least to any considerable extent, was likely to take place on this proposition. The gentleman from Franklin, (Mr. Dunlop) did himself declare, that he did not expect any debate

to arise. The property qualification to a vote is the main objection to this amendment; it is scouted out of the commonwealth, and it has been so for many years. Few states in the Union retain it. It was not, therefore, expected that it could create much debate, and I regret that so much time has been consumed upon it.

There is, however, one remark which has fallen from the gentleman from Bucks county, (Mr. Jenks) which I can not suffer to pass without notice. He has spoken of this convention as touching upon the rights of the courts in the change they have made in this respect in the provision of the constitution of 1790. This certainly is a new idea, and one which I scarcely could have expected to see introduced here. We are assembled together for the purpose of revising the fundamental law of the state of Pennsylvania. Is it not proper that we should say in that fundamental law who shall have the right to vote in the choice of those who are to administer the government? Is not this the proper place? The decision of the supreme court ought not to have been any guide to us, if we had taken it up. The courts have differed upon this subject. Men in and out of the convention differ upon it; it is proper that it should be settled definitely now; and it has been settled with the exception of the single proposition of the gentleman from Franklin. I hope that the convention will dispose promptly of that proposition. Considering the great length of time occupied in the discussion of this section of the constitution, I was greatly astonished that the demand for the previous question was not sustained by a majority of votes. I presume it was because there are a number of other amendments to be offered, though there is little chance of success for any of them. At all events, let us take the question on this amendment.

Mr. PURVIANCE, of Butler county, said that he intended to vote against the amendment of the gentleman from Franklin, and that lest his motives should be misapprehended, he would ask leave briefly to assign the reasons which would govern his vote on this occasion.

When this subject was under discussion in the committee of the whole, I voted, said Mr. P.. for the insertion of the word "white." I did so as a matter of expediency, and not for reasons such as those which have been assigned by the gentleman from Luzerne, (Mr. Woodward.) I shall now vote against this amendment, not only upon the ground, of expediency, but upon the ground of the injustice which would be done to that class of people comprehended in it. When I voted for the insertion of the word "white," I was under the impression that such an alteration of the provision of the constitution, would tend to the benefit of that debased and degraded portion of the people—as they have here been termed—the coloured race. I thought that, by adopting such an amendment, there would no longer be left any question for judicial construction, under the constitution of 1790, and that we should settle, in a definite manner, now and for all time to come, the position which the coloured should occupy in the state of Pennsylvania. But I am not disposed to vote for the amendment now under consideration, because, I think it does but minister to that feeling which pervades the southern states, and which, I am sorry to say, is to be found predominant at the capital of this great nation.

To pass such an amendment as this, would be in effect to say, that although we extend the right of suffrage to the white men, of every grade and upon very slight conditions, yet that, nevertheless, because a man's skin is not white, we will annex a heavy qualification to his privilege, which we are not willing to impose upon the white man. This, I say, is ministering to that injurious spirit which pervades the southern states, and which, I do seriously apprehend, is one day to pervade the whole length and breadth of this Union.

And here, Mr. President, I must be permitted to say a word, in reply to the very extraordinary position which has been assumed by the gentleman from Luzerne, (Mr. Woodward) and which was dwelt upon by him, with so much earnestness and eloquence, that because the coloured people of this country, were brought into the province by the commercial avarice of the British nation, and against the wishes and remonstrances of the colonists, that, therefore, the coloured race have no right to participate in the administration of the affairs of this government. Sir, I repudiate such a doctrine, come from what quarter it may; I can never give it my sanction.

I ask the gentleman from Luzerne, whether the lighted torch of persecution has not guided to the shores of this western continent, thousands of human beings, who left their homes with regret and sorrow; and who yet, when they come to live among us, become as devoted friends to the institutions of our country, as any other portion of our people? I ask the gentleman again, if the patriot *Emmett* did not seek the shores of this country? Whether he did not so by compulsion? Did he not leave the greenest spots of his native land with a sorrowful and heavy heart? And yet who ever clung to the institutions of this country with a more fervid devotion than he?

Sir, there was another remark which fell from the gentleman from Luzerne, and which I listened to with much regret. It was, in effect, that because Mr. O'Connell had manifested some feeling on the subject of slavery, therefore, he was to be characterized as the slanderer of the institutions, and the people of this country. I cannot believe it. I believe that the heart of Mr. O'Connell weeps and bleeds, not for the cause assigned by the gentleman from Luzerne, but because in this nation, professing to be founded on principles of universal freedom, slavery is tolerated; because, in such a nation, the traffic in human flesh is tolerated. This, I believe, it is which calls forth so much feeling from the generous and patriotic Irishman, whose heart beats in sympathy for the wrongs of the oppressed and persecuted in every clime, whatever may be their condition, or their colour.

Although, I voted for the insertion of the word "white," when in committee of the whole, and, as I have before stated, on a principle of expediency, I nevertheless, did so with reluctance. When I viewed this subject as an abstract question of right and justice, I confess that I voted so with much reluctance; because, if, under the provision of the constitution of 1790, which declares, that "in elections by the citizens, every *freeman* of the age of twenty-one years," &c. "shall enjoy the rights of an elector"—if, I say, under that provision, free negroes were *freemen* within the meaning of the constitution, I doubt our right to interfere with

that privilege, which had thus been granted to them by the fathers of the American revolution.

But when I reflect upon it as a question of expediency, and with reference to the interests and the welfare of the great mass of the people of this commonwealth; when I reflect upon it with reference to the condition of the coloured race for the time to come; believing that the adoption of such an amendment would alleviate their misfortunes, and ameliorate their condition among us—I gave my vote for it, though, I am free to confess, with more reluctance than I have given a vote on any question, since the moment I first took my seat in this convention, down to the present moment. Nevertheless, I am not among the number of those who stand up for the institution of slavery. I am not the advocate of slavery; and I have heard with regret, gentlemen on this floor maintaining the proposition on the ground of right and justice. Sir, it was shocking to my feelings to listen to such an argument; for I am one of those who hope that the day will come when slavery will not be known in our land. I am one of those who trust in God that the day will dawn upon us, at no very distant time, when slavery will not be tolerated at the seat of the national government; and when the disgraceful traffic in human flesh will not exist, as it is at present known to exist, at the very doors of your national capitol.

I have always entertained the opinion, that congress, under the constitution of the United States, had no power to interfere with the institution of slavery in any of the states of the Union; but, at the same time, I have always held the belief, that congress had full and ample power to interfere with slavery in the District of Columbia, in any manner which they might think proper. Sir, I trust in God that I shall live to see the time when the fervid eulogies that are pronounced, year after year, in the halls of congress, on American liberty, will no longer be responded to by the clanking of the chains of the slave at the very door of their capitol. This is one of the first aspirations of my heart. I am one among the number of those who say, that if the District of Columbia—the seat of the American government—is to be be continued as a market for human flesh—as a market for the sale of human beings possessed of spirits immortal as our own, and pressing forward to the same eternal destiny—if sights so humiliating to our pride and to our humanity, are still to be suffered to exist—I, for one, would give my voice in favor of planting liberty's temple upon liberty's soil.

Sir, I am not an abolitionist;—I never have been. I am a colonizationist;—I trust I feel as an American ought to feel on this subject; and while I may, on the one hand, deplore the misguided course of some of the friends of abolition, I can not forbear, on the other hand, to deplore the infatuation of those friends of human liberty, who in the halls of congress, can fold their arms, listening to the eulogies which are there continually poured forth on American liberty, where burning exclamations of patriotism and devotion to the cause of human freedom, are mingled with cries at the door of the capitol *of negroes for sale.*

For these reasons, Mr. President, I shall give my vote in the negative, on the amendment of the gentleman from Franklin; and I trust that a majority of this convention will be disposed to do likewise; for I think

that if any thing, more than another, will tend in this commonwealth to increase the excitement which already exists, to an unfortunate extent, in relation to the coloured people, it will be this very establishment of a distinction in the fundamental law, which is not recognized by the constitution of 1790, nor in the constitution of any other state of the Union, except in that of the state of New York, where it now exists, and which, I hope, will never be recognized here.

Mr. SMYTH, of Centre, said, that after the long discussion which had taken place on this amendment, he did not rise with any desire to detain the convention by any remarks of any considerable length, but merely for the purpose of saying a very few words in explanation of the vote he was about to give. I do not intend, said Mr. S., to assign the reasons which induced me to vote in the manner I did, on the demand for the previous question. That vote stands on the record, and must speak for itself. Nor do I rise with any view to criticise the votes of any other members of this body.

I intend to vote against the amendment of the gentleman from Franklin; and I do so through principle. The gentleman proposes that we should make a property qualification to enable a citizen to vote at our elections. This is the sum and substance of his proposition. I am opposed *in toto* to the principle of making a property qualification, because, there is no point where a proper stop could be put to it. He proposes that two hundred and fifty dollars should be a necessary qualification to the vote of a citizen. I will not stop to inquire what is the difference between two hundred dollars and one hundred and ninety-nine dollars; that a man possessing property to the amount of one hundred and ninety-nine dollars, may not have as much intelligence, and as much information in relation to the government of Pennsylvania, as the man who possesses two hundred dollars? It is, at the best, but the difference of a dollar.

Mr. DUNLOP here rose and said:—Will the gentleman from Centre county, (Mr. Smyth) vote for my amendment, if I reduce the qualification requsite to a coloured voter, from two hundred dollars to one hundred and ninety-nine dollars?

The CHAIR called the gentleman from Franklin to order.

Mr. SMYTH resumed. I will answer the inquiry of the gentleman from Franklin, by stating, that I will not vote for his amendment under any modification—no, not even if the property qualification were reduced to the amount of a single dollar. I will not vote for it, because, I am opposed to it upon principle. A qualification of this description has never been recognized in the state of Pennsylvania, nor can I record a vote of mine in favor of it, under whatever aspect it may be presented. I should suppose that the anecdote which was related on a certain occasion by Doctor Franklin, would have a very suitable application here.

Mr. COPE, of Philadelphia, wished to express the regret which he felt at not having been present to vote on the question which was decided on Saturday evening. Had he been enabled to record his name, it would have been in the negative. As he could not obtain what he wished, he would now vote for this proposition, on the principle, that if he could not

get all he desired, he would yet take what he could get. After the excitement of this day shall have passed away, posterity will say, that we have not, in our decision of Saturday, shown that justice, wisdom and humanity, which ought to have distinguished our proceedings.

Mr. FULLER, of Fayette, rose to call the gentleman to order, on the ground, that it was not in order for a member to censure a vote of the body.

Mr. COPE did not impugn the motives of gentlemen, but he must not be abridged of his right of free discussion.

Mr. INGERSOLL, of Philadelphia, called the gentleman to order.

The CHAIR stated, that the course of the gentleman was not precisely in order.

Mr. COPE said, he was willing to accord to every one the right of free discussion. It was said that there was some doubt as to the proceedings which took place in the convention of 1790, and I am required, said Mr. C., to state what I know of the matter.

I was in the practice of occasionally attending the sittings of that convention. On one of those occasions I found the floor occupied by a member, whose appearance and peculiar French accent were well calculated to rivet my attention—his visage was sharp, his eye keen, his manner animated, his complexion sallow. As he spoke, his body inclined forward—his right arm was extended, and his forefinger bent as if to grapple with his subject. He was declaiming against the introduction of the word white, as a qualification for a voter—and said among other things, that if the word were so introduced, he did not know but he himself might be excluded from voting. The whole circumstance made a deep impression on my mind. I inquired the name of the member, and received for answer, that he was Albert Gallatin, delegate from the county west of the Allegheny mountains.

Mr. EARLE, of Philadelphia county, said he was sorry to find that there was a majority in this body, who would deprive the minority of the privilege of speech. He felt regret that they should have interrupted the gentleman from Philadelphia, (Mr. Chauncey) in his argument, while they were willing to listen for a quarter of an hour to another, (Mr. Shellito) who was occupied in imputing improper motives to him, (Mr. Earle.) He was happy to see the prejudice, on account of colour, dying away. They who would deny all privileges to those who differ from them in colour, could not be believers in the Bible. How could they wish to perpetuate oppression? And, as republicans, how could they be willing to see a portion of their fellow men cut off from the exercise of these rights? He was sorry to hear the gentleman from Butler say, that he wished to fix the destiny of the coloured people for all future time. It was his, Mr. E's. wish, that there should not appear in the constitution any thing like a denial of the rights of man. The day, he hoped, would come, here, as over all Europe, when this prejudice against colour, in opposition to the Bible and to reason, would be done away. O'Connell had strong prejudices against slaveholders, which he, Mr. E., had not. But he considered O'Connell as the ornament of the age, and as one who had done more for the rights of man, than any other had.

These prejudices against colour, are contradicted by reason and philosophy. Every man could see that the coloured race was becoming lighter. He stated this fact also, on the authority of writers of eminence. Persons became black from the influence of climate. A Portuguese colony in Africa had become black. He had conversed with a gentleman who had been in Africa, and understood from him, that he had seen these Portuguese. If gentlemen go out from here, to that quarter of the world—members, perhaps, of this body—would we on their return, deprive them of the right of suffrage, because, from the influence of the climate, they might there become darker of skin?

Mr. M'CAHEN, of Philadelphia county, rose to call his colleague to order. He was arguing a question which was decided. We have already put the word "white" into the constitutio .

Mr. EARLE, resumed—

Would we deprive them of the right of suffrage—flesh of our flesh, and bone of our bone—because climate had changed them? Certainly not. Well, from all the descendants of Noah, the principle was the same. He wished not to bring the blacks to the polls, if public opinion was against them; but, he wished to leave the matter to the day when prejudice should have subsided, as in Europe, when they could enjoy the right, and when, as his colleague, (Mr. Brown) had said, they would be more intelligent and better able to exercise the right.

He Mr. E., would not have risen now, had it not been for the charge of inconsistency made againt him. The principle he contended for was, that every man who pays taxes, and is liable to imprisonment under the laws—that man, if he possesses common sense, and is twenty-one years of age, has an inalienable right to vote—has a right to choose his rulers. And, the moment you depart from that—democracy is gone. The moment you can deprive a man of it under one pretext, you can do so under another. Tyrants can always find a plea. The tyrant's plea is the plea of necessity. But, there never was given a good plea to deprive men of their rights.

He, Mr. Earle, would vote for the amendment—not that he approved of a property qualification, but because he thought there had better be a partial, than a total, exclusion of our coloured population from the exercise of the right of suffrage. He preferred the amendment of the gentleman from Union (Mr. Merrill) to this, because it was more reasonable in its terms. He had been in doubt as to how he should vote; but, on reflection, he had discovered that there was a degree of democratic principle connected with it, that would induce him to vote in favor of the amendment. He had the sanction of Martin Van Buren in its favor, and he was too great, too good a man to deprive an other of his vote, because he happened not to be the same colour as himself. He did not take such anti-christian ground in the convention of New York. On the contrary, he contended that the coloured man had an equal right, with the white man, to vote, under certain conditions, and which conditions would be found in the constitution of New York. The vote of Mr. Van Buren, had been published in all the papers at the south; but he, Mr. E., was happy to find that the southern people did not entertain such narrow prejudice against him, and were not so illiberal as to oppose him on that account. For, the fact was, that the southern people admitted, that the

present state of things in relation to slavery, was wrong, and they only waited a propitious period to abrogate the evil.

The question was then taken on the adoption of the amendment, and it was decided in the negative—yeas 36; nays 86.

YEAS—Messrs. Ayres, Baldwin, Barnitz, Biddle, Carey, Chambers, Chandler of Chester, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Cleavinger, Coates, Cope, Cox, Cunningham, Darlington, Denny, Dunlop, Earle, Hays, Hiester, Jenks, Maclay, M'Call, Meredith, Merrill, Montgomery, Pennypacker, Porter, of Lancaster, Reigart, Royer, Scott, Serrill, Sill, Thomas, Sergeant, *President*—36.

NAYS—Messrs. Agnew, Banks, Barclay, Barndollar, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Clapp, Clark, of Dauphin, Clarke, of Indiana, Cline, Cochran, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dickey, Dickerson, Dillinger, Donagan, Donnell, Doran, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harirs, Hastings, Hayhurst, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, High, Hopkinson, Houpt, Hyde, Ingersoll, Keim, Kennedy, Konigmacher, Krebs, Magee, Mann, Martin, M'Cahen, M'Dowell, M'Sherry, Merkel, Miller, Nevin, Overfield, Payne, Pollock, Purviance, Read, Riter, Ritter, Rogers, Russell, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Todd, Weaver, Weidman, White, Woodward, Young—86.

A motion was made by Mr. DUNLOP.

To amend the said section as amended by adding to the end thereof, the words as follow, viz:

"But persons of this commonwealth, now citizens thereof, and their descendants, who may be excluded by the term 'white,' shall be entitled to the rights of suffrage, provided every such person shall have been for three years a resident of the county in which he shall offer his vote, and shall have been seized and possessed for one year next preceding such election of a freehold of the value of two hundred and fifty dollars, and shall have been rated and paid a tax thereon; and provided, further, that none but free white male citizens shall be eligible to offices of honor or profit within this commonwealth."

And on the question,

Will the convention agree so to amend said section as amended?

The yeas and nays were required by Mr. DUNLOP and Mr. KREBS, and and are as follow, viz:

YEAS—Messrs. Ayres, Baldwin, Barnitz, Biddle, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Cleavinger, Coates, Cope, Cox, Cunningham, Darlington, Denny, Dickey, Dunlop, Earle, Forward, Hays, Hiester, Jenks, Maclay, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Porter, of Lancaster, Reigart, Royer, Scott, Serrill, Sill, Thomas, Sergeant, *President*—40.

NAYS—Messrs. Agnew, Banks, Barclay, Barndollar, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Chandler, of Chester, Clapp, Clark, of Dauphin, Clarke, of Indiana, Cline, Cochran, Craig, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dickerson, Dillinger, Donagan, Donnell, Doran, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, High, Hopkinson, Houpt, Hyde, Ingersoll, Keim, Kennedy, Konigmacher, Krebs, Magee, Mann, Martin, M'Cahen, Miller, Nevin, Overfield Payne, Pollock, Purviance, Read, Riter, Ritter, Rogers, Russell, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Todd, Weaver, Weidman, White, Woodward Young—84.

So the question was determined in the negative.

Mr. MERRILL, of Union, moved to amend the said section as amended, by adding to the end thereof the words as follow, viz:

"But a free man of colour of the age of twenty-one years and upwards now resident in this state, and such as shall be born therein, if he shall have given to a judge of the court of common pleas, of any county in this state, sufficient evidence of his ability to demand the right of suffrage in writing, written in a legible and intelligible manner by himself; and also of his ability to read and understand the contents of common books, and shall have resided within this commonwealth three years, and within the district one year immediately preceding such election, and shall within two years have paid a tax, assessed at least ten days before such election, shall be permitted to vote."

Mr. MERRILL, of Union, said, he did not wish to trouble the convention with a long speech. We have heard a good deal, said Mr. M., about the aristocrary of wealth, and there may be such a thing as an aristocracy of intellect. The amendment which I have proposed, provides, "that a free man of colour of the age of twenty-one years and upwards, now resident in this state, and such as shall be born therein, if he shall have given to the judge of the court of common pleas, of any county in this state, sufficient evidence of his ability to demand the right of suffrage in writing, written in a legible and intelligible manner by himself; and also, of his ability to read and understand the contents of common books, and shall have resided within this commonwealth three years, and within the district one year immediately preceding such election, and shall within two years have paid a tax assessed at least ten days before such election, shall be permitted to vote." Such are the terms of my amendment.

I believe it is universally admitted, that intelligence is necessary in a republican form of government; and that intelligence ought to be a qualification requisite to enable a man to take part in the selection of those who are to have the administration of that government. There is no doubt that, in the minds of some men, it is incompatible for two distinct and separate races of human beings to take part in the administration of the same government; that one must succumb to the other. But the home of these people is here in the very midst of us; and unless we suffer them to have at least some voice in the selection of those to whose hands is to be entrusted the protection of their persons—and their lives and their property—we shall have a very extraordinary state of things. Let me ask to look at the matter in candour, and without reference to the many extraneous considerations which have mingled up with the discussion of this question, to say, whether any evil can arise from the adoption of a prosision like this. I limit the provision as strictly as possible. There we take those of the coloured race, who have been born amongst us, and those who have resided in the state for a number of years—who have sufficient intelligence to read and write, and to understand what is said to them, and printed for their use—with a perfect knowledge of our institutions—can there be any danger, or any impropriety in permitting them to take part in the election of those who are to govern us. They, like us, are to be governed; they, like us, are to be compelled to obey the laws; and gentlemen say, that it is so anti-republican to make a property qualification, that they can not vote for it; and, therefore, they would exclude all, without discrimination or exception, from the right of suffrage. For

my own part, Mr. President, I am not able to see the force of this objection; I believe, that when the coloured race are ascertained to be qualified in point of intelligence, to take part in our elections, they should be allowed by all means to do so. They ought not to be bound to obey the laws which we create—they ought not to be bound to pay, from their hard earnings, taxes for the support of our government, unless they are to have a voice in those who enact those laws, and through whom those taxes are laid upon them. Taxation and representation should go together; that they were not permitted to do so, was the first great cause which lighted up the beacon fires of the revolution, and led to that glorious struggle, which resulted in the emancipation of the North American colonies, from British thraldom and oppression.

The gentleman from Crawford, (Mr. Shellito) has told us that the coloured race are happier without this right of suffrage; and he says, that he has no notion of giving up his rights to them. Sir, let me ask that gentleman, whether the rights of the negro are not as valuable to *him*, as the rights of that gentleman to him? Here are men, who were born among us, who conform to our habits and customs—who pursue their daily business like our other citizens—who have friends and families among us, and who, more than all, possess an affection for the institutions of the country, and yet, we will not allow them the privilege of a vote.

The state of Virginia has been referred to in the course of the discussion. The principle there is, that all who give evidence of a permanent affection for our institutions, ought to vote. And this is the principle upon which I am desirous now to place the matter in the state of Pennsylvania. It is no part of my project, that a man who has no affection for these institutions, and no intelligence to comprehend what they are, should be allowed to vote. I think that what has been done by the state of Virginia, is not an answer to this argument. The constitution of the state of Virginia, as revised in the year 1830, does not, in terms, allow coloured people to vote. But here is a proposition to make them a distinct and subordinate class in the commonwealth of Pennsylvania, and yet, to tax them when they are to have no voice in any thing connected with the administration of the government. Sir, is this fair? Is it right? Is it just? It is peculiarly and emphatically the duty of a republican government, to do exact and equal justice to all her citizens.

But it has been said, Mr. President, that if one of the coloured race is to be permitted to vote, the whole body of them ought to be allowed the same privilege. I can not attach any weight to this argument; for it is to be remembered, that we make certain distinctions even with white men. I am willing, if the gentlemen are so disposed, so to modify my amendment, as to make a longer term of residence, a pre requisite to the right of suffrage, although, I do not believe that it is necessary to extend it. Still, however, I would fall in with the views of the convention in this particular, if, by so doing, I can secure the vote of a majority in favor of my proposition. I wish to have no man vote, who has not an affection for us, and a permanent home among us; and to all such, I desire that the right of suffrage should be extended. Is it, or is it not right that this should be done? It does not follow that, because the state of Virginia does not choose to adopt this course, therefore, it ought not to be adopted. If the principle is right and fair, and of universal application,

let it be carried into practice. I believe that Lord Brougham introduced the principle, that men in England should be allowed to vote according to a test similar to that prescribed by my amendment. At all events, the proposition originated with the reformers in England, among whom were Lord Brougham and other distinguished characters, that no man should vote who could not demand in writing for himself the right of suffrage.

Gentlemen may say that this is an aristocratic requisition. I do not think it is so. I think that every man who goes to the polls to vote, should at least be required to have so much intelligence as will enable him to appreciate our institutions. But, Mr. President, I am not prepared to argue this question at any great length, nor do I think it necessary to do so. I have already said more than I intended to say when I first rose, and I am sure that the patience of the house is nearly, if not altogether, worn out. I wish, however, to impress upon the minds of the members of this body what is to be the consequence of the rejection of this amendment. If we reject it we say, in effect, that men who are qualified in point of intelligence and integrity to exercise the right of suffrage shall not exercise it, but that they shall be forever precluded from doing so.

How can gentlemen vote to issue, as it were, a ban of ex-communication of this nature, and yet sustain their republican principles? How can they answer to the people of Pennsylvania when they say they will exclude from the right of suffrage, for a reason or for no reason, those who reside among us—who "live and move and have their being" among us, and who are sincerely attached to all our institutions. We will exclude them and know not exactly on what account—but we will exclude them on some ground or other. And, after all, what is the ground of exclusion? It is unnecessary for me to say any thing about prejudice, though I am aware I might say much.

What did the gentleman from Mifflin (Mr. Banks) say, in the course of his observations this morning? A man said he, may be rich and yet understand our institutions no better than the poor man. To him, then, at least, I can appeal, and I can ask him whether, on his course of reasoning, he will not recognize as fair, the principle of my amendment?

Mr. Fleming, of Lycoming, said that he did not rise to oppose, at any length, the amendment of the gentleman from Union, because he thought that there was sufficient, on the very face of it, to satisfy us that no such provision should be inserted in the constitution of Pennsylvania.

What is it? said Mr. F. It is a provision to fix a given standard of genius or intellect by which the voters shall be judged. This is certainly a new idea. We have made a tax standard, and we now propose to make a standard of intellect. These two put together would indeed make a beautiful system for a republican commonwealth like this. If we carry it out, the fear is that we shall soon arrive at that degree of perfection, that we shall have none left to judge.

But, Mr. President, I rose principally for the purpose of saying that almost every proposition for amendment, which the mind of man could suggest, has been offered to this section;—and it is probable that we have not yet had all which may be presented. I appreciate, as I ought, the good feelings by which gentlemen were governed in the introduction of

these propositions. I believe that their intentions are good, and their motives pure—and that they entertain the hope that it may be in their power to ameliorate the condition of the coloured race. But, when we recur to the votes which have been already taken, it seems to me that every gentleman must be satisfied that none of these new provisions will be adopted. In this state of things, is it wise or proper to consume any more time in the discussion of the subject? Is any thing to be gained by the contined presentation of the same propositions, one after the other, with but very trifling alterations? Shall we spend two or three days more in debate upon them, when we know that it will be useless, and that it can lead to no practical result. Surely we should not.

Being satisfied then, Mr. Chairman, that none of these projects will be adopted at this time,—that no material change can be effected in the provision of the constitution as it now stands; and although I am not myself exactly satisfied with it—being opposed to the tax qualification and to the ten days' residence before the election—still, with a view to bring an unprofitable discussion to a close, and thus to save the precious time of this body, I will, for the first time in my life, ask for the previous question.

Which said demand was seconded by the requisite number of delegates.

And on the question,

Shall the main question now be put?

The yeas and nays were required by Mr. FORWARD and Mr. REIGART, and are as follows, viz:

YEAS—Messrs. Brown, of Northampton, Brown, of Philadelphia, Carey, Clarke, of Beaver Clark, of Dauphin, Cleavinger, Cochran, Crain, Crum, Cummin, Curll, Darrah, Dickerson, Dillinger, Donnell, Doran, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hayhurst, Helffenstein, Hiester, High, Hyde, Jenks, Kennedy, Krebs, Mann, Martin, M'Cahen, M'Call, Miller, Montgomery, Nevin, Overfield, Pollock, Reigart, Read, Riter, Ritter, Rogers, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Taggart, Weaver, Woodward, Young—59.

NAYS—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Barnitz, Bedford, Bell, Biddle, Bigelow, Bonham, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clarke, of Indiana, Cline, Coates, Cope, Cox, Craig, Crawford, Cunningham, Darlington, Denny, Dickey, Donagan, Dunlop, Earle, Forward, Hastings, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Houpt, Ingersoll, Keim, Kerr, Konigmacher, Maclay, Magee, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Payne, Pennypacker, Porter, of Lancaster Purviance, Royer, Russell, Scott, Serrill, Sill, Sterigere, Stickel, Sturdevant, Thomas, Todd, Weidman, White, Sergeant, *President*—65.

So the convention determined that the main question should not now be put.

And the question again recurring on the amendment to the said section as amended;

Mr. EARLE rose and said, that he wished to read for the information of the convention a short extract—six lines only—from a speech of Mr. Van Buren, in relation to people of colour, and which was to be found at page 376 of the debates of the New York state convention. The extract was as follows, viz:

"Mr. Van Buren said, he had voted against a total and unqualified exclu-
"sion, for he would not draw a revenue from them, and yet deny to them
"the right of suffrage. But this proviso met his approbation. They
"were exempted from taxation until they had qualified themselves to vote.
"The right was not denied, to exclude any portion of the community who
"will not exercise the right of suffrage in its purity. This held out
"inducements to industry, and would receive his support."

It is proper that I should add, said Mr. E., that a provision, adopted upon his motion, relieved any coloured person from taxation until they had property enough to entitle them to the right of suffrage, so that those who did not vote paid no taxes.

And on the question,

Will the convention agree so to amend the section as amended?

The yeas and nays were required by Mr. FORWARD and Mr. MERRILL, and are as follows, viz:

YEAS—Messrs. Ayres, Baldwin, Barnitz, Biddle, Carey Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Cope, Cunningham, Darlington, Denny, Earle, Forward, Hays, Maclay, Merrill, Pennypacker, Porter, of Lancaster, Reigart, Royer, Serrill, Sill, Thomas, Sergeant, *President*—26.

NAYS—Messrs. Agnew, Banks, Barclay, Barndollar, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Cochran, Craig, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dickey, Dickerson, Dillinger, Donagan, Donnell, Doran, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helfenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Huopt, Hyde, Ingersoll, Jenks, Keim, Kennedy, Konigmacher, Krebs, Magee, Mann, Martin, M'Cahen, M'Call, McDowell, McSherry, Meredith, Merkel, Miller, Montgomery, Overfield, Payne, Pollock, Purviance, Read, Riter, Ritter, Rogers, Russell, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Todd, Weaver, Weidman, White, Woodward, Young—91.

So the question was determined in the negative.

A motion was made by Mr. REIGART,

That the convention do now adjourn.

Which was agreed to.

Adjourned until half past three o'clock this afternoon.

MONDAY AFTERNOON, JANUARY 22, 1838.

THIRD ARLICLE.

The convention resumed the second reading of the report of the committee to whom was referred the third article of the constitution as reported by the committee of the whole.

The question pending being on the first section of the article as amended:

Mr. DICKEY, of Beaver, moved to amend the section as amended, by adding to the end thereof, the words following, viz:

"*Provided*, That all persons who, at and before the ratification of this constitution, shall be entitled to the right of suffrage, shall have that right secured to them."

Mr. D. stated that he had a single object in view, and that might be seen by the language of the amendment itself. It was to secure to all persons who might be entitled to the right, under the constitution of 1790, a continuance of that right. The amendment does not relate to black persons or white persons. It had no reference whatever to colour. But it was intended to secure the right which, by a vote of seventy-five to forty-five, was given to all by the constitution of 1790; to make safe the right of suffrage in party times.

He was not sent here to despoil any person of any political, or other right possessed under the constitution of 1790. He had no doubt his learned friend behind him (Mr. Meredith) would join him in support of this amendment. That gentleman says the persons of colour have no right under the constitution of 1790. No doubt, therefore, that the gentleman would go with him (Mr. Dickey) in favor of the amendment, because, if the construction of that gentleman be the true one, the proposition can do no wrong to any. Those opposed to his (Mr. D's.) construction could not, therefore, but go with him.

Mr. D. concluded with asking for the yeas and nays on his amendment, and they were ordered accordingly.

The question was then taken, and decided in the negative by the following vote, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Barnitz, Biddle, Carey, Chandler, of Chester, Chandler, of Philadelphia, Clarke, of Beaver, Clark, of Dauphin, Coates, Cope, Darlington, Denny, Dickey, Dickerson, Earle, Hays, Henderson, of Allegheny, Hiester, Jenks, Kerr, Konigmacher, Maclay, M'Call, M'Dowell, M'Sherry, Merrill, Merkel, Montgomery, Pennypacker, Porter, of Lancaster, Reigart, Royer, Scott, Serrill, Sill, Thomas, Todd, Weidman, White, Sergeant. *President*—42.

NAYS—Messrs. Banks, Barndollar, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Chambers, Clapp, Clarke, of Indiana Cleavinger, Cline, Cochran, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Darrah, Dillinger, Donagan, Donnell, Doran, Dunlop, Fleming, Foulkrod, Fry, Fuller, Gamble,

Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, Henderson, of Dauphin, High, Hopkinson, Houpt, Hyde, Ingersoll, Keim, Kennedy, Krebs, Magee, Mann, Martin, M'Cahen, Miller, Overfield, Payne, Pollock, Purviance, Read, Riter, Ritter, Russell, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Weaver, Woodward—73.

The amendment was therefore rejected.

The question being on agreeing to the section as amended,

Mr. KONIGMACHER, of Lancaster, rose and addressed the chair to the following effect:

Mr. President: I will briefly state the reasons which will govern my vote on the report of the committee as amended, having voted against inserting the word "white" as well as against all the amendments, proposing to give the coloured population a *partial* right of suffrage.

I did not vote against the introduction of the word "white" for the purpose of extending rights and privileges to the coloured population, to which they were not entitled heretofore, nor would I knowingly give a vote which would deprive them of rights and privileges which they were entitled to under the present constitution.

In my opinion, the word "white" is not definite and does not reach the desired object. If it is intended to exclude the descendants of the African race from participating in the administering of our government, why not say so? Supposing a man of a dark brown complexion, offers to vote at an election, and the judge decide that white and brown are distinct colours, (and according to Gen. Jackson's opinion, every man has a right to construe the constitution as he understands it) in this case the judge has only to convince himself that *white* does not mean *brown*, thereby the dark complexioned man, may be deprived of his right to vote.

We were told by the respectable delegate from the city of Philadelphia, (Mr. Cope) that he was present in the convention of 1790 when Albert Gallatin advocated the impropriety of inserting the word "white" in the present constitution, giving as a reason that he himself (being of a dark complexion) might thereby be deprived of the right of suffrage.

The coloured population has never in Pennsylvania been recognized as being included in the term *citizen*, on an equality with the white population. I believe that the framers of the present constitution never intended, nor has it ever been construed by those who adopted it, that free negroes were required to serve in the militia or as jurors; consequently they were not entitled to the right of citizenship in a political point of view.—If you grant them the right of voting, you cannot, with propriety, deny them the right of being voted for. If you extend to them this right, you cannot draw a line of distinction here. You must, if you recognize them as citizens, place them on an equality with all other citizens, in social as well as political relations. Consequently they would be eligible to offices of trust and honor. What would be the result if one of your coloured citizens were elected to the congress of the United States, would he be entitled to a seat under that constitution? Why, sir, negroes are not permitted to enter the southern states without being subject to bondage, (I believe they are not excluded from all the slave states,) a free citizen, a voter of Pennsylvania, may in another state be imprisoned or enslaved, and there is no remedy.

Again, if you extend to them political rights, and shut them out from social equality with the whites, you will render their condition more unhappy; and, in my opinion, irritate the jealousy and prejudice, which after all is the only barrier between the two races.

I believe that the right of suffrage is nothing more than a political right. Foreigners are, the moment they put their foot on our shores, admitted to our social circles on an equality with the citizens of our country, but the right of suffrage is denied them, until they have complied with the requirements of the naturalization law. If it were a natural—inalienable right—they would at once be entitled to the full right of citizenship.

I thought it inexpedient to insert the word white in another respect—the case now pending in the supreme court of this commonwealth, in relation to the right of suffrage, will shortly be decided, which will put this question at rest. If that decision be not in accordance with the views of a majority of the people, they will have a remedy. The convention will adopt an amendment, providing for future amendments, in such a manner that this, or any other important question, may be proposed in a distinct proposition to the people, and decided on, disconnected with any other subject.

Having thus reflected on the subject, I have come to the determination to vote for the report of the committee, as I approve of the section in other respects, although I did not vote for inserting the word white, for the reasons I have stated. I do not, however, feel myself bound to vote against the section, as amended, after the convention decided thus to amend the section.

Mr. STICKEL, of York, moved that the convention re-consider the vote of the 17th instant, on the amendment to the first section, by inserting, after the word "election" in the sixth line, the following, viz: "and shall have resided in the district in which he shall offer to vote, at least ten days immediately preceding such election."

Mr. DUNLOP, of Franklin, moved to postpone the consideration of th motion for the present.

Mr. SMYTH, of Centre, asked for the yeas and nays on the question, and they were ordered.

Mr. CLARKE, of Beaver, demanded the previous question, and, a sufficient number rising, the demand was sustained.

And on the question,

Shall the main question be now put?

The yeas and nays were required by Mr. REIGART and Mr. CHANDLER, of Chester, and are as follows, viz:

YEAS—Messrs. Ayres, Baldwin, Barclay, Barndollar, Biddle, Bonham, Brown, of Northampton, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Coates, Cochran, Cope, Craig, Crain, Crum, Cunningham, Darlington, Dickerson, Doran, Dunlop, Fleming, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Harris, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Jenks, Kennedy, Kerr, Konigmacher, Krebs, Maclay, Mann, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery Pennypacker, Pollock, Porter, of Lancaster, Reigart, Read, Ritter, Royer, Russel Saeger, Scheetz, Scott, Sellers, Seltzer, Serrill, Sill, Smith, of Columbia, Snively Stickel, Thomas, Todd, Weaver, Weidman, Woodward, Sergeant, *President*—76.

NAYS—Messrs. Agnew, Banks, Barnitz, Bedford, Bell, Bigelow, Brown, of Philadelphia, Clarke, of Indiana, Cline, Cox, Crawford, Cummin, Curll, Darrah, Denny, Dickey, Dillinger, Donagan, Dennell, Earle, Gamble, Grenell, Hastings, Helffenstein, High, Hopkinson, Houpt, Hyde, Ingersoll, Keim, Magee, Martin, M'Cahen, Miller, Overfield, Payne, Purviance, Riter, Shellito, Smyth, of Centre, Sterigere, Sturdevant, Taggart, White—44.

So the question was determined in the affirmative.

And on the question,

Will the convention agree to the report of the committee of the whole as amended?

The yeas and nays were required by Mr. SMYTH, of Centre, and Mr. REIGART, and are as follows, viz:

YEAS—Messrs. Agnew, Banks, Barclay, Barndollar, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Chambers, Clapp, Clarke, of Beaver, Clarke, of Indiana, Cleavinger, Cline, Cochran, Craig, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Darrah, Dickerson, Dillinger, Donegan, Donnell, Doran, Dunlop, Fleming, Fulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grennell, Harris, Hastings, Hayhurst, Helffenstein, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Ingersoll, Keim, Kennedy, Kerr, Konigmacher, Krebs, Magee, Mann, Martin, M'Cahen, M'Dowell, M'Sherry, Merrill, Merkel, Miller, Overfield, Payne, Pollock, Purviance, Read, Riter, Ritter, Royer, Russell, Saeger, Scheets, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Weaver, White, Woodward—88.

NAYS—Messrs. Ayres, Baldwin, Barnitz, Biddle, Carey, Chandler, of Chester, Chandler, of Philadelphia, Clark, of Dauphin, Coates, Cope, Cox, Darlington, Denny, Dickey, Earle, Forward, Hays, Henderson, of Allegheny, Jenks, Maclay, M'Call, Meredith, Montgomery, Pennypacker, Porter, of Lancaster, Reigart, Scott, Serrill, Sill, Thomas, Todd, Weidman, Sergeant, *President*—33.

So the question was determined in the affirmative.

And the section as amended was agreed to.

The following sections were severally read, considered, and no amendment was offered thereto:

SECTION 2. All elections shall be by ballot, except those by persons in their representative capacities, who shall vote *viva voce*.

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

The third article was then ordered to be engrossed for a third reading.

On leave given,

Mr. CURLL, from the committee on printing, made report, which was read as follows, viz:

The committee on printing, in accordance with a resolution offered some days ago, report:

That they have examined the printing done for the convention in connexion with that done for other public bodies, and have no hesitation in saying, so far as they have ascertained, that the debates of this conventtion are executed in a style equal to, if not superior to any public work hereto-

fore done in the United States. They have examined the prices paid for public printing, and have confined themselves, in a good degree, to such as have been paid for works of a similar character to that done here; they therefore respectfully submit the following resolutions:

Resolved, That the price to be paid for printing the English Debates be thirty-eight dollars per sheet for (sixteen pages) twelve hundred and fifty copies.

Resolved, That the prices to be paid for printing the Debates in Germam be thirty-eight dollars per sheet for (sixteen pages) twelve hundred and fifty copies; and that an addition of five dollars per sheet should be allowed Mr. Guyer for translating.

WILLIAM CURLL,
Chairman.

On motion of Mr. CURLL,

The said report was read a second time.

Mr. WOODWARD, moved to postpone the further consideration of the report for the present. My object in making this motion, said Mr. W., is to enable myself and others who are to vote on this subject, to ascertain and make proper inquiries, for the purpose of satisfying our own minds. I see no urgent necessity why we should act upon the report at this moment; and I am not prepared just now, to vote either on one side or the other. I hope, therefore, that its further consideration will be postponed for the present.

And the question was then taken, and decided in the affirmative;

So the further consideration of the report, was postponed for the present.

A motion was made by Mr. CHAMBERS,

That the convention now proceed to the consideration of a motion, heretofore submitted by him, to reconsider the vote of the convention on the amendment of the delegate from the county of Chester, (Mr. Bell) to the report of the committee of the whole, on the first article of the constitution; which said amendment was adopted on second reading, on Monday the eighth instant, and is in the words following, viz:

"SECTION, 14. The legislature shall not have power to enact laws annulling the contract of marriage in any case, where by law the courts of this commonwealth are, or may hereafter be empowered to decree a divorce."

This motion to reconsider, said Mr. C., was made within two days after the vote of the convention was taken, and I should have pressed action upon it at the time I made it, but for the absence of the gentleman from Chester, (Mr. Bell) who submitted the amendment. The committee of revision cannot act with the care and attention requsite to a final decision of the article, until this question is settled. It will create but little, if any discussion, and I hope the convention will dispose of it at this time.

The CHAIR said, that the motion of the gentleman from Franklin, was not now in order—the subject to which his motion had reference being no longer before the convention. After the section referred to had been gone through with, a vote of the convention had been taken upon engross-

ing the whole article for a third reading. The convention determined that it should be engrossed, and prepared for a third reading, and it was referred accordingly to the appropriate committee. It now stood so referred, and it could not be reached except by a motion to discharge the committee from the further consideration of the subject, or by means of a report from that committee.

A motion was made by Mr. DICKEY,

That the convention now proceed to the second reading of the report of the committee, to whom was referred the fourth article of the constitution, as reported by the committee of the whole.

Which motion was agreed to.

The first section of the said report, in the words following, viz:

"SECTION 1. The House of Representatives shall have the sole power of impeaching;"—

Was read, and no amendment was offered thereto.

The second section of the said report being under consideration in the words following, viz:

"SECTION 2. All impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be on oath or affirmation. No person shall be committed without the concurrence of two-thirds of the members present;"—

A motion was made by MR. INGERSOLL,

To amend the said section, by striking therefrom the word "two-thirds" where it occurred in the third line, and inserting in lieu thereof the words "a majority."

And on the question,

Will the convention agree so to amend the said section?

The yeas and nays were required by Mr. INGERSOLL and Mr. CHAMBERS, and are as follow, viz:

YEAS—Messrs. Banks, Bigelow, Brown, of Lancaster, Brown, of Philadelphia, Clarke, of Indiana, Crain, Crawford, Cummin, Curll, Darrah, Dillinger, Doran, Foulkrod, Fry, Grenell, Helffenstein, Houpt, Ingersoll, Kennedy, Mann, M'Cahen, M'Dowell, Overfield, Read, Scheetz, Sellers, Shellito, Smyth, of Centre, Sterigere, Stickel, Weaver—31.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barclay, Barndollar, Barnitz, Bedford' Bell, Biddle, Bonham, Brown, of Northampton, Carey, Chambers, Chandler of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Coates, Cochran, Cope, Cox, Craig, Crum, Cunningham, Darlington, Denny, Dickey, Dickerson, Donagan, Donnell, Dunlop, Earle, Fleming, Forward, Fuller, Gearhart, Gilmore, Harris, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Hyde, Jenks, Kerr, Konigmacher, Krebs, Long, Maclay, Magee, M'Call, M'Sherry, Meredith, Merrill, Merkel, Miller, Montgomery, Payne, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Regiart, Riter, Ritter, Royer, Russell, Saeger, Scott. Seltzer, Serrill, Sill, Smith, of Columbia, Snively, Sturdevant, Taggart, Thomas, Todd, Weidman, White, Woodward, Young, Sergeant, *President*—90.

So the question was determined in the negative.

The third section of the said report being under consideration in the words following, viz:

"SECTION 3. The governor, and all other civil officers under this commonwealth, shall be liable to impeachment for any misdemeanor in office: But judgment, in such cases, shall not extend further than to removal from office, and disqualification to hold any office of honour, trust, or profit, under this commonwealth. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment and punishment according to law."

A motion was made by Mr. INGERSOLL,

To amend the said section by striking therefrom the word "misdemeanor," where it occurs in the second line, and inserting in lieu thereof, the word "misconduct."

And on the question,

Will the convention agree so to amend the said section?

The yeas and nays were required by Mr. REIGART and Mr. INGERSOLL, and are as follow, viz:

YEAS—Messrs. Crain, Darrah, Doran, Foulkrod, Fry, Helffenstein, Ingersoll, Mann, M'Cahen, Read, Ritter, Sellers, Sterigere—13.

NAYS—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Barnitz, Bedford, Bell, Biddle, Bigelow, Bonham, Brown of Lancaster, Brown, of Northampton, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Coates, Cochran, Cope, Cox, Craig, Crawford, Crum, Cummin, Cunningham, Curll, Darlington, Denny, Dickey, Dickerson, Dillinger, Donagan, Donnell, Dunlop, Earle, Forward, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Kennedy, Kerr, Konigmacher, Krebs, Long, Maclay, Magee, Martin, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Miller, Montgomery, Overfield, Payne, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Ritter, Royer, Russell, Saeger, Scheetz, Scott, Seltzer, Serrill, Shellito, Sill, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Thomas, Todd, Weidman, White, Woodward, Young, Sergeant, *President*—106.

So the question was determined in the negative.

A motion was made by Mr. M'DOWELL,

To amend the said section by striking therefrom the following words, viz:

"And disqualification to hold any office of honor, trust or profit, under this commonwealth."

Mr. BELL, of Chester, said there seemed to be a disposition in the convention at present, to do a great deal of business in a hurry; it would be well, however, to exercise a proper caution in what they are about to do.

For my own part, said Mr. B., I am at all times disposed to look with a favorable eye, on any proposition which the gentleman from Bucks, (Mr. M'Dowell) may lay before us. I believe that this is the first time the present amendment has been offered; we heard nothing of it, if I am not mistaken, when the section was under discussion in committee of th

whole. If there be any thing really amendatory in its character, I should be inclined to vote in favor of it; but if it is merely an alteration, carrying nothing substantially beneficial with it, I shall vote against it. I will ask the gentleman from Bucks, to favor us with some reason why we should adopt it; and I will also take the liberty to ask, whether he expects us to record our names upon it at once—without reflection or consideration. I make this inquiry, because the gentleman contented himself with submitting his proposition, and calling for the yeas and nays;—then taking his seat without saying a syllable in explanation of his views, or as to what he expected to be the result of the amendment, if it should be adopted.

We cannot be blind to the fact, that all propositions submitted in this body for the amendment of the constitution—whatever may be their character or from whatever quarter they may come—involve some degree of responsibility. I take it for granted, therefore, that no gentleman offers any amendment here, without having seriously reflected upon it, and being ready to assign some reason for its adoption. And I suppose that no gentleman here, late as it is in the session of this body, requires us to vote hurriedly, without consideration or reflection. I trust, therefore, that before the vote is taken, the gentleman from Bucks who, I know, is in the habit of considering well all that he does, will give us some explanation of his views in offering this amendment, if an amendment it be. I shall, otherwise, feel myself compelled to vote against it.

Mr. M'Dowell said he would, with great pleasure, give his reasons to the gentleman from Chester, or to any other gentleman, why he was in favor of the amendment, as he had given them when the subject was before the convention on first reading. If he could have his own way, he should prefer that a majority of the legislature shall convict, instead of two-thirds. And, if injustice were done to an individual, and in order that he might have an opportunity of obtaining reparation, the conviction should extend only to the office which he then filled. He knew of no offence, of which a man could be convicted, which should exclude him from filling any other office. It was carrying out the principle to too great an extent. He should like to hear the reason why a man found guilty of an indictable, or impeachable offence, should be forever hereafter disfranchised, or excluded from office. For his own part, he could see no good or sufficient reason, why an individual should be so severely dealt with, or why the public ought to be deprived of his services, if they desired them. The conviction ought merely to extend to taking away from him the office he held. As he had already said, he thought that a majority of the legislature should pass upon the individual, and if injustice were done to the individual, let him go back to the people, and they would rectify the matter.

What right, he would ask, had the legislature to say that, because a man had been guilty of a misdemeanor in a particular office, they shall have it in their power to disqualify him from holding any other office of honor or profit in the commonwealth? He denied that they had any right. Let them find him guilty of a violation of his duty in a particular office, and nothing more. Let this conviction, then, disqualify him for holding a like office in future. It should not apply to any other office.

The people certainly had a right to say, should the officer thus convicted, reform—repent his past misconduct—that they would appoint him to a new office. Or, if the people considered that the individual had been unjustly dealt with, they ought to have an opportunity of repairing the injury done to him, which they were fully able to do. He would conclude what he had to say by repeating, that he knew of no crime for which a man could be convicted, that should thereafter exclude him from all other offices, if the people desired his services.

Mr. MERRILL, of Union, remarked that the offence for which an officer might be impeached, might happen to be a very high one; it might be for corruption and a total abuse of his power, which should be visited by disqualification for office thereafter. Under such circumstances as these, it was proper to inquire whether removal from office was a sufficient punishment. In his opinion, the senate ought to have the discretionary power vested in them, of saying whether or not an officer, on removal from office, shall be disqualified from holding another in future. The senate were not bound to disqualify for office, unless they deemed the circumstances before them, strong enough to warrant such a punishment, or exclusion. It would be recollected, perhaps, by many gentlemen, that in the case of Judge Addison, who was removed from his office, the senate did not think proper to disqualify him from holding office afterwards. He, Mr. M., conceived that it was very possible for an officer so to abuse his power, as to render his exclusion from office thereafter, perfectly justifiable in every point of view.

Mr. BELL said that he had forgotten, if he ever knew, that the proposed amendment had been discussed in committee of the whole. So many propositions had come before this body, and been variously disposed of, that he could not remember, precisely, what had been done with any one in particular. It might be, that he had heard the gentleman from Bucks, (Mr. M'Dowell) on a former occasion, submit the same argument that he had now done, in favor of his proposed amendment. He repeated that he might have heard it; but he confessed, with some degree of contrition, that it had not made such an impression on his mind as to survive the events of the last three or four months. He would submit, notwithstanding the legal acumen of the gentlemen, and his undoubted acquaintance with the laws and constitution of the state in which he lives, that he had fallen into an error. The very basis—the very groundwork pf the superstructure he had erected, was defective. The gentleman had told this convention, that he desired to make such an alteration in the constitution, as would hereafter deprive the legislature of Pennsylvania of the power to disfranchise an officer, to disqualify him from again holding office, however gross and outrageous might have been his conduct.

The gentleman from Bucks, had spoken of the legislature as doing so and so. Now, under the present constitution they had no such power: it was the senate. His friend from Franklin, (Mr. Chambers) near him, thought the gentleman from Bucks meant the senate. Well, he might have meant that body, when sitting as a judicial tribunal. Who he, (Mr. B.,) would ask, was it that was to fix the amount of the penalty? Who was it, under the constitution of Pennsylvania, had the power to disfranchise, if you choose, a part of the community—to disqualify men, who had misbehaved themselves, from holding office? Why, it was the sen

ate of Pennsylvania. Acting in what capacity? As a criminal court. Under what sanction? Under the solemn sanction of an oath—sitting there—acting there under the solemn accusation of the lower house, being the representatives of the people. For, we all know that the house must present the officer—must present the truth. We all know that the house must go before the senate, not as part of the legislative power, but acting, as he had already said, under the sanction of an oath, as the accuser of the officer, and must produce that officer and with the proofs which—if he, Mr. B., might be permitted to say so—must be conclusive, must be as strong as Holy Writ, before he could be convicted. They must be of that character, before you could convict the lowest officer in office—before you could remove him, much more disqualify him for holding office hereafter.

He had risen merely to notice, and should not answer the mistake into which the delegate from Bucks appeared to have fallen, in reference to the legislature of Pennsylvania, or either branch of it having the power to act in its legislative capacity, with regard to the removal of a civil officer.

He regarded the argument of the gentlemen from Union, (Mr. Merrill) as conclusive in reference to the propriety of leaving a discretionary power with the Senate, and also as to that body not having heretofore abused it.

He contended that there was no tribunal, civil or criminal, known to the laws of Pennsylvania, which was bound to inflict any particular measure of punishment. It would be unjust, because in every particular offence, there were different degrees, and punishment should be inflicted only according to the degree of the offence.

The constitution of the commonwealth of Pennsylvania, conferred nothing more than that:

First, a man might be removed from office. And second, he might not only be removed, but also be disqualified to hold any office hereafter under the commonwealth. The legislature of Pennsylvania had never abused this power. On the contrary, they had always been very chary how they used it.

Mr. Dunlop, of Franklin, said that he had given the subject very little consideration, but he had always thought the punishment of disqualification was too severe, and that the senate ought not to have the power of pronouncing it; and that the section as it now stood, seemed to inflict a heavier punishment, than, he thought, should be imposed upon any individual.

It is to be recollected that whilst this civil punishment is imposed upon a party guilty of misdemeanor in office, he is at the same time made liable, whether convicted or acquitted, "to indictment, trial, judgment and punishment according to law." Is not this carrying the matter too far? When you bring out a felon before a court of justice, you inflict upon him a certain punishment for a particular crime. But here is a punishment which, from its extreme severity, takes away all hope and prospect of reformation in the party offending.

The phrase "misdemeanor in office" is a phrase of very extensive

sginification, and a man may be guilty of such a thing without being guilty of any very great moral turpitude. I do not think that the term implies moral turpitude; I cannot speak with certainty, but my strong impression is that the term does not imply moral turpitude. I think that the punishment which this section imposes, is certainly too severe.

As to the construction put upon the clause by the gentleman from Chester, (Mr. Bell) and the gentleman from Union, (Mr. Merrill) I can not concur in the view taken by either of them. On the contrary, I will undertake to say, that no such construction as that stated, has been put upon the constitution;—if it has been so, I ask where it is to be found? And if a solitary instance can be found, then I ask whether we can find a uniform current of decision to that effect. I know of none such; I do not think that any are on record.

Under this provision of the constitution, judgment must be for the whole extent of the penalty—for removal, not only from the particular office which the party may hold at the time, but for "disqualification to hold any office of honor, trust or profit under this commonwealth." We must either say that the senate shall have power to inflict the whole of the punishment, or none at all; for if you can take away a part of it, you can take away the whole. The constitution declares "that the Governor and all the civil officers under this commonwealth, shall be liable to impeachment for any misdemeanor in office;" and then it goes on to say, in plain and imperative language, that "judgment, in such cases, shall not extend further than to removal from office, and disqualification to hold any office of honor, trust or profit under this commonwealth, &c."

Here is no escape; for, under such terms as these, how can a decision be made short of the whole amount of punishment? These questions, however, have come upon us unexpectedly and without time for reflection or examination. But it seems to me that the punishment is altogether too severe, and I am, therefore, disposed to give my vote in favor of the amendment of the gentleman from Bucks.

Mr. MERRILL said, that since this subject was considered in committee of the whole, he had turned over a volume containing an account of the proceedings on the trial of Judge Addison, and that the sentence in that case extended to only one branch; that is to say, it did not include disqualification for office.

After the senate had arrived at the decision that he was guilty of the charge laid against him, Judge Addison sent a letter to that body, stating that if judgment extend to disqualification, was passed upon him, it might be the means of preventing him from practising law, and thus deprive him of the means of supporting his family.

The senate considered that letter, and passed a sentence removing him from office and stopping the punishment there. It was a case coming under this very article of the constitution, and I have no recollection that there have been any other judgments under it.

So we find that the senate, after taking the advice of the attorney general, at that time, if I am not mistaken, Mr. Dallas, who gave his opinion favorably to that course of action, did pass a sentence

removing the party from the office which he held at the time; but remitting that portion of the penalty which imposes "disqualification to hold any office of honor, trust or profit in this commonwealth." I should suppose that this is a sufficient answer to the argument of the gentleman from Franklin, (Mr. Dunlop.)

And the question on the amendment was then taken.

And on the question,

Will the convention agree to amend the said section?

The yeas and nays were required by Mr. M'DOWELL and Mr. SMYTH of Centre, and are as follows, viz:

YEAS—Messrs. Ayres, Barclay, Bedford, Bonham, Brown, of Northampton, Brown, of Philadelphia, Carey, Clarke, of Indiana, Coates, Craig, Crain, Cummin, Donagan, Donnell, Dunlop, Earle, Fleming, Forward, Foulkrod, Fry, Grenell, Harris, Helffenstein, Hiester, Houpt, Ingersoll, Kennedy, Long, Magee, Mann, Martin, M'Cahen, M'Dowell, Overfield, Payne, Purviance, Read, Riter, Rogers, Russell, Stheetz, Sellers, Sill, Sturdevant, Weaver—45.

NAYS—Messrs. Agnew, Baldwin, Banks, Barndollor, Barnitz, Bell, Biddle, Bieglow, Brown, of Lancaster, Chambers, Chandler, of Chester, Chandler of Philadelphia, Clapp, Clarke, of Beaver, Clarke, of Dauphin, Cleavinger, Cline, Cochran, Cope, Cox, Crawford, Crum, Cunningham, Curll, Darlington, Darrah, Denny, Dickey, Dickerson, Dillinger, Doran, Farrelly, Fuller, Gearhart, Gilmore, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, High, Hopkinson, Hyde, Keim, Kerr, Konigmacher, Krebs, Maclay, M'Call, M'Sherry, Meredith, Merrill, Merkel, Miller, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Reigart, Ritter, Royer, Saeger, Scott, Seltzer, Serill, Shellito, Smith, of Columbia, Smyth of Centre, Snively, Sterigere, Stickel, Taggart, Thomas, Todd, Weidman, White, Woodward, Young, Sergeant, *President*—79.

So the question was determined in the negative.

A motion was made by Mr. INGERSOLL,

To amend the said section, by striking therefrom all after the word "section three," and inserting the following:

"All officers holding their office during good behaviour, may be removed by a joint resolution of the two houses of the legislature, if two thirds of all the members elected to the assembly, and a majority of all the members elected to the senate, concurr therein."

Mr. I. said, he would simply remark, that this was a literal copy of a provision in the modern constitution of the state of New York, and is intended to be a substitute for all the modern force of impeachment for misdemeanor in office.

A question here arose, whether this amendment was in order, and after some conversation;

Mr. INGERSOLL said, he would obviate all difficulty by moving to amend the said report by adding his amendment as a new section, and he would modify it by striking out the words "officers holding their office during good behaviour" and inserting in lieu thereof "judicial officers."

I had forgotten, at the moment, said Mr. I., that there are to be no good behaviour offices.

And on the question,

Will the convention agree so to amend the said report?

The yeas and nays were required by Mr. INGERSOLL and Mr. FRY, and are as follows, viz :

AYES—Messrs. Bedford, Bigelow, Cummin, Dillinger, Doran, Dunlop, Earle, Forward, Foulkrod, Fry, Gamble, Grenell, Helffenstein, Ingersoll, Mann, Merrill, Sellers, Sterigere, Weaver, Woodward—20.

NAYS—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Barnitz, Bell, Biddle, Bonham, Brown, of Lancaster, Brown, of Northampton, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Coates, Cochran, Cope, Cox, Crain, Crawford, Crum, Cunningham, Curll, Darlington, Darrah, Denny, Dickey, Dickerson, Donagan, Donnell, Farrelly, Fleming, Fuller, Gearhart, Gilmore, Harris, Hasting, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Keim, Kennedy, Kerr, Konigmacher, Krebs, Long, Maclay, Magee, M'Cahen, M'Call, M'Dowell, M'Sherry, Meredith, Merkel, Miller, Montgomery, Payne, Pennypacker, Pollock, Porter, of Lancaster, Reigart, Ritter, Royer, Russell, Saeger, Seltzer, Serill, Shelito, Sill, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Thomas, Todd, Weidman, White, Young, Sergeant, *President*—95.

So the question was determined in the negative.

A motion was made by Mr. MARTIN,

That the convention do now adjourn.

Which was disagreed to.

A motion was made by Mr. WOODWARD,

That the convention proceed to the second reading of the fifth article of the constitution.

Which was agreed to.

A motion was made by Mr. STERIGERE,

That the convention do now adjourn.

Which was agreed to.

And the convention adjourned until half past nine o'clock to-morrow morning.

TUESDAY, JANUARY 23, 1838.

Mr. BELL, of Chester, moved that the convention proceed to the second reading and consideration of the following renolution, submitted by him on the eleventh instant, viz :

"*Resolved*, That the amendments to the constitution agreed to by this convention, ought not to be submitted to the people as a single proposition, to be approved or disapproved, and the same ought to be classified according to the subject matter, and submitted as several and distinct propositions, so that an opportunity may be given to approve some and disapprove others, if a majority of the people see fit; and that a committee be appointed, to report to the convention a classification of the amendments, and the manner in which the same shall be submitted to the citizens of the commonwealth."

The question being put, the motion was disagreed to.

Mr KONIGMACHER, of Lancaster, moved that the convention proceed to the second reading and consideration of the following resolution, postponed on yesterday, viz:

Resolved, That the English debates, German debates, English journal and German journal of the convention, shall severally be distributed according to the resolution of the eleventh of May last, in the following manner, viz:

	Copies.
To each delegate to the convention, including those who have resigned, one copy, making	136
To each secretary of the convention, including Samuel A. Gilmore, resigned, one copy, making	4
To the sergeant-at-arms, and door-keepers, including Daniel Eckels, resigned, each one copy, making	4
To each stenographer in the employ of the convention, one copy, making	5
To the Law Association, of Philadelphia, one copy,	1
To the Atheneum, of the city of Philadelphin,	1
To the Franklin Institute,	1
To the Philadelphia Library company,	1
To the printers of the debates, each one copy, making	2
To the governor and heads of depaatments of state, one copy, each,	6
To the State Library, at Harrisburg,	13
To the senate and house of representatives, four copies each,	8
To the prothonotaries' office of the several counties, one copy each,	53
To the commissioners' offices of the several counties, one copy each,	53
To the Congressional Library, at Washington,	5
To the governors of the several states, each one copy, making	26
The remaining copies thereof, to be equally divided among the members of the convention, to be by them deposited for public use in such public libraries, lyceums, and other places, as they shall deem most beneficial and proper,	931
	1,250

The motion was agreed to.

The resolution was then read, and, being under consideration,

Mr. CHAMBERS, of Franklin, moved to amend the resolution, by adding to the end of the resolution the following, viz:

"To the Mercantile Library company, and to the Apprentices Library company, each one copy."

Mr. KONIGMACHER stated, that the whole number was already disposed of.

Mr. AGNEW, of Beaver, said that the committe had placed the residue

of the copies in the hands of members, for the purpose of having them distributed, and placed in the public institutions of the commonwealth.

Mr. HIESTER, of Lancaster, suggested the propriety of modifying the amendment, by striking out the appropriation of "thirteen copies" to the State Library, at Harrisburg, and substituting "eleven."

Mr. CHAMBERS accepted the amendment as a modification of his own.

Mr. HOPKINSON suggested the propriety of including the American Philosophical society.

Mr. CHAMBERS accepted this as a modification also.

Mr. M'SHERRY said that each member would have seven copies, and, as there were eight members from the city, they would have fifty-six copies, which he thought a sufficient number for the wants of the city.

Mr. AGNEW explained, that the reason for introducing the city institutions was, because they had invited the members of the convention to the use of their libraries. He thought fifty-six copies sufficient for the supply of the city.

Mr. REIGART expressed a hope that the amendment would not pass.

After a few words from Mr. CHAMBERS, not distinctly heard,

Mr. BROWN, of Philadelphia county, moved to postpone the further consideration of the resolution.

The question then being taken on this motion, it was decided in the negative; ayes 41, noes 43.

Mr. RUSSELL, of Bedford, stated that, in consequence of the courtesies extended to us by inviting the convention and its members to visit their libraries, there was a disposition in the committee to give copies of the debates to these institutions.

Mr. STURDEVANT, of Luzerne, said he would give to the city the seven odd copies of the work which would be left on his hands.

The question was then put, and the amendment was rejected.

Mr. HIESTER moved to amend the resolution, by striking therefrom the following words:

"To the commissioners' offices of the several counties, one copy each;" and, by striking from the twentieth line the words "one copy," and inserting in lieu thereof, "two copies;" and by striking therefrom, in the same line, the word "fifty-three" and inserting in lieu thereof, "one hundred and six."

Mr. HIESTER said, he wished the copies to be placed in the offices of the prothonotaries, because these offices are always open to the public.

Mr. BANKS, of Mifflin, said the gentleman would have enough of his own for distribution.

The question was then put, and decided in the negative.

Mr. SMYTH, of Centre, thought that an amendment was necessary in

the twenty-third line. It now reads, "To the governors of the several states, one copy." It would be better, in his opinion, that these copies should be deposited in the several state libraries; and to effect that, he would move to amend the resolution, by inserting in the twenty-third line, after the word "copy," the words "to be placed in the state libraries."

The question on this amendment, was also decided in the negative.

Mr. THOMAS, of Chester, moved to amend the resolution, by striking therefrom the last four lines, and inserting in lieu thereof the words following, viz: "And that the Debates in the English and German be given to each member in the ratio of the report made on the 18th day of May last, upon the distribution of the Daily Chronicle."

Mr. THOMAS then moved to postpone the further consideration of the amendment, with the resolution, for the present.

Mr. KONIGMACHER said he should oppose this amendment.

Mr. HIESTER expressed his intention to vote for it.

The motion to postpone was then negatived.

The question then recurring on the amendment of Mr. THOMAS,

The debate was continued by Messrs. KONIGMACHER and DARLINGTON.

A motion was then made by Mr. DARLINGTON,

That the amendment, together with the resolution, be committed to the committe for the purpose of ascertaining and reporting the proportion of English and German Debates and Journals to which each member is entitled, according to the report of the committee of the eighteenth May last, in the distribution of the Daily Chronicle.

Which was disagreed to.

The question again recurred, and was taken on the amendment of Mr. THOMAS,

Which said amendment was rejected.

A motion was made by Mr. MANN, of Montgomery,

To amend the resolution, by inserting after the word "states," in the twenty-third line, the words "for the use of such state,"

Which was agreed to.

And the question on the resolution, as amended, was then taken, and decided in the affirmative without a division.

So the resolution, as amended, was adopted.

A motion was made by Mr. CURLL,

That the convention proceed to the second reading and consideration of the report of the committee on printing, postponed yesterday, and which is as follows:

The committee on printing, in accordance with a resolution offered some days ago, report:

That they have examined the printing done for the convention, in connexion with that done for other public bodies, and have no hesitation in saying, so far as they have ascertained that the Debates of this convention are executed in a style equal to, if not superior to any public work heretofore done in the United States. They have examined the prices paid for public printing, and have confined themselves, in a good degree, to such as have been paid for works of a similar character to that done here; they therefore respectfully submit the following resolutions:

Resolved, That the price to be paid for printing the English Debates be thirty-eight dollars per sheet for (16 pages) twelve hundred and fifty copies.

Resolved That the price to be paid for printing the Debates in German, be thirty-eight dollars per sheet for (16 pages) twelve hundred and fifty copies; and that an addition of five dollars per sheet should be allowed Mr. Guyer, for translating.

WM. CURLL,

Chairman.

And the question on the first of the said resolutions was taken, and decided in the affirmative, without a division.

And the question on the second of the said resolutions was then taken, and decided in the affirmative without a division.

So the resolutions were adopted.

Mr. DARLINGTON asked leave of the convention to make a few observations in explanation upon remarks which had fallen from him in the course of debate on Saturday morning last, in relation to a certain individual. He hoped, as an act of justice, that this request would not be denied.

Objections having been made,

Mr. BIDDLE moved that the rules of the convention be suspended, for the purpose indicated by the gentleman from Chester. He (Mr. B.) would like to see who it was, in this convention, that would refuse permission to a member of the same body to make an explanation, when that gentleman states that such an explanation was due, as a matter of justice, to an individual of whom he had spoken in previous debate.

And on the question,

Will the convention agree to the said motion?

The yeas and nays were required by Mr. BIDDDLE and Mr. FULLER, and are as follow, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Barnitz, Bell, Biddle, Bonham, Brown of Northampton, Carey, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Cline, Coates, Cochran, Cope, Cox, Craig, Cunningham, Darlington, Denny, Dickey, Dunlop, Earle, Forward, Gamble, Grenell, Hastings, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Jenks, Kennedy, Kerr, Konigmacher, Long, Maclay, Martin, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery Payne, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Riter, Ritter, Rogers, Royer, Russell, Saeger, Seltzer, Sill, Sterigere, Stickel, Taggert, Thomas, Todd, White, Woodward, Young, Sergeant, *President*—72.

NAYS—Messrs. Banks, Barclay, Bedford, Bigelow, Brown, of Philadelphia, Clarke,

of Indiana, Cleavinger, Crain, Crawford, Cummin, Curll, Darrah, Dickerson, Dillinger, Donagan, Doran, Fleming, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Harris, Hayhurst, High, Houpt, Hyde, Ingersoll, Keim, Krebs, Magee, Mann, Miller, Nevin, Overfield, Read, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Studevant, Weaver, —57.

So the convention refused to suspend the rule.

Mr. STERIGERE asked leave to read a letter from Judge Fox, in relation to certain remarks of which he had been made the subject, during a recent debate in this body.

But the convention would not grant leave.

FIFTH ARTICLE.

The convention proceeded to the second reading and consideration of the report of the committee to whom was referred the fifth article of the constitution, as reported by the committee of the whole.

Whereupon, the said report was read the second time.

The first section of the said report, in the words following, viz:

"SECTION 1. The judicial power of this commonwealth, shall be vested in a supreme court, in courts of oyer and terminer, and general jail delivery, in a court of common pleas, orphan's court, register's court, and a court of quarter sessions of the peace, and such other courts as the legislature may, from time to time, establish"—

Was considered, and no amendment having been offered thereto, the same was adopted.

The next section of the said report being under consideration in the words following, viz:

"SECTION 2. The judges of the supreme court, of the several courts of common pleas, and of such other courts of record as are or shall be established, by law, shall be nominated by the governor, and by and with the consent of the senate, appointed and commissioned by him. The judges of the supreme court shall hold their offices for the term of fifteen years, if they shall so long behave themselves well. The president judges of the several courts of common pleas, and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years, if they shall so long behave themselves well. The associate judges of the court of common pleas shall hold their offices for the term of five years, if they shall so long behave themselves well. But for any reasonable cause which shall not be sufficient ground of impeachment, the governor may remove any of them on the adderess of two-thirds of each branch of the legislature. The judges of the supreme court, and the presidents of the several courts of common pleas shall, at stated times receive for their services an adequate compensation to be fixed by law, which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any other office of profit under this commonwealth.

A motion was made by Mr. MEREDITH,

To amend the said section, by inserting after the word "courts," in the sixth line, the words "now in office and their successors," and by striking from the seventh and eighth lines the words "for the term of fifteen years, if they shall so long behave themselves well," and inserting in lieu thereof, the words "during good behaviour."

Mr. FRY called for the yeas and nays on this amendment, and they were ordered.

Mr. MEREDITH said he hoped a majority of the convention would be found ready to sustain the amendment now pending.

It is not necessary for me now, said Mr. M., after the very full consideration which was given to this question in committee of the whole—and after the elaborate arguments which were made on one side and the other—it is not necessary, I say, for me to do any thing more than to remind the convention of those arguments—to freshen their memory and not again to lead them into a long discussion. It is for this purpose that I now rise.

I was happy to hear on every side of the house that, upon one point at least, there is but one sentiment among the members of this body—which none have denied or called in question;—that is to say, that judges ought to be independent officers. We have found from the history and example of other countries, that this independence of the judiciary has been always considered as a safeguard to the liberty of the people. That such was the fact in England has been admitted by all;—that it was so believed to be, when it was introduced into the constitution of the United States has been admitted by all; and it was believed to be so by the men who framed the constitution of 1790. So far were they from having discovered that there was in this respect a difference between a monarchy and a republican form of government, I will beg the attention of the house to the fact, that when our ancestors formed the constitution of the United States, and the constitution of this commonwealth—instead of believing that a change in the form of government, from that of a monarchy to that of a republic, required a less safeguard to be thrown around the judges, they believed that that safeguard ought to be increased; and they, therefore, devised that mode which is now in existence, of requiring a majority of two-thirds of the legislature on an address for removal, and a majority of two-thirds of the senate in case of impeachment. The fact which I wish to demonstrate, and which I am anxious to impress on the minds of the members of this body is, that to throw fewer safeguards around the judges in a republican form of government, than in a monarchy, is in notorious opposition to the sentiments of those men who formed our constitution, and who gave their deliberate opinion on this subject, by the mode in which they have provided safeguards for the protection of these important officers in our commonwealth.

There are two principles which have been admitted in the former debate, distinctly admitted, by the gentleman from Luzerne, (Mr. Woodward) as well as by others who have taken the same side of the question. One of these principles is that the office of a judge is not, or at least ought not to be, a political office. We have not yet advanced so far in the branch of reform as to assume the contrary ground. No man will do

otherwise than repudiate the idea that a judge should be subject to rotation in office, or should be removed at a certain time, merely for the reason that he had held the office a certain time, without any reference to the manner in which he had fulfilled its duties; and we also repudiate the idea that a judge is, or ought to be, subject to the right of instruction. So far, therefore, as these principles are concerned, we stand here, interested to defend the foundations of the system.

Another principle which has been avowed here on every side—or which at least no man has been found to deny—is the principle that the tenure of the judicial office ought to be no other than that of good behaviour. I do not mean to say that these words ought to be inserted in the constitution. What I mean to assert is, that every gentleman who has argued in favor even of the lowest term for the judicial office, has taken as his principle of action, that a judge ought to hold his office so long as he behaves himself well. The only question, therefore, which is left is not a question involving any principle, but is merely a question as to the particular mode by which we are best to obtain security that a judge will behave himself well.

[The confusion in the hall had been so great during the last few minutes, and the conversation in various parts so loud, as almost to drown the voice of the speaker. Mr. M. paused a few moments until something like quietude was restored, and then proceeded:]

Mr. President, if I may judge from from the scene which is presented in this hall, I should say that it is lucky that *our* tenure of office is not during good behaviour, for if it were so, there are perhaps very few of us who would be able to retain our seats.

I was saying that the only question remaining to be settled by us, is not a question involving any important principle, but a simple question as to the manner in which we can best secure good behaviour in a judge. The mode which has heretofore been devised and, which is in operation at the present time, looks to the perpetuation of the office during good behaviour and no longer. The judge is to retain his office so long as he shall behave himself well—and no longer. When we look for a mode in which good behaviour is to be enforced, we come to a question which, considering that we have only three branches or departments in our government, and that the good behaviour of those who fill our judicial offices belongs essentially to the judicial functions, I say we come to a matter of great delicacy, in deciding where the power of enforcing that good behaviour ought to be placed. Our forefatheas believed it to be a principle not to be disputed, that the power of dismissal ought not to devolve upon the appointing power or upon the executive. They took this, therefore—although it now seems that the currrent of doctrine is running the other way—they took it as the great foundation of republican principles, that the power of removal from the judicial office, could not with safety be devolved upon the executive of the commonwealth or upon the appointing power; because, if it were so, it would be in the power of every executive to fill these offices with his own friends, and thus greatly to increase the amount of his patronage. They, therefore, left it to the representatives of the people, the only proper place for it. They left it to the two houses of the legislature on an address of two-thirds, and to the vote of a majority of the senate in case of impeachment.

Complaints have been made in various sections of the state, that this mode has not been found effective; and that there were judges on the bench at this time, who ought not to have retained their seats so long as they have done. In consequence of these complaints, we are called upon to lay aside and forget these great principles thus laid down by our forefathers; and under the colour of abolishing what has been termed a life office, and for the purpose, as it is said, of reducing it to a more simple and republican form, we are called upon to place the removal of judicial officers at the mercy of the executive and appointing power. We may veil this matter as we please, under the pretext that it is to be an office for a term of years.

It is avowed, that the re-appointment of a judge is a matter of right by the people, if he shall have behaved himself well; and I say, that whatever specious colouring may be thrown around it,—however much we may attempt to disguise the real nature of the change under particular names—we are in effect transferring the right of judging of the propriety of the conduct of the judges from the representative—where it has hitherto reposed—to the executive of the commonwealth. No matter how acceptable a judge may have been to the people of the commonwealth; no matter how acceptable he may have been to the justice of the commonwealth—he will no longer have a resort to the representatives of the people; he will no longer have the means of appealing to their justice. A governor who may be in his last term, and who may be willing to resort to any measures within his reach for the purpose of extending his patronage—or a governor in his first term who desires to perpetuate the party to which he belongs, and which may have elected him to the station which he holds, may declare that he will not re-appoint a man, but may nominate another—and yet you leave no appeal to any part of the people. You leave the judge entirely at the feet and mercy of the executive—absolutely so, without remedy or appeal.

I ask gentlemen to reflect upon this subject—to consider it calmly; and I ask by what existing difference between a monarchy and a republican form of government, they are led to the extraordinary inference, that it is characteristic of republican institutions, that the whole of the judicial power of the commonwealth should be placed at the feet of the executive. On what do they found their belief? Is this a distinction with which they are prepared to go before the people of this commonwealth? Are they prepared to say to them, that although in a monarchy, with a king and kingly powers, it is highly important that a single individual should not have the control of the judiciary, yet that in a republican form of government, which we are accustomed to regard as the reverse of a monarchy,—in which latter, as I have said, the power is not left to an individual—yet that with us, under our republican government and with our republican institutions—the whole control over these functionaries should be submitted to a single individual, and that, too, at a time when we are declaring that the executive has already too much power and patronage in his hands—at a time when one of the very objects for which we have assembled here in convention, in obedience to the will of the people, is to reduce the power and patronage of that officer—at a time when we are deluding the people with the idea of reducing that power and patronage; and yet, under the cover of that idea, we are about t

throw under his mercy, now and forever, the institutions of the commonwealth.

If we adhere to the amendment adopted in committee of the whole, we are doing what in us lies to bring our government nearer to the form of a monarchy, if I understood in what the difference between a monarchy and a republic exists. I, for one, will consent to no such measure; until it shall first have been made manifest that it is improper and dangerous to trust the people and their representatives.

The objects of changing his tenure of office are four in number. The first is to remove the disadvantage of precedent set in England, where it cannot fail to be admitted, that the independence of their judiciary is a safeguard to the liberties of the people. And, in answer to this, we have been told that the case in England and in this country is different;—that a monarch is an officer not chosen by the people—that the real power in these particulars is in the house as in the house of parliament; and that, although the judges cannot be removed by the crown, yet that they are, nevertheless subject to removal by the two houses of the legislature; and, if it is desirable that they should be removeable by a majority of votes, instead of two-thirds, (as was the case in the colonial act) I, for one, am willing to give the majority this power. For, although I believe that the exercise of such a power, might, on certain occasions, be attended with injurious results to the people, yet it would be far from introducing the fatal effects which would follow from a provision, taking the responsibility entirely from the people—making a judge hereafter responsible to the executive alone—as would be the consequence here. But, after all, when we cast our eyes to the British bench, where do we find justification for the inference that judges in England feel a subserviency to the parliament of England?

Why, we know the case of Chief Justice Hale who denounced the house of commons, they having persisted in trying and determining the right of suffrage of an elector whose right had been refused, and who had claimed the ordinary custom of the country, of the trial of right. And the house of commons claimed that the matter should rest exclusively with themselves. We knew, because it was a matter of history, that the sergeant-at-arms presented himself to the chief justice, sitting in court, and required him, at his peril, not to act in the matter. What he (Mr. M.) would ask, was the answer of that upright judge? Why, that he would commit the speaker himself if he interfered with his warrant; and that if he came there, with the whole house of commons at his back, he should not stop the course of justice. If judges would take such a course then—such an independent stand for the rights of the citizen, as we found thus recorded, how could it now be contended by gentlemen, that the effect of the judicial system was to render the judges dependent?

It was wholly unnecessary for him to refer back to history and to enumerate those judicial heroes who had resisted the arbitrary conduct of the crown, on several occasions. Yes! that man well deserved the appellation of "hero" who had the boldness to stand forward in defence of the rights of the court and of the justice which the subject sought from it, and because he ran all sorts of risk in doing so. As he (Mr. M.) had just remarked, it was unnecessary that he should refer to what had occur-

red centuries ago, because he could cite cases of modern date. A transaction had not long since taken place in England, and which had created no little sensation there. It was well known to gentlemen that owing to the carrying of the reform bill and the breaking up of the rotten borough system in England, great political changes had taken place in the administration of the government and in the character of the house of commons; and he might mention Lord Chief Justice Denman, as having been one of the principal actors in bringing about the reform. He and his party came into power with a triumphant majority. And what, he (Mr. M.) asked, had occurred since? Lord Chief Justice Denman, within a few months past, and when there was a house coming as fresh almost as ourselves from the people—coming in with the tide of reform—with a tide that might be supposed would oblige him to yield to their measures, but he was not to be influenced nor induced to surrender up his independence as a man and a judge. That house of commons undertook upon themselves to order a report of one of their committees to be printed for the use of the public with a view of making them acquainted with the facts contained in it. Having been printed, they were exposed for sale. And, what happened? why, a very humble man in society, through party rancour, or some other cause, brought an action against the publisher for a libel contained in the document in question. The action was tried before Lord Denman, sitting at *nisi prius*, and the defendant rested his defence on the order of the house of commons.

In the course of the proceedings of the court his lordship declared that he would not sit there to hear such doctrines—that there was no body in England had a right to libel a subject in the manner that the house of commons had done, and that whatever course the house had thought proper to pursue, they must answer for the consequences. Now, he would inquire of gentlemen whether they thought there was any subserviency exhibited on the part of Lord Denman to the house of parliament? They could not, he presumed, suppose such a thing. Lord Denman, to his honour be it said—having been a leading member of the reform party, which had placed him in power—decided against their proceeding as exceptionable and wrong. The house of commons ordered the defence to be carried on, and they declared Lord Chief Justice Denman guilty of a violation of his duty. His lordship, shortly afterwards, rose in his place in the house of lords and stated that he had laid down the law of the land—that he was not to be deterred from sitting on the bench, and from defending those whose rights were invaded. Now, did delegates suppose that if our judges should be elected for three years, or fifteen years, they would be likely to pursue as independent a course? Let not gentlemen suppose that by adopting such tenures as those, they would abolish subserviency, or that their judges would be as independent as the English judges. Here we had a noble and magnanimous example before us of a judge, who held his commission in his own hand, and who was willing to sacrifice everything; himself rather than that an individual—no matter how humble—should suffer. Here was an instance of the independence of the judiciary under the good behaviour tenure.

With regard to the judicial tenure, it had been said that under the constitution of the United States, the tenure had been well fixed, as it was that of good behaviour. So far as he had been able to understand the

argument on this subject, he had understood it to be admitted that the good behaviour tenure had worked well in England as well as in this country. He had heard no complaint in regard to it. But, it had been declared that we ought not to take the example of the judges of the supreme court of the United States as any guide to us, as they are in the enjoyment of the high exercise of political power.

In the first place, then, he would ask what was the political power they exercised? He knew of none himself. He knew that in the course of their judicial functions it becomes their duty to decide only on what might come before them, (as a state court would have to do) as to the validity of the facts in relation to the different states whose laws might have come in conflict with the constitution of the United States. But, that, after all, was a judicial function. It was a function which as much belonged to the judges of the supreme court of Pennsylvania, as to the supreme court of the United States; for, both are bound by an oath—both are bound by a solemn obligation to support the constitution. They, of course, then, would not sanction any act which amounted to a violation of the law of the land. He would ask where the reason was found for introducing a proposition to limit the terms of the judges? Was there any better ground for supposing that they would, above all other officers, be influenced by their political feelings in the execution of their duties? Why not every other functionary of the government? You say you desire that the tenure of the judges shall be for a short period, and that you wish frequent returns to the people. Hence, it was considered a good regulation that the representatives are elected annually. And so, by some gentlemen, three years was regarded as a better tenure for senators than four; and probably two years, or one year would, in the opinion of some delegates, be deemed long enough for the governor of Pennsylvania to hold his office.

Among the many reasons alleged by gentlemen for a change in the judicial system was, that under the present system, there are so many party judges. Well, he would admit that it was an evil. And, if he could believe the Eutopian doctrine to which we were sometimes directed he could wish to see it diminished. But, so long as we live in a country where parties prevail and must prevail, it matters not what plan or mode may be devised with a view to prevent any thing like political bias, or party feeling on the bench, he did not expect to see the time when it would be wholly removed. There would continue to be party heats and party contests; yet within the bounds of either of them, men might be found fully competent to the discharge of the judicial functions. If competent, it was of little consequence to which political party they belonged, so long as they were not active members of either. He would ask all those gentlemen who intended to vote on this question, to give it their most serious reflection. He would ask gentlemen to point out an instance of a man being a party judge, who was not more or less a party man before he was appointed. If it could be shown that a judge had become a party man after being raised to the bench, then he would be inclined to think that there really was something wrong in the system. He thought that if gentlemen looked well into this matter they would discover whether these judges had party attachments, or no party attachments, that it had nothing whatever to do with the tenure of office.

Another complaint made against the present judicial system by delegates was—that there has been, for some years past, a growing discontent and desire to get rid of the present judges—that they are unpopular, so much so that the people say they would rather place the judiciary at the mercy of the executive than be at the trouble of going all the way to Harrisburg with their complaints! How were they unpopular, and why unpopular? If it was clear that the present tenure of office was not such as to render them more party judges now than they would be if appointed for three, five or any other number of years. How was the evil got rid of? He had not time to go fully into the consideration of the case at this time: but he would ask gentlemen in all candor if they did not know, and feel, and believe that the complaints which had been spoken of had not extended beyond, to some of the judges of the county courts. He wanted to know from that part of the commonwealth, from which these complaints had come, in relation to the judge s of the supreme court, whether there were none as to the judges of the other courts? He did not speak of the course which the judiciary had taken in the protection of the citizen. He did not say any thing on that point; for, although dissatisfaction might have manifested itself in some counties, yet it had not come out in the shape of a remonstrance to the face of day. Although the judges in particular counties might have proved themselves unpalatable to the inhabitants—still, generally, they had given satisfaction. He had not heard an answer given to that to which he was about to allude.

He begged gentlemen to say whether the complaints they had heard of were not confined to the county courts? Why, that was known to have been a fact, and they were at present confined to that quarter. He asked them to say why it was? He asked them to say, if the evil arose from the tenure, why it was the judges of the supreme court held during the same tenure, while the judges of the county courts only failed to give satisfaction? Why ascribe the dissatisfaction which was felt under the latter tenure of office, to the former? Now, if the facts showed anything they showed that the tenure of office had nothing to do with the case. He knew there was a majority in the convention—a large majority, too, who would vote for keeping the judges of the supreme court on the tenure of good behaviour, if they were not afraid of subjecting themselves to the charge of inconsistency as regarded the county courts. There was not those complaints against the judges of the supreme court, who held by the same tenure. He believed it not to be difficult to get at the origin of those complaints. If gentlemen would only set themselves about ascertaining what the evil is that required to be remedied, a remedy might be at once applied.

According to the common law of England, and the law of good sense, the judges of courts having general jurisdiction are not permitted to sit in the county in which they may be residents. This law was adopted after the people had become disgusted and dissatisfied with the county courts, and were determined that no judge should sit in the county of which he was a resident. Now, he would ask, what was our system? That no judge shall sit except in the county in which he lives. A man who is to be looked up to as the speaking organ of Divine Justice, you take fresh from the associates of his neighborhood—perhaps a small village—you take him up from among those, with some of whom he may have had a

petty quarrel, and you put him on the bench, and the next moment you expect the people to forget all these circumstances. They never would do it. It was not in the nature of things that they could do it. It was not to be expected that a man could all at once forget his old associates, and warm personal friends, or his bitter enemies. And yet you take this man and expect him to decide from pure motives and impartial feelings. If you will have a man do justice to the people, you will have to dispense, as in England, with the petty jurisdiction. It had been found good there and would be found equally so in this commonwealth. Our supreme court judges hold their court all over the state. Let gentlemen look at the causes they try. Suppose a cause to come on for trial, not only would you see the jury box filled with men, some of whom seem to recognize each other, but you would find the whole population of the county taking part on one side or the other.

Now, he would ask gentlemen to say, where there was an instance of a judge of a circuit, coming as a judge, and trying a case, that did not give satisfaction? But, could this be expected of a man, living in a small place, surrounded by his friends and his enemies—the latter of whom, of course, were always ready to speak disparagingly of his conduct, let it be as upright as it might. His friends would think he had done right, whilst his enemies would say he had done wrong. He could not give satisfaction. You may palter and tamper with this question as you like, after all there is nothing like a good behaviour tenure. I say, continued Mr. M., let the governor re-appoint the new judges for three years, but, until you have the firmness and the courage to go to the root of the evil, you have been but paltering with it—but increasing it. You have been only applying stimulants to the concern—which requires excision. When gentlemen see what is wanting, and have not the firmness to do it—when they see the evils resulting from a local jurisdiction, where, too, the population is small, and where there may be many private piques existiug between the judge and individuals in the community among whom he lives—they must be convinced that there can be but little or no justice dispensed. Under such circumstances, the administration of justice between man and man must be greatly jeoparded, at least. And, when gentlemen see all this, and cannot close their eyes, and take this as a remedy, and see the appointment of five or ten judges, and imagine that that is to remove all the local jealousies—that that is to take away from the district all the ill feeling and put a stop to all the attempts made to get the judge out of office, because he may not be acceptable to some members of the bar—it is, indeed, not a little singular that they should take the course they are doing.

Are we a republican government or not? Do we derive, and will we improve our institutions by going back to the darker periods of monarchy? —by giving to the executive a power which has been taken away from the king of England, because found dangerous to the subject? We are going backwards instead of forwards. We are going back to the time when criminal proceedings were instituted in England in order to ascertain whether the crown were interested in the conviction of a man. Are we going back to the time when the jurymen of England were ordered by the judge, sometimes to find a man guilty, under pain of fine and imprisonment, and degradation if they refused to do so? I trust not. Will

any man tell me that this is a mere picture of fancy? He, Mr. M., contended that the doctrines advocated here by many delegates were, in effect, the same as those maintained a century ago in the monarchical government of England, and which even before the revolution of 1688, amounted to political slavery. The delegate from the county of Philadelphia, (Mr. Earle,) in the course of his speech had cited the opinion of Mr. Jefferson, as being opposed to the good behaviour tenure, and said that he had carried it with him from his youth, and through the revolution. Now, he, Mr. M., would show how it happened that Mr. Jefferson expressed himself as he had done; and also, that the opinion was not adopted prior to the revolution, and adhered to by him after that event. In Mr. Jefferson's letters, written in France, (see volume I, page 439) it would be found that he made use of the following language:

"I approved, from the first moment, of the great mass of what is in the new constitution; the consolidation of the government; the organization into executive, legislative and judiciary: the sub-division of the legislature; the happy compromise of interests between the great and little states by the different manner of voting in the different houses; the voting by persons instead of states; the qualified negative or laws given to the executive, which, however, I should have liked better if associated with the judiciary also, as in New York; and the power of taxation. I thought at first that the latter might have been limited. A little reflection soon convinced me it ought not to be. What I disapproved from the first moment, also, was the want of a bill of right to guard liberty against the legislative as well as executive branches of the government; that is to say, to secure freedom in religion, freedom of the press, freedom from monopolies, freedom from unlawful imprisonment, freedom from a permanent military, and a trial by jury, in all cases determinable by the laws of the land. I disapproved, also, the perpetual re-eligibility of the president. To these points of disapprobation I adhere."

In another letter, at page 442, referring to the bill of rights, he says:

"In the arguments in favor of a declaration of rights, you omit one which has great weight with me; the legal check which it puts into the hands of the judiciary. This is a body, which, if rendered independent and kept strictly to their own department, merits great confidence for their learning and integrity. In fact, what degree of confidence would be too much, for a body composed of such men as Wythe, Blair and Pendleton? On characters like these, the '*civium arder prava jubentum*' would make no impression."

These were Mr. Jefferson's opinions in 1789, deliberately expressed by him in a foreign country, after the declaration was inserted in the constitution of the United States.—"That the tenure of office shall be for good behaviour. Now, when did he change it? At a period of political rancor, added to personal pique; at a time when his rival was before the community, and which caused him to tremble for his own popularity; at a time when that individual fell, as he supposed, under the lash of the law. And, when he found out his mistake, and that he was to remain the life ornament, and safe guard of his country; when he found Judge Marshall disobeying his mandates, conveyed to him through the distric

attorney, to force on the trial, before the individual had his witnesses ready; when he disobeyed his mandates to disregard a case which had been decided by the supreme court, (Marbury, vs. Madison,) which might be brought forward to overrule the proceedings of a criminal court against the prisoner—because he happened to be obnoxious to him; when he found Judge Marshall discharging his duties faithfully and fearlessly (which has made his memory dear to the hearts of his countrymen for generations yet unborn) then it was, and not before, that he made the discovery that the judiciary was too independent of the executive. This was the first intimation of Mr. Jefferson's opinion on this question, that he, (Mr. M.) at least, had been able to find. He might be mistaken as to its being the first intimation. In the 72d page, 4th vol. of his letters from France, he uses this language:

"The fact is, that the federalists make Burr's cause their own, and exert their whole influence to shield him from punishment, as they did the adherents of Miranda. And, it is unfortunate that federalism is still predominant in our judiciary department, which is consequently in opposition to the legislative and executive branches, and is able to baffle their measures often."

To baffle their measures, he would have had a man tried for high treason and hung by the neck, in order to have succeeded in disgracing Judge Marshall, and the federal party. And, if any thing had been said as to injustice having been done, the odium of it would have been thrown upon the legislature. But Mr. Jefferson had found a judge who dared to baffle with him. And, from that moment you may date his anxiety to break down the judiciary. It was, then, that the new light of the principle broke upon him. It was then, he found that the trial of high treason was a legislative and a judicial function. He, however, did not pretend to give Jefferson's opinions, and how he became biassed by his party. He begged to quote from a letter, written by Mr. Jefferson, to Mr. Giles, under date of April 20th, 1807, in which he says:

"Your favor of the 6th instant, on the subject of Burr's offences, was received only four days ago. That there should be anxiety and doubt in the public mind, in the present defective state of the proof, is not wonderful; and this has been sedulously encouraged by the tricks of the judges to force trials before it is possible to collect the evidence, dispersed through a line of two thousand miles from Maine to Orleans."

And, he goes on to speak in other letters, in much the same strain. He also, speaks of Mr. Bowdoin being able to baffle the executive. On the 19th of June, 1807, he wrote to Mr. Luther Martin, one of the most distinguished lawyers at the bar. He abandoned his practice at home, and threw himself in the gap—waiting to know what would be done by the executive.

The CHAIR announced to the gentleman from the city of Philadelphia (Mr. Meredith) that the time allowed by the rule, had expired.

Mr. MEREDITH thereupon yielded the floor; when a motion was made by Mr. BIDDLE that the gentleman from the city of Philadelphia, (Mr. Meredith) have leave to proceed.

But, on Mr. M's request, the said motion was withdrawn.

Mr. Biddle, then rose and said;

Mr. President: I am sensible that in asking the attention of the convention to any remarks which I may submit on a subject which has been so long and ably discussed, I am venturing boldly. But, believing as I sincerely do, that no question upon which this body has been called to act, or may hereafter be called to act, can be more vitally important to the happiness and prosperity of the people of this state—nay, even to the continuance of the rights and liberties which we now enjoy—than that now before us, I feel bound briefly to state the reasons which will govern the vote I am about to give. And I can assure the convention that I will not trespass on their patience a moment longer than I believe to be necessary for this purpose.

Our liberties consist in a government of just laws—well administered—made by the people. We all know that there is such a thing as a liberty which consists in entire freedom from all controul, but that is not civil liberty. It is the very reverse of civil liberty. It is that which enables the strong to trample upon the weak—it is that which enables the powerful utterly to break down the humble; for if all men could do exactly that which they pleased, it is obvious that in proportion as men possessed power, they would triumph over those who had none. Our liberty then depends entirely on the control of law—on the supremacy of law—alike applied to all, controlling the great, and protecting the great—controlling the humble and the weak, and protecting the humble and the weak. But it is a matter of no consequence how perfect may be a written system of laws, unless those laws are well and justly administered. Let the system be ever so fair to the eye, if it is not practically carried out and brought home to the community, they will realize none of the blessings which ought to flow from just and equal laws.

Taking this, then, as the starting point, the question presents itself how and by whom were laws to be brought home to the people? The answer is, by the judges. To them is entrusted the duty of administering the laws? If justice could be impersonal, not in reference to those who apply, but in relation to those who devise it, it would be the very perfection of the system.

But invariably in the administration of the laws, we must, from the the necessity of the case, rely upon the weak and fallible man; and it is, therefore, a matter of the greatest importance that we should obtain the wisest, the most learned and the best men which can be found in our country to administer the laws. And it is not only important that we should obtain such men for the discharge of this responsible and solemn duty, but that, having obtained them, we should guard them by every means within our legitimate control, against those temptations to which the frailty of our nature lays us open. We were told upon a former occasion by a member of this body, that the act of bestowing upon a man a high judicial commission, did not elevate him above the frailties of others, and that he remained the same man that he was before. This is a truth which presses itself upon the understanding of us all; and, for this reason, it becomes important that we should pro-

tect a judge from these sinister influences which may cause him to falter in his high duty. If, in granting these commissions for the highest offices in our state, we could superadd the virtues which were necessary for the righteous discharge of their functions, it would cease to be a matter of any moment who might be the judge, or what might be the tenure by which he held his office; because, in such a state of things, the office, and not the man would secure the proper performance of the duties. And I confess that I was somewhat surprised to hear a learned gentleman on this floor, assign this as a reason why we should not protect the judges *from* being operated upon by extraneous considerations.

If, then, it is thus important to have the wisest and the best and the most learned men which our country can produce, to administer the laws in their full purity, the question next arises, how are such men to be procured? Is it by degrading the dignity of the judicial office? Is it by diminishing its importance? Is it by rendering it subject to a species of control to which no honorable man—no man of independent mind, will be willing to submit? Do you expect that those bright and shining lights who grace the profession of the law, and who are in possession of an honorable and a lucrative practice at the bar—do you, I ask, expect that such men will abandon that profession, for the purpose of being placed upon the bench, when it is shorn of all its dignity and honor, that they may remain there for the brief space of a few years—their practice scattered, their energies directed to a new and untried channel—and then, at the end of some ten or fifteen years, to be turned out, insulted judges, to re-build their fortune as best they can, and to enter anew upon the practice of their profession, under circumstances of so discouraging and humiliating a character? Can it be expected that any individual in the prime of life, rising in reputation among his fellow citizens—laying up by means of his profession a future provision for himself and family—but still poor—that is to say, not in possession of a fortune—will it ever be expected, I ask, that such a man will give up such a condition and such prospects, for the purpose of giving up to the public, the advantage of all his learning and talents, upon conditions like these, and with a prospect of being turned out of the office at the end of a short term? Turned out, too, it may be, as the gentleman from the city of Philadelphia, who last addressed the convention, (Mr. Meredith) has eloquently said, because he would not sully the dignity of the ermine by bowing his knee to power; or, probably, because he would not yield his judgment and his independenee to the popular passsions of the day?

Sir, are we in this convention expected to recognize the doctrine, that popular prejudice or popular passion is always to sway the decisions of the judicial bench, and that the judge is to hold the scales of justice tremblingly in his hands, with his eye fixed upon the multitude around him, that he may see which way they will be pleased to tell him they are to turn? Is this justice? Is this liberty? Is this law? Is this the justice which the members of this body would desire to see administered between man and man? Is this the protection which we ask for ourselves and which we hope to transmit to our children? What, sir! that a citizen of this commonwealth is to feel that his rights rest not in, not upon the law of the land, but upon the *fiat* of a judge, who makes his decisions dependent on the impulses of popular feeling and popular passion

Not upon popular opinion, as clearly asserted after the time, but as that opinion may be acted upon by a sudden and overwhelming impulse.

We have had introduced here, by the gentleman from Allegheny, the case of Mansfield, and the gentleman asked us, if we doubted that Mansfield would have been continued in office until the end of life, had his commission been subject to the tenure which it is now proposed to adopt. Does the gentleman remember the instance in which his mansion was razed to the ground, because he fearlessly performed his duty? It was then, that he said he loved popularity, not that popularity which has to be run after, but that popularity which followed an honest, upright independent and fearless discharge of his duty. What would have been his fate, if he had held his commission by the tenure of political favour? It would have been wrested from him at the same time that his house was given to destruction. There can be no greater evil inflicted upon the people, than to give them a judge who feels that he holds his office by the tenure of political favour. A political judge should be the object of scorn to every upright man. And yet, what are you about to make our judges? Are you about to make them dependent on the will of the executive—an officer elected every three years by the people—and, probably, his election to office turning upon the very question whether he will continue or remove a certain individual from the judicial office? Shall it be told that such a case is improbable? I have information, which is entirely to be relied upon, that, in the state of Ohio, which has been cited here as an example of the operation of the judicial tenure for a term of years—I say, I have it upon authority, worthy of all confidence, that, on a certain occasion, the election in a whole district turned upon the question, whether a particular individual should, or should not, be continued in office. Is not this an illustration which will bring home to the minds of the members of this body, the injurious operation of a system which renders a judge liable to be governed by any consideration, in the discharge of his judicial functions, save only the immutable rules of right and justice. The only restraint which should be imposed on a judge, is the fear of bending to executive favour, or of yielding to the popular will. I would delight to see a judge like Marshall who, when a man against whom popular opinion was strong, and who was sunk so low in public estimation, that all his reputation and brilliant talents could not raise him from his degradation, and who, although acquitted, carried a stigma fixed upon his name—I say, I should like to see a man who, like Marshall, would extend his panoply over one assailed by the executive and by popular opinion; and by whose judicial independence, the executive would be rebuked, and the popular clamour silenced. Sir, I fear we can hope for such things no longer. If we are to give up this which is the citadel of our liberties, and which is more important to us than any other feature of the constitution under which we live—we give up that which secures the free and unbiassed administration of the laws.

Make your judge a mere creature of a party—make your judge the mere dependent of popular favor—liable, as it is, too constant changes and fluctuations, and what is the position in which you place him? In every case he has two purposes before him. Suppose that his term of office is about to expire. Let there be two candidates—one popular, powerful, and connected in political affinity, with the individual who has the

appointing power in his hands. Let the other be unpopular, arrayed against him in party influence—and, more, let the question be one connected in any manner with party politics—and we know, from experience, that there have been questions connected with party politics, and that there will be such again—I ask, can you expect such a judge as you will obtain under the tenure for a term of years, to act fearlessly? I have no doubt that such a man may be found, but he will be a man of rare virtue, and the instances will be "like angels visits, few and far between," in which individuals of such qualifications and excellence can be found.

But, Mr. President, I would have the suitors in courts of justice know and feel that they also must bow to the decision of the judge, and that they can not retaliate upon him, if the decision should happen to be against them. I would have a party to know, that if a judge strips him of his property to-day, he can not to-morrow, by any appeal to the prejudice, or the passions of the people, or by any other means, strip the judge of his office. I would have it so, that the individual who has been successful, as well as the one who has been defeated, should feel that he has no power over the man who has pronounced between them the decree of justice. If this is so, men will be satisfied to submit to the decision; but when it is known that the term of office, of a judge, is shortly to expire, a man against whom a decision has been given, will be often restless under the defeat—revengeful—and will be apt to seek a retaliation—that, in after life, he may say to the judge, had you decided that case differently, you would not now be turned loose upon the world, an object, probably, of pity and commiseration. But, sir, this is not all. We are not only disposed to make the judges these dependent creatures, but we must do one of two things. We must either remove all the judges of the supreme court together, which I do not believe is contemplated by any of the gentlemen, who have advocated the tenure for a term of years, or we must remove them at different times. If we are to remove them all together at one time, what is to become of our system of justice—of our code of laws? Are we to have five gentlemen, who have long administered the laws of our state, suddenly turned out of office, and five others substituted in their places? Are we to have a new code and a new system? Are we to expect, from such a course of proceeding as this, that uniform and consistent symmetry, which should exist in a system of laws, and which is so essential in the administration of justice? But it is not necessary to dwell upon this view of the case, because, as I have said, I believe that such a state of things is contemplated by no gentleman on this floor.

Suppose, then, that the term of fifteen years—which is the term fixed by the amendment of the committee of the whole—should not be changed, every three years a judge is to be removed. It is true that his commission is to run fifteen years; but still, once in every three years an admonition is to be given to him, as to what he may himself expect, by the expiration of the commissions of one of his colleagues, and by his re-appointment or removal, as the case may be. Is this a course of policy, which is calculated to give permanency to the laws, dignity to the bench, or security to the citizens? But we have been told once and again—on the same principle, I suppose, on which we are told that new brooms sweep clean—that these judges, who are thus to be degraded in every way

will do a great deal of business, and gain a great degree of popularity. I think that the experience of those among us, who have spent their lives in the profession, and who have grown old in gaining a reputation, will convince us that this is an entire mistake; and although a new judge, entering with ardor on the duties of his office, may soon despatch a considerable amount of business, yet, each additional year, during which he may retain that office, increases the value of his services to the community, adds to his knowledge and adds to his capacity, for the faithful execution of the duties of the office.

But what is the duty of the supreme court of the commonwealth? It is to establish in the last resort great principles of law, to operate equally upon the whole community. Let us look back upon our judicial history. and let us ask, has the supreme court of this state, as at present constituted, answered this purpose? Are the decisions of the court respected? Are the laws established by that court, considered imperfect? Are they considered so bad, as to shew that there is some practical evil in the system? If not, why should we change it? I may safely say, that the code of Pennsylvania, has been distinguished by the wisdom of the judicial decisions of the bench—that the improvements which have been introduced here, have been imitated abroad; and even England, the country from which we derive our laws, has borrowed from us. She is beginning to imitate us—we, giving to her lessons of wisdom in return for the common law which she gave to us. And, if this is so, why should we change a system which has been productive of such results? Look at the judges of Pennsylvania! In what state of the Union, in point of talent, learning, and impartiality of its decision, is there an abler bench to be found? Do you expect to get a better—have you the most distant hope that you can get a better, by altering the tenure of office in the manner you propose.

I fear, Mr. President, that all such expectations are Eutopian—that they are mere delusions; and it will be much better for us to hold on to the good things which we have, and not to indulge in any dreams of an ideal perfection to be attained, not by elevating, but by depressing the ministers of the law.

I have but a little more to say, and that I am anxious to compress into as small a space as possible. I have felt a strong indisposition to detain the convention even as long as I have. There are many other topics of which I feel anxious to speak, but as I commenced by saying that the subject had been ably discussed and illustrated by gentlemen in every point of view in which it could be presented, I shall content myself with saying that the liberties of the people must depend upon the supremacy of the laws. And believing that the due administration of good laws must depend upon the selection of upright, able and learned judges, believing that such judges can not be obtained under a tenure for a term of years with a salary inferior to the amount of the renumeration arising from the practice of a competent member of the bar—and believing, in such a state of things, that you must have inferior judges—and there are few geater evils than that a judge should feel that they are inferior to the bar, and, that instead of governing its members, he is governed by them, or by some man of towering ability among them—believing, that every man

should know and feel that he will find in the judge these characteristics which should control and give justice to all—I am in favor of the tenure during good behaviour.

I thank the convention for the patient kindness with which they have heard me.

Mr. MEREDITH then rose, and resumed his argument as follows:

Mr. President; I have but a few remarks to offer in addition to those which I have already submitted.

I was about to read, for the information of the convention, a letter to which I was alluding at the time the Chair interposed to enforce the rule of this body, confining the delegates to a single hour.

The letter which is to be found at page 86 of the 4th vol. of Jefferson's Works, is addressed to George Hay, and is as follows:

"I inclose you the copy of a letter received last night, and giving singular information. I have inquired into the character of Graybell. He was an old revolutionary captain, is now a flour merchant in Baltimore, of the most respectable character, and whose word would be taken as implicity as any man's for whatever he affirms. The letter writer, also, is a man of entire respectability. I am well informed, that for more than a twelvemonth it has been believed in Baltimore, generally, that Burr was engaged in some criminal enterprise, and that Luther Martin knew all about it. We think you should immediately despatch a subpœna for Graybell; and while that is on the road, you will have time to consider in what form you will use his testimony; e. g. shall Luther Martin be summoned as a witness against Burr, and Graybell held ready to confront him? It may be doubted whether we could examine a witness to discredit our own witness. Besides, the lawyers say that they are privileged from being forced to breaches of confidence, and that no others are. Shall we move to commit Luther Martin, as *particeps crimnis* with Burr? Graybell will fix upon him misprision of treason at least. And at any rate, his evidence will put down this unprincipled and impudent federal bull-dog, and add another proof that the most clamorous defenders of Burr are all his accomplices. It will explain why Luther Martin flew so hastily to the aid of 'his honorable friend,' abandoning his clients and their property during a session of a principal court in Maryland, now filled, as I am told, with the clamours and ruin of his clients. I believe we shall send on Latrobe as a witness."

Is it not obvious, continued Mr. M., to every man who looks at the matter with common sense, and as a freeman ought alone to look at it, that you have an example of an executive, of a man in whose existence they will see exemplified the danger to be apprehended. That danger does not arise from the personal character of the individual. The most virtuous men may have temptations set before them, which they find it impossible to resist, or they may be led away by their feelings to do that which their calmer judgment must condemn.

I ask gentlemen whether it is not obvious that the executive of the United States, in the instance to which I have referred, was endeavouring not only to brow-beat the court, but to direct the most minute particulars of

the evidence; writing to the district attorney as a private counsel, directing who should be brought up as witnesses, and, above all, designing to take some step which, if the attempt had not been frustrated by the stern integrity and honesty of John Marshall, would have deprived Burr of his advocate.

I care not what impression of his guilt might have gone abroad. It is precisely in circumstances such as these, in which the hatred of the dominant party in the country, and the bitterest hatred of that which was in the minority, had united all parties in the desire to see him sacrificed; it is, I say, precisely in such circumstances as these, in which any man may be placed, that an independent and fearless judiciary is required to withstand the commands of the executive. Sir, you have such a tenure at this time—you have such a judiciary if—which may God forbid—the times should ever come when we should need to call it into action.

I have asked gentlemen before, and it is a point to which I desire their attention—whether this discontent with our judicial system, has not been confined to the judge of a county court? I have reminded them that the complaints which are made, are strong in proportion to the sparseness of the population in the district.

I will ask gentlemen to bear in mind an instance, of the very case of which they have spoken, of the judge's falling under the displeasure of the public—where a judge in the county in which he resided was represented as a monster while in the county in which he did not reside, but to which he went at certain periods only for the purpose of administering justice, and when he was not pursued by personal hatred or personal animosity, he was held, by persons who were examined before the committee of the legislature, to be a model of judicial excellence and private worth.

How is this to be accounted for? I need not name other instances of a similar character, for they are familiar to every man who hears me. In one district a man is represented as unfit to live, while, in another county, the same individual is held, by almost unanimous opinion, to be every thing that a judge or a man should be. You will account for it only by saying that it arises from the circumstances I have mentioned.

I know as well as any man, that judges are not free from imperfections. I know that a judge may not in private life pursue precisely the course which he should. But it does not follow because his particular habits, not to say vices, are of this nature, that, therefore, he may not administer justice on the bench fully as well as if the course of his private life were less exceptionable. Nor do I know a man who would be able to sit as an administrator of justice, if, by too much familiarity, the people were prevented from looking up to him with the respect with which the judicial bench should be at all times regarded; for, by reason of that very familiarity, they would consider themselves entitled to look down upon him.

No man could desire to see a judge compelled to be placed in a situation where he cannot maintain the dignity of the bench: reduced to the necessity of bartering conversation on the subject of his duties, offending

by the very act, and turning even his friend into his enemy. This, sir, is the course which you are about to take. In a state of society in which you could have nothing but a domestic jurisdiction, and in which this jurisdiction was proper. Perpetuating this very trial of causes, when the state of society no longer admits of it, since the power began to enlarge and the people to increase in number. Although these county courts were established, you, had also the provincial court—a court of general jurisdiction, and which gives to every man who was dissatisfied with the county jurisdiction, the option of going to the court of general jurisdiction.

When our population has increased so much, you have forgotten the lessons which have been read to us by the experience of ages; you have forgotten the lesson which has been read to us in the history of the province of Pennsylvania, and you apply the jurisdiction of that general court, to try issues of facts.

You throw the people into the arms of the mere local jurisdiction of the state. You give them no judges. You deny to them any judges, with the exception of those who are to live among themselves. You confine them to the neighboring judges, and then you expect that such a state of things is to give satisfaction—taking away from the judges the only chance they have of administering justice at all,—that is to say, taking away this tenure of good behaviour.

I wish that there were more gentlemen among the members of this body, who had held seats in the legislature of Pennsylvania, and who had seen these prosecutions going on; that they might have seen on what trifling grounds of complaint the time of the legislature was occupied, and with what little justice it was that any man was found to complain.

He wished there were more gentlemen here, who were in the legislature at the time the prosecutions were going on. He wished he could recollect the facts and all the particulars of the ridiculous complaints that were then made. He had known the most ridiculous charges to be brought to the notice of the house of representatives.

The senate were not to blame; they were compelled to act judicially. And where, he asked, was the man who said they were to blame, or to be censured?

He contended that the senate were not at all to blame. He had known impeachments to be carried to the bar of the senate, when one of the judges was sitting in a county in which he did not reside, and notwithstanding this fact was known to the house, yet it was looked over by them as well as by the people.

He had known, too, an instance of a judge having been called away from court, in consequence of one of the members of his family being at the point of death, when the jury having come into court and called for further directions, the associates were not able to discharge that duty. He had seen frequent and vain attempts made to impeach men in the senate; and had known cases where it was said that the whole district from whence the men came, were against him. He had known, too, the greatest hatred felt by an individual against a judge, in consequence of

the decision of the court in a particular case. He had known the party come to Harrisburg, swearing nothing less than destruction against the judge who had decided the case. He had seen him coming there winter after winter, asking for an impeachment against him, until, finally, he has succeeded in wearing the judge out of patience, and induced him to send in his resignation.

He had known a man who lived in the same district as the judge who had decided against him, (and about whose case he knew neither the merits nor the demerits) swear vengeance against him for so doing.

Now, these were facts, and this was the state of things we were desirous to have reformed. But gentlemen on the other side, advocated such alterations of the constitution, as would continue the evil of which he had spoken, if not make it greater than it now was. Yes! gentlemen were now for a limited tenure.

He begged the attention of the convention to one further observation. Delegates had not come to that convention to destroy the tenure of office of the county courts by the will of the people. He begged gentlemen to give the people an opportunity of judging between the two systems. He wished them to see whether it was the tenure of office that had produced the evils complained of.

If they believe that a change in the tenure of office would remove the evils, they might, at least, leave the supreme court alone, and let the people have an opportunity of judging of the two systems. Let the people decide for themselves whether they will have a limited tenure for the supreme court, as well as for all the other courts. He entertained no doubt as to what conclusion they would come.

Now, he would ask, why they would refuse to have a permanent tenure for the county courts? Why they will refuse to submit the question to the test of public opinion, and leave the people to choose? Let the experiment be tried, and we would soon be convinced which of the systems would be best. As to himself, he had no fears in regard to the result. He was not to be charged with being unwilling to trust the freemen of Pennsylvania, with being opposed to allowing them an opportunity of exercising their judgment. He wished, as he had already said, to leave the question to them—to submit it to them, which of the two tenures they like best.

He would not detain the convention many minutes longer, as he had only a few words to say. He knew that on this occasion, there were not men wanting who thought that all that was said by a professional man—a member of the bar—against the proposed change, ought to go for nothing, because he was supposed to be biassed—to be prejudiced—to acting under influences which prevents him from seeing the matter in its true light.

He (Mr. M.) knew it to be in vain to attempt to remove a feeling of this sort, which prevailed among certain men. He, therefore, would not attempt it.

What he had said, he had said in all the sincerity of his heart. He believed, as he lived, that by the cutting down of the executive patronage and the making of this great change in the judicial system of Pennsylvania, a deadly blow was aimed at the roots of this government.

With respect to the change proposed to be made in the judicial department, he knew the members of the bar to be divided, at least, in this body. And, although gentlemen here might be told that what a lawyer says goes for nothing, still his (Mr. M's) reliance was in the people, who, he trusted would not be so blinded—so misled as to imagine that the change would have the effect, as some gentlemen contended, of restoring the purity of this government.

In his opinion, no surer step could be taken of destroying it, much less of restoring it. Here was an attempt made to destroy that which rendered every thing else secure under this government. However free the executive might be, unless the judiciary was equally free, what, he asked, was protected? What was secure? Neither life, liberty, nor property. He sincerely believed, that when this question of a change in the tenure of the judges should be submitted to the people, they would be brought to see it in its true light.

He again repeated, that he was anxious to leave the people to try the experiment as to the two systems.

He trusted, then, that a majority of this convention would be found in favor of adopting this course. But, if there should not be, he at least would have the consolation of knowing that he had done his duty. He knew that there were some men who were not able to do a thing, because lacking moral courage. He did not profess to have more moral courage himself than most men; but he could say that he had given, and would always give, his vote according to his opinions. He saw no moral courage in a man having to give a vote founded on his best judgment. But, those he admitted to possess moral courage who could resist the popular cry, when satisfied that it was in error—who, seeing that the changes proposed to be made, were fraught with evil, could refuse to lend his sanction to them, despite of every consideration to the contrary.

He did not say—nay, he did not believe, there were any men present who would lend themselves to do that which they, in their conscience, believe to be wrong and improper.

If it should happen that a majority of this convention should refuse to give the people an opportunity of judging between the two systems, we should not only have violated their rights, but have prevented them from having an independent judiciary to decide upon their grievances.

Mr. Scott, of Philadelphia, rose and addressed the convention. After making two or three remarks, which were very indistinctly heard by the reporter, he said that he was glad to see that a sentiment of humanity had found its way to the bosoms of the members of this convention. He saw all very clearly—scattered before his eyes—dressed in all the habiliments of mourning. The block was there—the axe was there. And, he believed that in a few moments, the body of the constitution, so far as the judicial branch of it was concerned, would be lying there. He believed that in a few moments, the bleeding body of the constitution would be there immolated and destroyed. If no one else would, he would avail himself of the few moments grace that still remained to the victim, to raise his voice in its behalf, weak and feeble though it may be in these halls; so, that when the people hereafter come to pass on the actions of this convention (if he

was successful in his efforts) they might say we had, at least, left some few remnants of the constitution of 1790. He proposed to address a few remarks to the democrats of this body, and to the democrats of the state of Pennsylvania—to that party in this house and out of it, who go, as they say, for the sovereignty of the people, and for the sovereignty of the laws. He believed that in consistency with their own principles, they were bound to vote not only for the amendment of his colleague (Mr. Meredith) or against the whole section as it stands. He would call the attention of the convention and of the people of the commonwealth not merely to the effect of the change of tenure upon the judiciary itself,—but also, to the utter and total change in the whole frame of their government which results from the combined effect of the change of the judicial tenure and of the mode of appointment. What is the change which has been produced in the whole frame of our government? You have now an executive, elected by a majority of the people, whose business it is to superintend to the due execution of the laws; you have a legislature, whose business it is to enact your laws; and you have a judiciary appointed by your executive, who is to appoint your judges, but who from the instant of that appointment, loses all control over those judges. A man whom he has placed on the judgment seat, from the moment he has signed his commission, he remains to him an utter and entire stranger. There is your clear, beautiful distribution of powers—securing to every man safety, liberty, and law. What is it under your alteration? You elect your governor, and by and with the consent of the senate, you appoint your judges for ten or fifteen years. Twice in the active life of a man, must the whole judiciary of the commonwealth be exposed to change at the will of the executive and the senate. Now what is the influence of this on the frame of your government. I say, and I declare it to the people of the commonwealth of Pennsylvania, that this change in the democratic government of Pennsylvania, is turning it into an oligarchy, into the worst of all possible forms of government ever known on the face of the earth,—worse than a monarchy—worse than an aristocracy—worse than the despotism of a single man, whose appetite is generally satiate with one or two victims of passion. This oligarchy is composed of the governor of Pennsylvania on one hand, and of the senate on the other, who elect your judges four times in the course of their natural life. Who, I ask, will elect your judges? Will it be the governor of this commonwealth? No, it will be the senate; for, it is by and with the advice and consent of the senate, that appointments are to be made. And, those who look for justice must go a humble suitor, not to the executive for executive favor, but to the senators from every territorial district in the commonwealth of Pennsylvania for appointments.

Will it be the senate of thirty-three men who will appoint your judges? Will it be even that body of thirty-three men? or will it be that great overruling spirit which has commanded the senate and which hereafter may command the senate.

Your power of appointment would be in the breast of the man who can rule the passions of the people, and control the will of your senate chamber. There lies your power of appointment; and thence will he diffuse a spirit of dependent and blind subserviency with the judicial bench, till that spirit shall pervade every section of your state.

The judge will know that through the senator of the particular county, he has obtained his office. Suppose he should be subservient to the governor. It is infinitely less degrading than when the subserviency is upon an oligarchy of thirty-three men, having the control and influence of every county in the commonwealth. In such a state of things, the judge will be free and independent on no bench. Where ever he may go, in whatever county of the state he may assume his seat on the bench of judgment, he knows that he is constantly watched by a power to which in a few short years, he must again bow his head for the means of obtaining a re-appointment to his office.

Mr. SCOTT here gave way to a motion to adjourn, which was agreed to.

And the convention adjourned until half past 3 o'clock this afternoon.

TUESDAY AFTERNOON, JANUARY 23, 1838.

FIFTH ARTICLE.

The convention resumed the second reading of the report of the committee to whom was referred the fifth article of the constitution, as reported by the committee of the whole.

The amendment to the second section of the said report being again under consideration,

Mr. SCOTT rose, and resumed his remarks, as follows:

Mr. President: When the convention adjourned this morning, I was speaking on the abolition of the tenure of good behaviour, as taken in connexion with what was already done in allowing the senate to participate in the election of the judicial officers, and I was saying that it would create an oligarchy in the commonwealth.

The senate is a body which never dies. I know that, theoretically, the same remark may be made of the house of representatives; that is to say —there is always a house of representatives existing—but the house of representatives of one year may, and often does, find itself retained during the successive year. The office, however, expires at the end of a year, and there is no continuation of it. How does the case stand with your senate? Two-thirds of the senators always come in and continue in power from year to year. Even under the new constitution, you change one-third of the senators every year, so that the passions or the prejudices which might find their way into that body in the year 1840, may run through the senate of forty-one, two and three. There is a continuation —a succession of feeling, and a transmission of it from body to body and from period to period.

It is a very remarkable fact, that while in Great Britain, they are grad-

ually breaking down the power of their oligarchy—of their house of lords, which is their senate—we are endeavoring, in the commonwealth of Pennsylvania, by this representative convention, which assembled, among other things, for the purpose of reducing executive patronage—we, I say, are endeavoring to build up an oligarchical power.

The senate of Pennsylvania—under this new constitution which we are about to submit to the people, if that constitution should be ratified—will be placed in such power that, so far as power is concerned, I would rather be a leading senator of the state of Pennsylvania, than a peer of Great Britain. Compare the two. What do you find the peer of Great Britain to be? He is a man possessed of great wealth and hereditary power—sitting in a body which at this time can scarcely stand against the repeated assaults made upon it by the house of commons;—sitting in a body which even now is tottering to its fall. Compare such a man to a senator of Pennsylvania—to what a senator of Pennsylvania will be, under this new constitution, with all the power and authority which you are thus about to pour into his lap. There is no comparision between them in point of authority—there is no comparison between them in point of personal influence. Your new senator will be elevated to a higher pinnacle than that on which the peer of Great Britain stands. Yet this is what you aim at, when you give to the senate the authority to control the judicial appointments of your commonwealth. The manner in which the spirit of dependence in a judiciary thus created, will infuse itself into private life, has been ably descanted upon by another member of this body, but with reference solely to the supposed control of executive influence. For my own part, I conceive that the danger to be apprehended from that source, is infinitely less than that which will ensue as the results of this vast senatorial influence.

What is the influence of your executive? It is that of a single man—a man who is to be removed from power at the expiration of a certain time; and, therefore, a man with whom controversies, if they exist at all, may be one or two in the course of his term—which, however, are not very likely to occur.

What will be the effect of senatorial influence? Your senators live in every county—and all of them are capable of exercising some influence upon the minds of those who are dependent on that body for office; an influence resulting either from present power, or the prospect of future favor. How easy will it be for a prominent or ambitious senator to perpetuate the existence of his power in that body. His own constituents or district may send him two terms, and his friends or relations may succeed him; and thus the machine of power may be kept in constant existence—almost from generation to generation. You can assign no limit—you can fix no period at which that power shall terminate.

But there is another point of view in which this question is to be regarded. The power which you thus propose to bestow, will exercise a deep influence in controversies of a different character from those which have reference to private life. Your judicial officers are constantly and daily engaged in the decision of political controversies; and there are such controversies of importance which can be brought for decision before no other tribunal, save before a judicial tribunal. I recollect, within the last

three or four years, an occurrence in the history of parties here which will show the importance of the judiciary in the settlement of controversies of a political character, which may agitate the public mind. In this very ward in which the building in which we are now assembled is located, a heated controversy took place upon the day of the ward election, between the two great parties at that time contending for political supremacy in this city. They assembled to elect their assessors who were to return their list of taxables. A dispute arose among them. The party to which I did not belong obtained possession of the place of holding the election, as it was supposed, by violence. The party to which I did belong got a place at the opposite corner, and proceeded to the necessary arrangements. The party to which I belonged returned a considerable majority of votes for their assessors. That party had elected their assessors at the proper place. The other party elected their assessors at the other place, where they supposed they had been driven by violence. And both parties claimed a majority. What did they do? They went with the question before an upright and an independent judiciary. The gentleman from the city of Philadelphia (Mr. Meredith) and myself appeared before the judiciary on behalf of the party which we represented; and ———— appeared on behalf of the Van Buren party. Both parties were fairly heard, and the supreme court of Pennsylvania decided the case against my colleague and myself; and they declared that the assessors elected by the Van Buren party were the duly elected assessors, because they were elected at the proper place. And what was the result of that decision? The party to which I belonged submitted to it calmly. They were satisfied upon that decision, that the gentlemen who had been elected by the Van Buren party, were entitled to act as assessors. They believed it because the supreme court said that it was so. Their taxes were paid, and peace was restored throughout the city.

Now, Mr. President, let us suppose for a moment that the decision in this case had been given before a tribunal, the judges belonging to which were to have looked for a re-appointment to a Van Buren governor and senate—and at a time when their term of office was about to expire. Would the party which was defeated before that tribunal have placed any confidence in the decision? Would they not have supposed it to be a tribunal influenced by personal and party considerations, and not by a desire to do justice in the premises? This, sir, is one instance of a class of cases.

Let me now call the attention of the convention to that class itself. Before whom were all your disputed elections for county officers to be contested? All disputed elections for county officers are, by your acts of assembly, to be disputed before the judiciary of the state. Do we not know the ardour with which political questions are mixed up with the election of county commissioners?

Do we not know that your prothonotaries and a number of other officers, are to be appointed by the people of each county? Under the existing law, all controversies arising out of these elections, must be contested before a judicial tribunal. Thus, then, you have a county divided in politics, the different parties ranging themselves under opposite banners, voting separately and returning their different officers as elected, and a

dispute arises growing out of an election. Before whom shall it be tried? Before a judge who in one year has to seek for his re-appointment from a governor, by the aid of a senator of his county? Would that be a fair and an impartial tribunal? Can we reasonably, and with a knowledge of the human character, expect it to be so? Let the decision of the judge be what it may, would the people believe in it?

We have an instance, the result of which was laid on our table some three or four months ago;—I allude to the contested election in the county of Bucks, in which the coloured people were admitted to vote It was admitted that the votes of coloureft people, more than enough to have made up the majority in that county, were admitted to be polled. The judge decided that, if the facts turned out to be so, the election would be void. Suppose that the judge had to look for a re-appointment to office, to the governor and senate of Pennsylvania; a majority of whom were adverse to the right of the coloured people to vote. What degree of confidence would the people have placed in his judgment, if, under these influences, he had given the decision which, as an independent judge, he has given and to which we are willing to bow?

I will now remind the convention of another matter. There exists at this day in the commonwealth of Pennsylvania, the crime of high treason, and of constructive high treason. All these disgraceful judicial sins which disgraced the ermine of Great Britain in the early days of the judiciary of that land which sustained the struggle for the tenure of good behaviour, arose principally under the decisions in cases of constructive high treason. There was the case of Algernon Sidney, which is known to all of us, and to which I need not make further reference. In the year 1782, the legislature of the commonwealth passed an act, that a proposition to establish an independent commonwealth within the bounds of Pennsylvania, should be regarded as high treason. What is the language of that law.

"That if any person or persons shall set up any notice, written or printed, calling or requesting the people to meet together for the design or purpose of forming a new and independent government as aforesaid, such person or persons, and all others who shall assemble themselves for that purpose, in consequence of such notice, shall be adjudged guilty of high treason.

"That if any person or persons, at any meeting of the people convened for the purpose aforesaid, or for any other purpose, shall maliciously and advisedly recommend or desire them to erect or form any new government in any part of this state, independent of the present, or shall read to them any new form of a constitution, with design to induce them to adopt the same as a new and independent constitution, every such person or persons, being thereof legally convicted, shall be adjudged guilty of high treason."

This act, continued Mr. S., was passed in the year 1782, after the adoption of the first constitution of the state, and within a few years after we had secured our independence of British tyranny, and at a time when the fire of freedom burned as brightly as ever. And yet at that period, a legislature was found to pass an act, which, I say, adopts a constructive high treason, which condemns a man not from acts, but from words, pri-

vate opinions and feelings. I am aware that we no longer talk of dividing the state of Pennsylvania, but I point to this act for the purpose of showing that, in the history of our commonwealth, we have passed a law creating the crime of constructive high treason, and attaching to that crime the punishment of death.

Who would undertake to say what would be done? Who would undertake to say that the legislature would not, at some future day, declare it to be high treason to receive a coloured man's vote? He contended that there was great danger to be apprehended from vesting the senate with so much power—that they were liable to abuse it, and thus to bring the body into odium. We had already seen the senate of the United States almost render itself odious by performing a most extraordinary process; and, instead of being, as it was called, the senate of the United States, it had acted as if it were merely the representative of a particular party in the country. He was no alarmist, nor did he wish to create any unnecessary fears; but this convention was now forming a state government, not only for the present generation, but for all time to come, and it behooved them to be careful what powers they conferred and how they distributed them. He begged to call the attention of gentlemen to what had transpired in the senate of the United States within twelve months. Had we not seen a citizen of the United States, from the state of Ohio lectured, and reproached, and reviled, by a distinguished senator—deprived of his liberty in an unwarrantable manner, and rebuked before the whole nation for an offence which he had not committed?

Suppose an individual to meet with like treatment in the senate of Pennsylvania under the amended constitution, and the judges to be appointed for a term of years by that body in conjunction with the governor, and that man to apply to the courts for redress, what probability was there that he would obtain a fair and impartial hearing. In his, Mr. S's. opinion, there was but little, under such circumstances. It was almost contrary to the human heart to do justice, when placed in the peculiar condition which judges would find themselves in, if appointed for a limited tenure, particularly under circumstances like those he had just related. This was the view taken, also, by the president of this body, in the admirable speech delivered by him some days since, and which he, Mr. S., hoped would be read by every body. He would call the particular attention of the democrats of this convention and of the state at large, to that speech.

Did not gentlemen remember that the legislature of Pennsylvania had, about eighteen months ago, debated some time, as to whether they should commit Governor Wolf and other gentlemen to prison, and keep them there the remainder of the session, for what was regarded as a violation of the rules of the body? Did not gentlemen remember the proceedings—no matter whether they were right or wrong. Now, supposing that a different decision had been come to by the legislature than they arrived at, and that the gentlemen referred to, had sought redress at law, from judges sitting under a limited tenure, against the sergeant-at-arms, was it likely that they would obtain it? Did not gentlemen, he repeated the question, remember that about eighteen months since, several members of the legislature and others were brought before, and arraigned in the presence of the house, and were there lectured and rebuked? He wished that he could forget it. But, supposing that any of the individuals had

commenced an action against the speaker or the sergeant-at-arms, would he be likely to obtain justice at the hands of a judge, whose tenure was about to expire, and who looked forward to a re-appointment? The injured party could not believe it, nor any other man.

He, Mr. S., begged to cite an historical incident of the revolution of 1789 in France. We all know that the revolutionary judges were the creatures of the popular will. They held their offices at the will of the directory, or council of five hundred, or whatever else it was called. They were daily in the habit of trying men for political offences, and they were so much urged on to do so by the jacobinical body sitting in the adjoining hall, that in twenty days, no less that sixty executions had taken place for political offences. And, the unfortunate beings, let it not be forgotten, were tried by judges who held their offices at the will of the people!

The incident he was about to relate was this: One day there was brought before those judges, a man whose hair was gray and whose character was unimpeachable. He was suspected of some political offence, and was in consequence arraigned for his life. The court, after examining the evidence, were unwilling to convict him—when the jacobinal legislative body sent to inquire if that prisoner had been convicted; to which answer was returned that the testimony against him was insufficient, that it was too strongly in his favor. This message, at different intervals, was repeated, and a similar answer was returned, the court having become still more satisfied of the innocence of the intended victim; when a final message was sent, from those who had acquired the temporary power to control and command the judiciary, to the effect that if that prisoner was not convicted within one hour, the judge should himself be ordered to execution. The white haired victim was convicted, and the obedient judge remained upon the bench to administer justice—such justice, as must, to a less or greater extent, always be the result of a weak and wicked subserviency, in times of great excitement, to the political power, perhaps faction, that may happen to have a temporary ascendancy.

He had related an anecdote of the revolutionary judges of France, and now he would say a word or two concerning the judges in monarchical France. It was well known that since the revolution of 1830, the monarchical power has lost strength. For, just prior to that memorable event, notwithstanding the judges held their offices under the tenure of good behaviour, and independent of the king, he possessed the power of declaring their acts unconstitutional. That power he exercised, and proclaimed martial law. This and other acts led to the revolution, since which time, the judiciary has become more independent. He, Mr. S., would ask, why it should not be, at least, as independent in this great commonwealth? He had heard it said that the genius of the day was to expand political freedom—to understand the principles of freedom. He understood the freedom of France to partake of the republican principle. He begged leave to ask, how a man can be made more free than he is in Pennsylvania at this moment? He would ask how he is to expand the doctrine of self-government; how he is to enlarge the principle of freedom—to enlarge the judicial tenure? Let every man put the question to his own soul.

Am I not, said Mr. S., to the utmost extent, a free and an independent man? Is there a man in this body who can become more free and independent than he now is? What does he want now to perfect his freedom? Whose favour does he want—whose frown does he fear? Who dare take from him his seat, or his property? Who dare assail his reputation? Sir, how can you make a man—a single man, freer than he is in the state of Pennsylvania? And that which is true of an individual, is true of the community at large.

But, there is another reason, besides those I have noticed, why gentlemen would alter your judicial tenure. They say that a judge is now a life officer. Sir, let us not be misled by terms. How, I ask, is a judge a life officer? What is meant by a life officer? I will presume it must be a supposition, because, there is no constitutional definition of the term: nor, is there any legislative definition of it. What I understand by a life office is the appointment of a man to office, when in the enjoyment of active life, and for life, as the judges in England may be said to be, they holding under the tenure of good behaviour. What is the office of a judge in Pennsylvania? Why, at best, it is an office for the poorer members of the bar; and a man's life is half spent before he obtains it. I repeat that it is an office for members whose lives are half spent. How many years of a man's life are spent in study and labor before he is competent to fill the judicial station: but, then, he has not experience enough to enable him to sit on the supreme court bench, or the court of common pleas. Give him ten years more. Fifteen will bring him to forty, when he is appointed to an office, which is to endure—how long a time? He will then have passed through youth before he is fit for the station. And, there is a small portion of life left when he arrives at the age of forty; and, then, at sixty or seventy he ceases to be a judge, or perhaps a living being. He enters upon the duties of an office, after a life two-thirds spent, and from which he may be removed by a vote of the senate or the house of representatives. And, this is called an office for life! Sir, why should he not be permitted to render services to the commonwealth the remainder of his life during which he has the will to labor?

Do you refuse permission to the mechanic who begins to practice his trade at the age of eighteen years, to continue to practice it to the latest period of his existence? Has such a propositions ever been entertained? Do you refuse permission to the freeman who comes into the possession of acres at the age of twenty-one years by purchase, or the death of his parent, to cultivate those acres and to reap the fruits of them to the end of his life? Do you refuse permission to the student who has devoted his early years to the study of the science of medicine, to practice that profession so long as he may live? Or do you refuse permission to the lawyer to continue the practice of his profession to the latest period of his life? Have such propositions ever been entertained? No, sir, there is no trade, occupation or profession known to men, the right to follow which is not guarantied by the constitution, from the very moment that he enters upon its exercise to the time when his heart shall cease to beat, if he chooses still to follow it. The farmer is a farmer for life; the physician is a physician for life—the mechanic is a mechanic for life; and why should not a judicial officer, who has been upwright and fearless in the discharge of his duty, be permitted to retain his office during the small balance of his life? It is

said that he is irresponsible. How is that? Is it the case? I know of no officer in this commonwealth who is so responsible as a judge. What do you mean by responsibility? I hear gentlemen talk of their responsibility here, and of their responsibility as members of the legislature. What is it? when we speak of the responsibility of a member of this convention. What is it? What is the responsibility of a member of the legislature? How are either of them responsible? If either of them does wrong, how can the people punish them? Can they be punished by imprisonment or fine? Is there any thing of a penal character which can be inflicted upon them? They are no more responsible than this—that they are responsible in character and reputation. The people may, or may not, at any future time re-elect him as their represetative. But what is this? Is this the responsibility of a judge? Yes, sir—with much more super-added; he is punishable. He is removable not for misdemeanor alone but for impropriety of conduct

Show me, if you can, another officer in the commonwealth who is responsible to this extent. The governor is not. I say the governor is not. You can not remove him. Prothonotaries are not responsable to such an extent—for you can not romove them. You may indeed punish the governor by impeachment during or after his term, but you can not remove him when he ceases to fulfil the duties of his office. You are under the necessity of waiting until the expiration of his term.

I have only a very few words more to say, Mr. President, and I will not trespass upon the time of the convention many moments longer. I have a remark to make in relation to a particular branch of your judiciary. The amendment now before us has reference only to the judges of the supreme court. I shall vote in favor of it, because it preserves alive the principle of independence now existing in our constitution, which I hope may grow and expand until it shall cover the whole of your institutions. But I say to gentlemen whose residence is in the county that I consider the principle of the amendment as important to the county judge as it is to the judge of the supreme court. Life is at stake before the court of the county. It is the judge of the county court who presides over that court which holds in its hand the balance of life and death much oftener than does the judge of the supreme court. Take the people of your county. You give them a judge for the term of ten years. I say that the most talented and enthusiastic young man who may be raised to the judicial bench—and this, I believe is an idea in which men of all parties concur—the most talented and enthusiastic young men must serve an apprenticeship—so to speak—of two or three years before he will be properly suited to perform the duties of this important office. He will have to unlearn much that he has learned. He will spend the first three years of his term of ten in fitting himself to perform the duties of his office; and he will spend the last three years in the apprehension that the moment is about to arrive when he will lose the means of supporting himself and his family; when he must bow and court for favor in order to retain his office, as no honest or independent judge would consent to do. Here then you have a judge for the term of ten years; three or four of which must be spent in learning the duties of his office, and the last three or four of which must be spent in the agonizing apprehension that he is about to lose that which affords the means of subsistence to himself and his family. You have thus an intermediate period of about three years in a term of ten, during which you may expect that a

man may perform his duties. Is this a system such as the members of this convention are willing to go? Is this a system which we are willing to recommend to the adoption of the people of this commonwealth who have so great an interest in the result? I ask the advocates of reform in this body, as I did at the outset of my remarks, whether they are willing to go for it? I for one, whatever may be the determination of other gentlemen —I, for one, can never consent to break down the tenure of the judicial office during good behaviour, which tenure I believe to be the basis and the corner stone of our free institutions.

Mr. CLINE, of Bedford, rose and said

Mr. President, this is a very important question and I am desirous to explain my reasons for the vote I intend to give. It will necessarily happen that I shall go over some of the grounds which have been touched upon by the two gentlemen who have preceded me. I will, however, be as brief as I can. I am, however, admonished of the necessity of being so, by the rule which provides that a delegate shall occupy the floor but for the space of an hour. I shall therefore proceed, without further preface, to explain my opinions and views.

In the very long and laboured discussion which as taken plece in committee of the whole, on the subject of judicial tenure, it seems to me that it has happened on that occasion, as it not unfrequently does on other and similar occasions, that we have drawn on sources of doubtful authority for argument, and have been willing to rely on facts and illustrations which have had but little relevancy to the question in debate. The judicial history of Europe, or at least of several of the prominent nations of Europe, for past centuries, has been confidently appealed to; by gentlemen too who have advocated both sides of this question, without perhaps sufficiently adverting to the fact, that the same reasons which existed for a particular state of things at one period of time might not exist at another, and that what it was proper for one people to observe it might be equally proper for another people to avoid and condemn.

I make these remarks, Mr. President, because if it shall be found that I am not mistaken in my views on this subject, then we at once get rid of the consideration of an immense mass of matter, which can serve no other object than to distract the attention, and lead to opposite conclusions from those which are founded in truth. There would be no danger in reasoning from analogy, if we were always sure that the facts, and circumstances of both cases were precisely similar, and that there was not something in the one which could not be found in the other.

The judicial history of England, for instance, has been referred to as affording undoubted evidence that our judges ought to be appointed during good behaviour and not for a term of years, and this principle has been strongly asserted by some gentlemen without perhaps very carefully inquiring whether a difference in the state of the two countries might not lead to a principle different from the one which is supposed to be the true one.

Now, let us inquire how this matter really is. You must appoint our judges during good behaviour, say the advocates for this doctrine,

because they do it in England, and because there it has been found to be the only safe way of preserving the independence of the judges, and securing the liberties of the people. I at once acceed to the correctness of your position so far as regards the operation of this principle in England, but does it follow from this that the same principle is to be engrafted in the constitution of Pennsylvania? Is there no difference between the people of England and the people of the state which we have the honor of representing in this hall? Is their moral and physical condition the same? Is the structure of their government the same? Have they both agreed to enter into the same social compact? If thay have, sir, then did our fathers vainly sacrifice their lives and fortunes in defence of American liberty.

Mr. President, there is a difference between the government of Great Britain and the government which was established for us under the constitution of this state. There is a marked, a prominent and radical difference between the two. However, gentlemen may be disposed to assimilate them together in some of their important features, yet the broad and distinctive marks which separate them, cannot be mistaken. The one is a monarchical, the other is a republican form. The one is the creature of a barbarous age, when it had passed into a maxim that the weak must submit to the strong, the other is the offspring of progressive knowledge, pointing to the scale of political justice, and laying the foundations of government on the natural and inherent rights of men. The one is in many important particulars, managed by a single individual, the other by the people. Can we not see therefore, that it was highly necessary to the people of England, that the judges should be independent of the king, who otherwise in his attempts to trespass on the rights of the people, might engross to himself the whole judicial power, and become the sole and arbitrary dictator of all law and of all justice? But the same reasons to the same extent for the independence of the judiciary,—I mean only in reference to this part of the argument—do not exist in our country. Here, if I may so express myself, the people are the governors as well as the governed. It is not at all likely that they would ever attempt to dictate to the judges—that they would ever resort, to the judicial tribunal merely to gratify their whims, or like a single individual, seek to prostitute it to the purposes of malice and revenge. In this view of the subject, therefore, no matter how long or how short the tenure of a judge might be, I think his independence of the people would be greater in this country than under any circumstances his independence of the king could be in Great Britain.

But, Mr. President, let me not be mistaken on this important matter. I am radically and essentially conservative in relation to the tenure of judicial office. I stand up here as the sincere and humble advocate of the good behaviour tenure, and although I do not think that the same reasons exist for it here that exist in Great Britain, yet I believe that there are other reasons equally cogent, nay, that ought to operate on our minds with tenfold force in favor of this independent tenure of office. Let us for a moment examine some of these reasons.

And here Mr. President, I may be permitted to say, before I proceed any further, that I pay almost as little attention to the examples set us by our sister states, in relation to this important matter, as I claim to the examples set us by Great Britain, or by the people of any other Euro-

pean nations. And why do I think so lightly of these examples? For two very good reasons. In the first place I have reason to believe that in the two or three states of our Union, where this system has existed for any considerable length of time, its operation has been found to be inconvenient, imperfect and far short of answering the ends for which it was instituted. How is it, sir, in the states to which I have reference? Is the law administered there without sale, denial or delay? Are the decisions of their judges of such high authority, that they can always be appealed to with confidence? Are their judges so learned in the law as to add to the science of jurisprudence, and are the reports of their decision eagerly read in the other states? Is it not to be feared that many excellent men have been forced from the bench, in order to give way for more pliant tools, whose decisions would be as little creditable to the bar as their political characters are to the community? I say have we not reason to believe that such a state of things exists in all those states in which this system of limited tenure has existed for any considerable length of time. It is very certain I think, to say the least that can be said on this subject, that they have had less weight in giving character and consistency to the jurisprudence of their country than they would have had, had they originally adopted a different system.

On the other hand sir, what can be said of those states which are yet in their infancy, and where this system has been adopted, rather perhaps as an experiment—rather perhaps with a view to gratify an unconquerble thirst for novelty—then as one which has been sanctioned by time, and which has received the approbation of the wise and good and enlightened men of our country? Shall we go to Michigan, or to Arkansas for the discovery and establishment of a new and important principle in the most important of all sciences, I mean the science of government? Shall we discard the institutions of our fathers—the lights of experience, and cling with fanatical superstition to the Eutopian and untried schemes which as yet have but a mushroom and sickly growth in the western wilds of America? I for one am unwilling to do so. You must give me some better earnest of the success of these schemes, than merely to tell me that they have been adopted by some of the infant states of our republic, and have been made a part of their fundamental law. Before they receive my approbation they must be sanctioned by experience.

How then are we to arrive at truth in considering this important subject which now agitates the mind of this convention? Where should we go to seek for arguments, and to what sources refer for matter congenial to the question which is now debating? I think it may be said with perfect safety, that this is a subject which belongs exclusively to ourselves as a people, and which cannot receive much light from the history and experience of other nations. It can no where be so well elucidated as by arguments drawn from our own reasoning, founded on principles applicable to our own experience as a state. It has been truly said to be a common sense question, which can but be solved by reflections drawn from experience and observation. That this question is weighty and momentous in itself, no one can for a moment doubt; that it ought to receive the grave and deliberate consideration of this convention, is equally true: and that on its proper solution much of the future happiness and welfare of this state may depend, has been acceded, I presume, by every gentleman

who is within the sound of my voice. What then is this question? I take it to be simply this—whether our judges shall be appointed during good behaviour, with a remedy for their removal, provided in the existing constitution, or whether they shall be appointed for a term of years, with I presume the like remedy.

The advocates for reducing the tenures of the judges to short periods seem to rely on the following arguments. They say that this mode of appointment would

1. Be more congenial to the known and established practice which prevails in the other departments of our government.

2. That it would make the judges more immediately responsible to the people for their conduct.

3. That this responsibility, in proportion as it would be more sensibly felt, would as a necessary consequence, produce a greater degree of caution, impartiality and integrity in the judges.

The first argument then is, that the practice of appointing our judges for a rerm of years, would harmonize with the mode of appointing officers in the other departments of our government. But where is the necessity or the propriety that this harmony should exist? It is the part of wisdom always to endeavor to adapt the means to the end. No man who has the superintendence of a tract of land containing three or four different fields will say that each of these fields is to receive precisely the same kind of culture, or that there may not be different modes of arriving at the same end with respect to the different departments of his farm?

The people elect their governor for a term of years. He has high and responsible duties to perform it is true, but none of them are half so important as those which belong to the judiciary. Besides, these duties are soon learned, and only require that a man should possess a good judgment and common honesty to perform them well. It does not require that he should undergo the labor and experience of half a life time in order to fit himself for the office of chief magistrate of Pennsylvania. If he only be a good man, there can be but little apprehension that he will not make a good governor.

But again, the people have a better opportunity of judging of the fitness of a candidate who aspires to the chief magistracy of the state, than they have of judging of the fitness of those who are to fill the judicial stations of our country. The man who aspires to the gubernatorial chair, is always well known before the people are called on to vote for him. Every newspaper in the state is either for against him. His virtues and his faults, his learning and his ignorance, his wisdom and his folly, become equally the topics of public debate and of private discussion. If the people err in their selection, it is not because there was not full opportunity given them to make a right choice, but because they permitted their prejudices or their folly to get the better of their judgment. They are always in possession of proper information, and if they make an improper use of it, they have none to blame but themselves.

I know, Mr. President, that it may be said that the advocates of the system which I oppose are not for electing their judges by the people,

that this forms no part of their plan, and that however, much this may be desired by a few of those who are called ultra-radical, yet that the vast majority of them are opposed to it. Well, sir, I do not pretend to reconcile differences, between themselves—that is a task which I cheerfully resign to abler hands than mine. But let us take the system as it has been given to us by the majority, and what does it prove? Why it goes to confute at once the argument drawn from analogy—that because the other departments of the government are filled by officers appointed for a term of years, therefore the judiciary department should be filled in the same way. I would say to these gentlemen at once, if this be your argument, why not carry it out in all the length and breadth of it? Have you not made, or do you not desire to make nearly all of the other officers of the government immediately elective by the people? Are they not all to be elected for a term of years? Do you not zealously contend that it is right that it should be so, and that this is the only efficient and republican mode of making public officers responsible to the people? Now, if this rule be so wise, so salutary, and so essentially important in securing a faithful discharge of the duties of the different functionaries of our government, why except therefrom the judiciary, which is the most important part of it? Why not preserve your consistency, and bring within the letter and the spirit of the rule, the judges as well as the other officers who are placed in authority over us.

When you tell us that all the officers under the constitution which you are about framing, ought to be elected by the people, why has it not occurred to you that the judges ought to be elected likewise? By assuming the ground which you choose to take, do you not tell us in so many words, that a distinction is to be made between the judges of our courts and other officers? Well then what does this amount to? It only goes to show that you too are persuaded that the judicial department of our government is not be managed precisely in the same way that the other departments are managed. If therefore, you agree that there ought to be a different mode of appointment, might it not happen too, that there ought to be a different mode or a different extent of tenure? At all events in order to presere your consistency, you must abandon the ground you have assumed, that the judges are to be appointed for a term of years, because all other officers are appointed but for the same period. And if you abandon the principle in one particular, you may do it in another. It is in vain therefore, for you to say that the judges are to be appointed for a short term of years, in conformity with what exists in the other departments of our government—if at the same time you say that this analogy is to be disregarded with respect to the mode and manner of conferring on them their appointments.

But, Mr. President, it is said that this limited tenure would make the judges more immediately responsible to the people for their conduct. Let us examine for a moment the arguments by which it is attempted to support this position, and see whether they are founded in reason, or whether they are likely to be comfirmed by experience.

It may be remarked here, sir, at once, that this position seems to lose its chief support from the fact, that when you take the whole system together, as contended for by the gentlemen on the opposite side of the question, you find that a part of that system is, as I have already stated in

to be, not that the judges are to be elected by the people, but that they are to be appointed by the governor, by and with the advice and consent of the senate. The judges then are to be responsible to whom? Not immediately to the people, because the people have no immediate voice in their selection or appointment. But they are to be responsible to the appointing power, to the governor and senate, to the source from whence their commissions are immediately derived. Now gentlemen say that they will not trust the judges, that by appointing them during good behaviour they become fearless and irresponsible, and that justice in their hands is sometimes partially, and sometimes corruptly administered.

But why will you trust the governor and senate? Are you sure that they will always listen to you when you tell them that one of your judges ought not to be re-appointed? Are you sure that the scale of justice will be so equally and steadily poised in their hands, that there will be no danger of their meting out too much or too little in the distribution of power? Will they have no party feelings to gratify, no private grudges to listen to, no vulgar prejudices to contend with? Will they be able at all times to appreciate your motives, and to give proper weight and influence to the considerations which induce you to believe, honestly to believe perhaps, that a judge ought to be removed? I ask you, where is your security, that the governor and senate will do right any more than the judges? You place over the judges the governor and senate, as a council of censors, who are to say, at regular and stated periods, whether justice has been properly administered or not. But who is this council of censors? Is it a body of men so fearless, so independent, so pure, so intelligent, that they will always deal out exact justice between the people and their judges? Are they insensible to popular favor and popular applause? Is it quite certain that they may not sometimes be influenced by the judges themselves? May it not be that when you ask them for bread they will give you a stone? That when you ask them for a just and upright judge they will give you a party judge? That when you ask them for reform of the judiciary, they will only make it more exceptionable than it was before?

Mr. President, it is in vain to say, as an answer to all this, that the governor may be removed, and the senate may be removed, and that by changing these officers the people will thus have it in their power to change their obnoxious judges? Sir, it cannot be done. The people in one part of the state will feel comparatively but little interest in the appointment of judges in another part. And even if this could be effected, a considerable time must elapse before the measures for its accomplishment could be carried into successful operation. In the mean time you have suffered under a careless, an ignorant, perhaps a corrupt administration of justice, until the term of your judge's commission expired. When that took place you asked for the appointment of a person more honest and more capable, but without success. You must now endure the evil of having a bad judge for another term of years, and when that takes place you will not even then be sure that a proper remedy will be found for the evil of which you complain.

Sir, is there not danger that the system may work as I have represented it? Is it not to be feared that party spirit, that sinister intermeddling, that political favoritism, will be found to accompany us in every stage of the experiment? Who are likely to be the applicants for executive favor under

the new system which you are about to establish? The very men, sir, who in all probability will be the least deserving of it. Remember that the terms for which your judges are to be commissioned will expire at stated and regular periods. These periods will be known to every man who may chose to inform himself on the subject. One of the great infirmities of our nature is, that man is always aiming at the acquisition of power. At least it is so with ambitious men, and I believe members of the legal profession, as a general rule, are as much, it may be even more subject to this infirmity, than those of any other. Here then we shall have a class of men constantly exposed to the temptation of looking forward to the periodical expiration of these judicial tenures for personal aggrandizement and promotion. Sir, you cannot prevent this. Parties will still exist. That political maxim adopted here and elsewhere, so disgraceful to its advocates, so repugnant to a just and impartial administration of the government, so selfish and so sordid, I mean, that to the victors belong the spoils, I say that maxim will still exist. The whole system of intrigue for office, of conciliation and of patronage will still exist. The basest of men will be plotting and counterplotting, in order that they may push others from their stools, and become firmly fixed in their places. And will not this be a great evil? will it have a tendency to secure the upwright and impartial administration of justice? Certainly it will not.

The third argument, sir, that is used is, that under these short tenures there will be a feeling of responsibility which will produce a greater degree of caution, impartiality and integrity in the judges. And how do the advocates for a limited tenure of office attempt to prove this? They tell you that when a judge knows that he may be removed from office at the expiration of a certain period of time, he will be more circumspect, more honest, more industrious, and more attentive to the high duties which devolved on him as one of the most important functionaries of government. Now I would be willing to accede to the force of this argument if it could be proved to me that men become the objects of political promotion in proportion to the virtue, integrity and impartiality of their conduct in discharge of their official duties. It would add great force to the argument if we were sure that the executive and the senate could always be correctly informed with respect to these very important qualifications, and that when so informed the choice would be made where they found them to exist in their greatest perfection. But I contend that they would neither be very correctly informed as regards the pretentions of the candidate for office, nor would they always act in conformity with their duty when this information was correctly given. And what are my reasons for saying so? Why do I suppose that the executive and the senate might not always discharge this high trust delegated to them by the people in the most upwright and satisfactory manner? For the simple reason that all political preferments are most generally awarded from other and widely different considerations. And if this be so, what would be its effect not only on those who are out of office, and who would attempt at all times to make their political zeal subservient to their private ambition, but, sir, what would be its effect on the man who is in office, on the judge himself, who would know the exact period at which his office is to expire, and that he is dependent on the executive and senate for a commission of re-appointment. Would he be so calm, so cool, so contented, so indifferent, as to rest entirely secure in the belief of a renewal of his commission? Would he

forget that his continuance in office depended altogether on the will of those who might chance to be placed in power at the time, and that in order to share this power with them, he must identify himself with their measures and principles? Here then is a party judge, to be fed from the crib of party patronage, and to have his daily bread taken from him unless he descends from his high estate to mix in the dirty arena of party politics.

Sir, am I exaggerating this matter? I say that the judge must and would have regard to the party who had appointed him, or from whom he expected the renewal of his appointment. I do not mean that it would be the executive and senate alone to whom incense must be offered by the judge. They would indeed be considered the head of the party, and would be the more regarded on account of holding the power of appointment in their own hands. But it would be *the party* which must be propitiated. And who are *the party?* Why every roystering knave who might choose to spit his frothy patriotism round a township meeting—every blustering demagogue whose incorrigable zeal made him a public agitator in the cause of democracy and the people—every village politician who is constantly piping for the rights of the people, while his whole soul is employed in securing the plunder and spoils of political appoinment. These would be the very kind of men then,—perhaps the very worst men in the community—whom the judge must be fearful and cautious of offending, whose lynx-eyed vigilance would ever be in active exercise to detect the slightest blemish in the discharge of his official duties, and who with the characteristic impudence of party leaders would tell him to his face even perhaps when he was acting with a sacred regard to his conscience and his oath of office, that he must beware, lest he should forfeit the seat which he held by no better tenure than their good will and pleasure. We made you a judge, would be their language, and we can just as easily unmake you again as soon as the few weeks or months of your short commission shall expire.

Sir, I have already said that bad men would be plotting and intriguing for the purpose of filling judicial stations themselves, and they would frequently be appointed to these stations for no other reason than because they are bitter political partisans. But supposing a judge should be pure and upwright in his character, honest and industrious in the discharge of his official duties, when first appointed, could he be expected to remain so under the state of things I have attempted to describe to you? Would he not become infected amidst the tainted atmosphere of political agitation? I know it may be said that a man of as much integrity and honesty could be obtained to fill a limited tenure of the judicial office as to fill a tenure which was to last during good behaviour. Of this, however, I entertain very strong doubts. Nay, I have said and will say without hesitation, that I do not think it at all practicable. But supposing it to be so. He is but a man at last, possessing all the infirmities incident to our common nature, and liable like other men to be seduced from his duty by fear, by prejudice and by popular excitement. Here then is the difference between a judge for years, created during the pleasure of a party, and whose continuance in office is identified with the preservation of power in the source from whence he derives his appointment, and the judge who is appointed for life, who feels himself secure in his office, and entirely independent of the operations of party, or the force of any other circumstances around him.

The one bows to the dictates of popular opinion—the other listens to the voice of God and his conscience. The one is influenced in his decisions by a slavish anxity to preserve his place, the other is assured that he holds and exercises his power by a tenure so strong that it cannot be wrested from him except for corruption and incompetency in the discharge of his official duties. The one is the timid, time-serving, drivelling instrument of political dictation—the other is the fearless, upwright and inflexible advocate of justice and the laws of his country. And if you take it for granted that both may be bad men on first receiving their appointments still the one will only be growing worse, while the other will be constantly growing better.

But again, sir, under the system which is contemplated by those who oppose me, where will you get your judges from? Can you expect that men of eminence in their professions, who have acquired the confidence of their fellow citizens, and who are enjoying a lucrative practice, will so far loose sight of their own interests, as to accept a seat on the bench, which may not be very honorable under these limited tenures, and which will certainly not be very profitable, and forego the honors and emoluments which they are in possession of at the bar? Few men I am afraid will be found, I mean few capable and honest men, who from the inducements offered to them will be ready and willing to make the exchange. It will be in vain to tell them that they may continue on the bench, that their re-appointment will depend on the ability and fidelity with which they may discharge their duties, and that all that will be required of them will be an honest and faithful administration of justice. As a refutation of your arguments, they will point to ancient and to modern experience—they will tell you of innumerable instances of perfidy on the part of government towards her public servants—they will point to Drake and to Ewing, and ask you whether those men were not sacrificed on the altar of party prejudice, and whether they were not made the victims of a blind confidence in the rectitude of political rulers.

I must apologize, Mr. President, for having troubled you so long on a subject which has been so amply and ably discussed. I have thought it my duty, however, as I have before intimated, so far as my constituents were concerned, to submit these remarks, few and desultory as they are, before I gave my final vote. It is a matter of regret to me to find that this important question—one of the most important, in my view, which has engaged the attention of this convention, with the exception, probably, of that article of the constitution which relates to education—I say, it is a matter of regret to me to find that, at the present stage of the debate, so little interest is manifested generally by the members of this body. We were told this morning that the bleeding body of the constitution was about to be immolated. I have voted, in conformity with the dictates of my conscience, to make some amendments to the constitution; but I do say, without hesitation, that all the comparative advantage which can be attained by the amendments we shall make, will do infinitely less good to the people of the commonwealth, that this section, should it pass as an amendment, will do evil.

I have considered this subject with anxiety. I regret that it is out of my power to do more than raise my feeble voice, and say how I design to vote. I do hope to see, even at this late stage of the debate, men of talent

and character, not only here, but out of this house, rise and stand in the gap, and say that if we are to part with the independence of the judiciary, we, at least, will part with it struggling as for life.

I shall record my vote in favor of the amendment of the gentleman from the city of Philadelphia, (Mr. Meredith) and if no other amendment is adopted, I shall then record my vote against the whole section.

Mr. EARLE, of Philadelphia county, said that the argument on this subject, while the convention was sitting at Harrisburg, was almost exclusively confined to one side of the question—that in favor of the tenure which is nominally for good behaviour, but substantially for life. It might be that nothing which could be now said on the other side, would change any vote in this body. It was, however, to be remembered, that the discussions here, were, in many cases, intended to influence the opinions, not only of the members of this body, but those also of the people at large, with a view to affect their action in the adoption or rejection of the amendments which we might propose to them. The ingenious and plausible arguments that we had heard, in favor of the permanent tenure for judges, had already been published, and perhaps extensively circulated for this purpose. It was, therefore, but reasonable, that those who were friendly to the limited tenure, should offer their views, in hopes that they might have whatever weight was their due, here or elsewhere. This was in part his apology, for a brief statement of some views, which he doubted not would receive such a degree of consideration as they deserved, however feebly and inartificially they might be expressed.

In giving to the executive the power to nominate judges, and, with the advice and consent of the senate, to appoint them, as the convention had decided to do, it went on the ground that that officer would act, in making the appointments, with skill and fidelity. This, he believed, would generally be the case; yet he thought a single individual more likely to be imposed upon, by misinformation, or swerved by feelings of personal friendship or association, than a considerable body of men. Hence he believed it would be better to give the appointment immediately to the senate, than to give to that body the mere privilege of a negative on the governor's nominations, which, owing to feelings of delicacy, or the influence of interest and executive patronage would not often be exercised. He thought it would be still better to give the appointments to the house of representatives, as being a more numerous body, and best of all to vest them in the two houses in joint ballot.

He took the question, however, as settled by this body in favor of the nomination by the governor, and the ratification by the senate. Now, admitting that all our governors will be both honest and capable, it is evident that we may as safely trust one governor with the decision of the question whether a judge should be re-appointed, as we could his predecessor with the question of such judge's original appointment. If, on the contrary, we suppose that some among our chief executive magistrates may be deficient, either in talent or integrity, in the exercise of the appointing power, it would be a monstrous doctrine to say, that the appointments made by such an executive should be perpetual, rather than that the people should have an opportunity to correct the evil, through fresh appointments, made by a worthier executive. Hence were it even true, that no additional

knowledge of an individual's degree of fitness for office is obtained from actual experience and observation of his performance of its duties, it would still be wise to limit the term, so that the people might undo that which a faithless agent might have done, against their wishes, and contrary to abstract propriety.

But take the facts as they really exist, and the argument becomes much stronger. It is impossible for the people, the senate, or the governor, to be as competent judges of an individual's fitness for a station, before he has been proved in it, as after a fair trial has been made. No man can himself estimate, with accuracy, his qualifications for a place in which he has never been tried. Hence we find, particularly in relation to judges, that in the performance of their duties, some few exceed, and others fall far short of the expectations which were raised at the time of their original appointments. Instances in corroboration of this truth, are probably famliar to every gentleman here. Consequently the executive, enlightened by intercourse with members of the legislature and other citizens, will be far more competent to judge correctly of the policy of re-appointing a judge, than he was of the policy of his original appointment.

We find, too, that the characters of men frequently undergo a change. A judge who was industrious, temperate and honest, may lose one or other of these qualities, and when this shall be the case, an easy mode of emoval ought to exist.

Experience has shown, that a judiciary may construe erroneously the great principles of the constitution, upon which the very existence of liberty depends. I have no hesitation in avowing the opinion, that as the people are the power which may rightfully establish these principles, in a manner not inconsistent with moral obligations, so they are the rightful ultimate judges of the meaning or intent of parts of the constitution in which they are declared; and that in a case of gross misconstruction by the judges, like that through which the judges of the supreme court of the United States declared constitutional the sedition law—a law which went to suppress the liberty of speech and the press—the people ought to have the means, by deliberate and temperate action, of removing such judges: and a limitation of tenure, is the best and safest mode of furnishing this opportunity.

I cannot think that to hold the judiciary as infallible in its decisions, and immovable in its persons, will furnish the best safe-guard of liberty, or the best prevention of tumult and violent revolution.

From the foregoing considerations, I conclude that, so far as the judicious exercise of the appointing and removing power is concerned, great advantages will arise from the limitation of judicial tenures.

He (Mr. E.) proposed next to examine the effect of a limited tenure, in the conduct of judicial incumbents. First, of its influence on the industry of a judge. We know that a prominent source of complaint against our life officers, in Pennsylvania, for many years past, has been the indolence and delay of business, which have characterised some of them. Would not responsibility serve as a spur to industry? Would not the judge be stimulated, by the consciousness that neglect of duty would operate upon the people, and through them on the governor and senate, to prevent his

re-appointment? Does not human nature require a stimulus of this kind? Do we not find, in our own persons, and in our observation of others, that if it makes no difference in our emoluments, we are apt to sink into lethargy? Who among us would, in his affairs of private life, be willing to employ any individual, for ten years, or for a life time, together, at a stated salary, without power of dismissal? or who would confidentially expect, under such a contract, to be served with the same diligence as under one for a short period of time?

Judges, from the nature of their intellectual labors, and from the authority of their station, are liable to become irritable, morose, and despotic, in their temper and conduct. It is proper to provide some check upon the temptation to this too common frailty.

He (Mr. E) knew of none more effectual, than that of responsibility in the tenure of office; and he thought, a judge desirous of preserving his amiability of character, would be pleased with having such restraints placed upon himself.

These functionaries are also under temptation to the indulgence of favoritism towards particular members of the bar, alike inconsistent with the rights and the interests of both counsel and client. So conscious were the public of the proneness of human nature to this weakness, that he had heard of an instance of a young member of the bar, whose practice was vastly increased in consequence of his marrying the daughter of a presiding judge. This, very probably, might not arise, in that particular instance, from any fault of the judge; but from the general knowledge, in the people, of human frailty, and its tendencies. Short tenures would afford the best check on this weakness; for a judge would always lose more than he would gain, in the chances for re-appointment, by the manifestation of partiality.

A love of sway, and a confidence in one's own opinion, are natural, and under their influence, a judge may be tempted to usurp, in some measure, the province of the jury, and decide the facts, as well as the law. The limited tenure would check this propensity; for such assumption of power generally offends the party to whom the judge is adverse, and diminishes his popularity; while, by confining himself strictly to his proper sphere, he offends no one.

We have been reminded of an English judge who was executed for receiving bribes. This species of corruption is probably extremely rare, if it exists at all in this country. But judges for life are exposed to many influences, calculated to bias them, and swerve them from the course of strict impartiality between the various suitors who appear before them. One suitor may be a distant relative of the judge, a personal friend, a political associate. Or he may be a bank director, where the judge may borrow money, for purposes of speculation; or an endorser who lends his name to the judge; or the father of a family, with whom the judge may anticipate a matrimonial alliance for members of his own family. These things may insensibly operate on his mind, unless he keeps a strict watch upon himself: and the best possible inducement, or at least the most certain to be operative, is a consciousness that he is responsible to the agents of the people for re-appointment, while he is at the same time ignorant which party may be in the ascendant at the expiration of his term.

Thus we find, that while our judges, under the permanent tenure of Pennsylvania, are often active intermeddlers in politics, and sometimes suspected of political partiality on the bench, in those states where the appointments are for short terms, and more especially where they are annual, as in Vermont and Rhode Island, active interference of judicial officers in party strife, is rarely known, and political partiality on the bench, rarely suspected. By inquiry and correspondence with intelligent individuals of those states, I have satisfactorily ascertained these facts. It is reasonable that it should be so.

We all know from our personal observation, that impartiality in a judge makes for him more friends than enemies: by impartiality a judge may obtain a prospect of re-election by either party, but if he be partial, and a meddler in party strife, he will be sure to lose his place, in case of the predominance of his political opponents, at the end of his term.

There are other considerations of some moment. The ancients represented justice as blind, so that she could not perceive the persons, and condition in life, of those whose merits she weighed. The perfection of a judge, requires that he shall have a feeling of equal friendship towards, and equal responsibility to, the rich and the poor, the learned and the ignorant. But the qualifications of education required for a judge, are such, that these officers are rarely selected from the strictly poor, and never from the strictly ignorant class of the community. And, from the idea of honor and character, attached to the office, the judge's associations with the wealthy and the learned are actually enlarged, after his appointment to the office; and so far as the feelings of caste go, the judges partialities and prejudices are likely to be in opposition to that class which most requires the protection of the law, and which has, in almost every country, had its rights and its interests least respected and encouraged. Hence, it is a rare thing to find a judge, so superior to frailty, as to listen with the same patience to a protracted investigation, when necessary for the eliciting of truth, where the parties are poor, and the sum in controversy small, as he will do, where they are wealthy and the amount in dispute large; and it is equally rare to find one who treats the one class of suitors, and their counsel, with the same deference and courtesy as the other.

Now the conclusion to which I arrive, is this;—that the bias, or influence, of association, wealth, and learning, ought, for the protection of all, to be neutralized, or counterbalanced, by an opposing influence; and that this opposing influence may be found, in rendering the judge responsible, at short and stated periods, to the people at large, or to their representatives. The members of the one class may give their influence, as the wealth and blandishments of the other gives it to them—and even then, the predominance will be in favor of the latter, or superior class; for no modern government has created inducements on the minds of judges, to favor the many, equal to those which operate in favor of the few.

In relation to the length of the terms of office, although but little disadvantage and much benefit has accrued in those states where all the judges are appointed annually, yet I think it is better to guard against a sudden effervescence of popular sentiment, and against the consequences of temporary errors, to which masses of mankind, as well as individuals, are sometimes subject.

For this purpose, it is not desirable that all the judges, or even a majority on a bench, and especially on that of the supreme court, should go out of office or be liable to be displaced at the same moment. Hence, I would make the terms longer than one year, so that the terms of the several judges of a court might expire at different periods, and different governors or legislatures fill the vacancies. But I think the term heretofore fixed by this convention, and which will probably be adhered to, is entirely too long.

For the ordinary courts, consisting of three judges, it is perhaps best to make the term of office three years, the official term of one judge expiring in each year. For our supreme court, as it is now organized, with five judges, I should be disposed to fix a term of five years. But I am by no means satisfied that that term would be better than one of three years, if the number of judges corresponded with the latter. That five years is long enough, I am well convinced; whether that term or one of three years, would prove ultimately best, is a question, on which we have not evidence enough, resulting from experience and observation, to determine positively.

The gentleman from the city of Philadelphia (Mr. Meredith) in alluding to the case of Aaron Burr, has taken occasion to pay a compliment to the independence of the judiciary, and at the same time to speak in severe terms of the conduct of Mr Jefferson, in attempting, as the gentleman said, to break down that independence. I cannot concur at all in the gentelman's remarks on this point. Of those who have ever enjoyed power, few, I think, have abused it less, or had less disposition to abuse it, than Jefferson. He ardently loved his country and his race. Born in affluence, and nursed in literature, he was yet the strong and the warm friend of the humble and the ignorant. Instead of becoming more aristocratic, with the enjoyment of office, he became more democratic. His reputation, I trust will survive with lasting honor, notwithstanding the assaults which the prejudices of party have caused to be made upon it. May he be remembered, as the man who, invested with the chiefest patronage, strove to diminish official influence; and who, vested with the chiefest power, strove to put the curb upon authority.

The delegate from the city has referred to the case of the English chief justice Denham, in support of his argument. But what does this case prove, but that a judge who is fit for the station will continue to be so in spite of the responsibility which we wish to establish? Judge Denham was liable to removal, at any moment, on the address of a mere majority of the parliament. If that did not destroy his independence of mind, how can we expect that of a good judge to be destroyed, by rendering him responsible once in a few years?

The gentleman has also told us, that judges have been impeached, by the house of representatives, on charges which were not, in point of law, matter of impeachment. What is this, but an evidence of the inadequacy of the mode of responsibility, provided in our present constitution?

I believe it to be a fact, beyond reasonable question, that judges, and their friends, have exerted themselves to obtain an impeachment, in preference to a motion to remove by address, because they could avail them-

selves of the question of form, to defeat the proceeding by impeachment, and to retain places, for which they were unsuited.

It has been said in this debate, that in some occasions of the prosecution of judges, large numbers of witnesses have been brought up, to testify against the judge, and an equally large number to testify in his favor. This, to my mind, rather shows that the accused was unfit for his station, then that he was in all respects competent. Though partial, he would not offend every one. Some might favor him from feelings of sympathy for his family. But the fact, that a large portion of the community had no confidence in his talents, his integrity, his industry, or his impartiality, would furnish, at least presumptive evidence, that the public good would be best served, by having another man in his place.

After all which may be said on the one side or the other of this question of limited tenures, the best test of truth, and of policy, is experience, and the judgment of mankind, founded upon such experience. The evidence of this kind, is most decidedly favorable to judicial responsibility. There is scarcely a state in this Union, nor a country on the face of the globe, where the judges are so irresponsible as they are in this commonwealth. Where responstbility, through short terms, has been put in practice, the people at large have never, so far as I can ascertain, become dissatisfied with it. And where irresponsibility, or tenures for life or for good behaviour have been established, I believe the people have always become dissatisfied.

Of the thirteen original states, but four, or five at most, at first elected their judges for limited periods. viz: Rhode Island, Connecticut, New Jersey, Pennsylvania, and possibly Georgia, though I have not certain information in relation to the latter state. The people have never asked a change of that system, in any one of these states. In Pennsylvania, it was changed by an act of usurpation in 1790; and the people ever discontented with the change, are now about to right themselves. In Connecticut, in 1818, a convention, called for other purposes, changed the tenure of the judges of the supreme court, from an annual appointment, to one until the age of seventy years. The people of that state, who had not asked this change, are not satisfied with its results; and, daily witnessing the comparative advantages of the two tenures, by a reference to their other courts, they are so strongly in favor of returning to a short term of office for the supreme judges, that an amendment, to this effect, has twice passed the legislature, by a vote of two-thirds of both houses, but owing to some error of form, it has not yet gone into effect.

The result of experiment has been such, that at this moment, out of the twenty-six states of the Union, not more than five, or six at furthest, now appoint their inferior judiciary, viz: the justices of the peace, for good behaviour. Tennessee, Mississippi and Missouri, have become dissatisfied with the life tenure for their judges, and have abolished it. Georgia has done the same, if it ever existed there. New York has done likewise, with the greater portion of her judiciary. The people of the new states, Vermont, Ohio, Indiana, Michigan and Arkansas, warned by their experience, before their migration, never adopted the life tenure. So that at the present time, thirteen states have the limited tenure for their judges of courts of record in general; and ten states have that tenure for their supreme courts.

I confidently trust that Pennsylvania is now about to return to the virtuous institutions of which she was wrongfully deprived; and I look forward with hope and confidence, for the day when their will not exist a life officer in the United States of America.

A motion was made by Mr. STURDEVANT,

That the convention do now adjourn.

Which was agreed to.

And the convention adjourned until half past 10 o'clock to-morrow morning.

WEDNESDAY, JANUARY 24, 1838.

Mr. MANN presented two memorials from citizens of Montgomery county, praying that measures may be taken effectually to prevent all amalgamation between the white and coloured population, in regard to the government of this state—which were severally laid on the table.

A motion was made by Mr. HASTINGS, and read as follows, viz:

Resolved, That the resolution to adjourn *sine die* on the second day of February next be and is hereby rescinded, and that this convention will adjourn *sine die* on the twenty-second of February next.

Mr. H. asked that the said resolution be now read a second time, but withdrew the motion on the suggestion of Mr. Meredith.

A motion was made by Mr. MEREDITH, and read as follows:

Resolved, That the secretary be directed to make arrangements, if practicable, for supplying each member of the convention with two daily papers during the remainder of the session.

Mr. M. asked that the said resolution be now read a second time; but the yeas and nays having been demanded thereon, Mr. M. said that, rather than consume the time of the convention, he would withdraw the motion for the second reading and consideration of the resolution.

And, thereupon, the said resolution was laid on the table.

ORDERS OF THE DAY.

The convention resumed the second reading of the report of the committee to whom was referred the fifth article of the constitution, as reported by the committee of the whole.

The amendment to the second section of the said report being again under consideration,

Mr. MANN, of Montgomery, rose and said as this was a very important question, and as there were many vacant seats, he would move a call of the convention.

Which motion was agreed to.

And the call having been proceeded in some time,

A motion was made by Mr. REIGART,

That further proceedings on the call be dispensed with.

And on the question,

Will the convention agree to the motion?

The yeas and nays were required by Mr. FULLER and Mr. READ, and are as follow, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Banks, Barndollar, Barnitz, Biddle, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Cochran, Cope, Cox, Craig, Crum, Cunningham, Darlington, Denny, Dickey, Dillinger, Donagan, Forward, Gilmore, Grenell, Harris, Hastings, Huyhurst, Hays, Heiffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Hyde, Jenks, Kennedy, Kerr, Konigmacher, Krebs, Long, Maclay, M'Call, M'Sherry, Meredith, Meikel, Miller, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Reigart, Royer, Russell, Seager, Serrill, Stickel, Sturdevant, Taggart, Thomas, Todd, Weaver, White, Young, Sergeant, *President*—70.

NAYS—Messrs. Barclay, Bedford, Bell, Bigelow, Brown, of Northampton, Clarke, of Indiana, Crain, Crawford, Cummin, Curll, Darrah, Dickerson, Donnell, Doran, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Houpt, Ingersoll, Keim, Lyons, Magee, Mann, M'Cahen, M'Dowell, Nevin, Overfield, Payne, Porter, of Northampton, Purviance, Read, Riter, Ritter, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre—42.

So the convention determined that all further proceedings on the call should be dispensed with.

And the amendment to the second section being again under consideration;—

Mr. DARLINGTON, of Chester, rose and said, that when this question in relation to the judicial tenure, was under consideration in committee of the whole at Harrisburg, it was his good fortune to hear the whole subject discussed by much abler men than himself, and it did not occur to him that it was proper at that time that he should present his own opinions. Nor do I now intend, said Mr. D., to address the convention at any length; but inasmuch as I was absent from Harrisburg, when the final vote was taken in committee of the whole, and as I had not, therefore, an opportunity then to record my name, it is due to myself, and to those whom I represent in this body, that I should state in a few words the reasons for the vote which I am now about to give.

I voted at that time in favor of a term of years for the judges of the court of common pleas, and of the supreme court. I said that I wished to reduce the term of office of the judges of the court of common pleas to seven years, and the judges of the supreme court to ten years. I said, also, that I intended to vote for the good behaviour, for the judges of the court of common pleas and of the supreme court, if an opportunity should

present itself to me to do so. It is a matter of regret to me, that the amendment of the gentleman from the city of Philadelphia, (Mr. Meredith) did not extend the tenure of good behaviour, to the judges of the court of common pleas. I trust, however, that this will be done hereafter.

In the course of some remarks which I took occasion to animadvert upon a judicial decision made by Judge Fox, I do not think it foreign to the subject matter now before us, to advert again, for a single moment, to that topic. By way of elucidating the opinions I then expressed, I stated that I had been informed that Judge Fox had himself been concerned in leading up coloured voters to the polls. I made this statement upon authority which I considered to be unquestionable, and which I now respect as such; but it is proper that I should state that the information spoken of, was not derived from any member of this convention, but from an individual who had probably been misinformed. I beg to say, therefore, that though I respected the individual alluded to, as a man on whom the most undoubted reliance is to be placed, still I am of opinion that he has been misled. Since the time at which I made the observation, I have seen a letter in the hand writing of Judge Fox, in which he disavows having participated in such a proceeding. I am glad that an opportunity has been afforded me to do justice to him, as well as to another individual. I shall not add any thing now to what I have already said; with the exception of the single remark, that this is the explanation which I was desirous to make yesterday, when I made an ineffectual effort to obtain the leave of the convention for that purpose.

Mr. Meredith then modified his amendment, by adding thereto the following words, viz:

"But may be removed from office by the governor on the address of a majority of each branch of the legislature."

And the said amendment, as modified, being again under consideration;

Mr. Read, of Susquehanna, said, that it became his duty to address the convention, and that he was compelled to do so under very discouraging and inauspicious circumstances. I am fully aware, said Mr. R., of the anxiety which is pervading this hall—which I do not censure, and cannot but feel—to make progress with the business before us—to do more and to speak less, especially having in view the resolution as it now stands, for the final adjournment of this body, on a day which is now rapidly coming upon us. It will, however, be some excuse for me that, on a former occasion, when this matter was pending before the committee of the whole at Harrisburg, I did not then occupy the time of the convention with any remarks, although it will be remembered that the debate upon it ran through a period of many weeks. I apprehend that I shall now be so fortunate as to gain the attention of gentlemen to what I wish to say, and if I do not, I shall give up the idea of saying much that I intended to say when I first took the floor.

But, Mr. President, I have a duty to perform which, if I shall be permitted, I will endeavor to discharge with as much ability as in me lies, notwithstanding the feeling which is so manifest in every p rt of this hall, that an immediate decision should be had upon this great and important question;—a question which is acknowledged upon all sides to be

one of the deepest moment, and a question, in reference to which you have been told by the President of this convention, that upon its decision the permanency of our free institutions may probably depend.

It is possible, Mr. President, that notwithstanding the very protracted discussion to which we have listened—it is, I say, possible, that some new points of view may be taken of this question, and which hitherto may have escaped the notice of gentlemen on both sides. Much time has been spent in endeavoring to draw a nice distinction, which exists only in theory, between a life tenure and a tenure during good behaviour; and it is true that, in theory, as has been eloquently shewn by several gentlemen in the course of this debate, the two tenures bear very little resemblance to each other. But what are all our fine imaginings, and what are all our astute disquisitions about theory, if they are in manifest and open contradiction to facts, to experience—to the experience of half a century?

It is true that, in theory, the judges of the courts of this commonwealth do not hold their offices for life; but experience has shewn us that, in truth and in fact, they are life officers, possessed of all the fearful power of officers for life, and imbued with all that feeling consequent upon the possession of that power, which induces them to do things which they would never attempt to do, nor think of doing, if they did not feel themselves to be irresponsible, and free from any human authority or control.

It is also true that, under the provisions of the consititution of 1790, some few cases of removal from office have occurred. But they are only the exceptions to a general rule; and although it is true that some few such cases have occurred, yet of the very many instances, in which attempts to remove these officers have been made, a few of them only have been attended with success; and, probably, in nineteen out of twenty cases where there ought to have been a removal, the expense, delay, vexation and fear in case of failure to establish the charges, have been the means of preventing prosecutions which would have been continued, but for the vast irresponsible power which these judges possess. The judges themselves understand this in the same way as I now state it. They feel that, in the first place, they are clothed with a power such as was described by the venerable gentleman from the city of Philadelphia, and the President of the convention; a power to do things without responsibility to any human tribunal, and which these gentlemen attempt to make us believe is a proper judicial independence. But, according to my view, their definition of independence showed nothing more nor less than judicial omnipotence or despotism.

After the able and eloquent manner in which the sub-ect of judicial tenure has been discussed, it may be considered presumptuous in your humble servant to attemp to shed any additional light upon it, or to arrest the attention of this convention. And yet, sir, it seems to me that the subject is not entirely exhausted, that it may be presented in some new points of view, and at all events I have a duty to perform in reference to some of the propositions and arguments presented by advocates of good behaviour, or life tenure. I say, *some* of the arguments, because it would be impossible in the time allotted to follow the advocates of this doctrine through all the mazes of their eloquent and protracted debates.

In selecting, I shall endeavor to notice those points on which gentlemen seemed most to rely, and to consider most conclusive. Gentlemen have laid much stress on the supposed distinction between a tenure for life, and a tennre for good behaviour. They have discoursed eloquently and with much seeming self-complacency, and have shown what was well known, and universally admitted before, that *in theory* these two modes of tenure scarcely bear a resemblance to each other. Yes, sir, they have shown what has never been denied or doubted. But all their fine theories are flatly contradicted by the experience of half a century. In theory we have no such thing as a life tenure. But in practice, a tenure during good behaviour is equivalent to life tenure.

Some cases of removal have occurred, but so "few and far between" that they constitute exceptions to a general rule. The expenses, delays, and uncertainty of success, together with the danger in case of failure, of bringing down upon the devoted head of the prosecutor, the vengeance of a judicial despot, has hitherto prevented complaints, I mean formal complaints, and prosecution, in nineteen cases out of twenty, where prosecutions ought to have been instituted and sustained. What then, *in practice*, is this constitutional right of removal, but a mere mockery! to inveigle the prosecutor into a snare, to make him the victim of the acquitted judge. So thoroughly is this understood by the judges themselves, that they feel no responsibility whatever. They feel that they are in the actual exercise of uncontrolled despotic power, and they demean themselves accordingly. As then actual experiment contradicts the theory, and as all experience demonstrates that the distinction is merely specious, I shall, as I am in the habit of calling things by their right names, speak of it as a life tenure.

The gentleman from the city, the venerable judge, who is so warmly attached, so thoroughly wedded to this life tenure, that he holds to it with the death grasp of a young lover to his drowning mistress, took occasion to say, if I recollect aright, that this provision of the present constitution was so sacred that it could not fall, except "as the victim of the assassin."

The precise idea which he meant to convey by this expression, it is perhaps a little difficult to ascertain. Perhaps it would be more respectful to ask him the purport of the words, than to attempt a solution which might do injustice to his purpose. Surely he could never have intended to characterize as assassins, the 86,000 of the citizens of this commonwealth, who voted for the assembling of this convention. Nor would it seem quite probable, that he would so designate the majority of this convention who voted against the permanent tenure. The principle of this tenure has, however, brought abundance of corn to that gentleman's mill, and it would, *perhaps*, be asking too great a sacrifice of interest to principle, to expect him to relinquish this aristocratic branch which has borne so much fruit, and filled *his* basket to overflowing.

The reformers of this convention must be under equal, if not superior obligations, to the gentleman from the city on my right, (Mr. Chauncey) for the high compliment, originating no doubt in the kindest feelings and the most tender regard for the dignity of this body, when he stated that the lad convicted before, and sentenced by Judge Cooper, for horse stealing, is now one of the principal reformers in Pennsylvania.

If he did not state it as a fact, but as a probability, then I apprehend the compliment is in no degree weakened, by his assuming for a fact what he now admits he did not know to be such, when he took the trouble to invent a fiction for the courteous and gentlemanly purpose of placing the reformers of this convention and of this commonwealth on a par with convicts and inmates of the penitentiary. The people of the state to whom, if I mistake not, he alluded as the "many headed tyrant," will no doubt duly appreciate the kindness and courtesy of that gentleman.

The honorable President, in his protracted and eloquent speech on this subject, has assured us that a judicial, is an important and indispensable branch of every government. That with the best possible code of laws, and with the most efficient executive department, the rights of the citizens cannot be secure without a judiciary to apply those laws to individual cases. In short, he has assured us that laws are of no value, unless there be a power to carry them into execution, with a great variety of maxims and truisms, which no one ever thought of doubting or disputing. Why did he thus lecture us on the first rudiments of political science? Why did he labor long and learnedly to establish self-evident propositions? Was it for the purpose of inducing the people abroad to believe, that the friends of reform in this convention are so ignorant, so madly radical, as to contend against the plainest maxims, and the most indisputable facts? Was it for the purpose of depreciating the intellectual character of the reform side of this convention? Was it for the purpose of representing us as totally ignorant of the first principles of our political institutions, and so reckless as to aim at a total prostration of the main pillars of our political edifice? If such was not the intent, I cannot divine the motive for that extraordinary effort.

Moreover, the president, as also the judge, and the venerable gentleman from the city on my right, with many others, have spoken enthusiastically and eloquently of the great superiority of our forefathers in wisdom and intellectual strength, over the pigmy race of these latter days. They put it to us, and urge it upon us, with all the powers of unrivalled eloquence, as an argument against touching the "matchless instrument," that it was framed by men so greatly superior to our humble selves, that it would be madness in us to attempt any improvements upon the work of their hands, the emanations of their wisdom.

In the midst of the progressive improvements incidental to human nature, surrounded as we are by the progressive improvements in the arts and the sciences, we are gravely told that political science is an exception to the general rule; that in the knowledge of self-government the world has been retrograding, and that it is presumption, if not sacrilege, in us, to arrogate to ourselves even an equality of political wisdom with our progenitors.

Days, yes sir, I may safely say weeks, have been consumed since we assembled in May, in eloquent and highly wrought eulogism of this description. It has been reiterated in all the varied forms of glowing declamation, till perhaps, like the marvelous tale of the superanuated sailor, it has come to be believed by those engaged in the rehearsal.

Sir, is it no enviable task to strip from our venerated ancestors the mantle of charity which should have been permitted still to cover and

conceal their imperfections and weaknesses. But the course of this debate, and the labored enconiums on their superior political acumen, have compelled me to exhibit them in all their nakedness. Let them be tried by their fruits. let them be tried by the record, and then say, sir, whether a single fact, brought home to our senses, does not demolish at once and for ever, all the dreamy visions of an excited imagination, all the gorgeous creations of a fascinating eloquence.

Sir, I have a short answer to all these eulogies upon those who have gone before us. I read, sir, a copy of a record, now remaining in the secretary's office at Harrisburg, and by the last legislature ordered to be printed. It is a record of a criminal prosecution, of a judical proceeding of a court of justice in which Governor Wm. Penn presided.

The record is in these words—the printed copy is in my desk if any gentleman wishes to see it:

"The grand jury being attested, the governor gave them their charge, and the atturney general attended them with the presentment: their names are as follow:

Robt. Euer, foreman,	Thomas Mass,	John Barnes,
Saml. Carpenter,	Dennis Liner,	Gunner Rambo,
Andrew Griscom,	Thomas Millard,	Enoch Flower,
Benjn. Whitehead,	Barnaby Wilcox,	Henry Drystreet,
John Barnes,	Richard Orne,	Thomas Duchet,
Saml. Allen,	John Day,	Thomas Philips,
Jehu Parsons,	John Fisher,	John Yaltman.

Postmeridiem.

"The grand jury made their returne, and founde the bill.

"Ordered that those, that were absent of the petty jury, should be fined 40 s each man.

"Margaret Matson's indictment was read, and she pleads not guilty, and will be tryed by the countrey.

"Lasse Cook, attested interpiter between the propri'r and the prisoner at the barr.

"The petty jury empanelled; their names as follow:

Robert Wade,	Nath. Evans,	Robt. Piles,
William Hewes,	Albertus. Hendickson,	Edw. Carter,
John Hastings,	Jer. Collet,	John Kinsman,
John Gibbons,	Walter Martin,	Edw. Bezar.

"Henry Drystreet attested saith, he was tould twenty years agoe, that the prisoner at the barr was a witch, and that severall cowes were bewitcht by her. Also, that James Sanderlin's mother tould him that she bewitcht her cow, but afterwards said it was a mistake, and that her cow should doe well againe, for it was not her cow but another persons that should dye.

"Charles Asheom being attested, saith, that Anthony's wife being asked why she sould her cattle; was because her mother had bewitcht them, having taken the witchcraft from Hendrick's cattle and put it on

their oxen. She might keep noe other cattle. And also, that one night the daughter of ye prisoner called him up hastily and when he came she sayed, there was a great light just before, and an old woman with a knife in her hand at ye bedd's feet, and therefore shee cryed out and desired John Symcock to take away his calves or else she would send them to Hell.

"James Claypool attested interpeter betwixt the propri'r and the prisoner.

"Annakey Coolin attested, saith her husband took the heart of a calfe that dyed, as they thought, by witchcraft, and boylied it; whereupon ye prisoner at ye Barr came in and asked them what they were doing; they said boyling flesh; she said they had better, they had boyled the bones, with several other unseemly expressions.

"Margaret Matson (the prisoner) saith, she vallues not Drystreet's Evidence, but if Sanderlin's mother had come she would have answered her. Also denyeth Charles Ashcom's attestation at her soul, and saith where is my daughter, let her come and say so.

"Annakey Cooling's attestation concerning the Gees, she denyeth, saying she was never out of her canoe, also that she never said any such things concerning the Calve's heart.

"The prisoner denyeth all things, and sayeth that ye witnesses speake only hearsay. After which ye Gov. gave ye Jury their charge concerning ye prisoner at ye Bar.

"The Jury went forth, and upon their returne brought her in Guilty of having the common fame of a witch, but not Guilty in manner and forme as shee stands indicted."

A very wise verdict, sir, at least a verdict which shows that the jurors of that day knew more than the court. There is one other clause in this record not less curious, when it is considered that the person was acquitted. It is as follows:

"Neels Matson and Anthony Neelson Enters into a recognizance of fifty pound for the good behaviour of Margaret Matson for six months."

Yes, sir, although the jury gave her a full acquittal, with the exception of having been slandered by her neighbors—and in those days of ignorance and superstition, the charge of witchcraft was one of startling and infamous import—yet the supreme court judge, the proprietor himself, sitting in judgment in the plentitude of his wisdom, held the poor abused Margaret Matson to bail in fifty pounds for her good behaviour for six months. Such were the judges under a life tenure, whose superior wisdom, the honorable president and the two distinguished venerable lawyers from the city, so much admire. Such was the wisdom of judges, and such the virtues of life tenure, which have excited the admiration, and elicited the glowing eloquence of three distinguished jurists for many weeks, and at an expense to the commonwealth of many thousands. Sir, I will take it for granted that the exhibition of the foregoing simple record is a total extinguisher of all those eloquent but unfounded descriptions of the superior wisdom of those who have gone before us—whose weakness and imbecility ought to have been permitted to slumber under the mantle of charitable silence.

Sir, I now ask the attention of the house to what may be supposed rather a dry subject, a reference to a number of cases reported in the books, all tending to show that our judicial history is little more than a long catalogue of contradictions; that our system has not "been found to work well;" that we have not secured "by a life tenure" a uniform rule of property; that uniformity of decision, the vital principle of all judicial excellence, has not been attained, under the auspices of judges clothed with despotic power. Let us inspect the record:

In the case of Parrish against Stephens, 3 S. and R. 298, it was decided that the five years limitation, under the act of 3d April, 1804, for the sale of unseated lands, should be computed from the time of the sale, which is in perfect accordance with the provisions of the act. Thus stood the law till 1822, when it was decided in Wain vs. Sherman, 8 S. and R. 357, that the limitation should be computed, not from the sale, but from the date of the actual possession of the purchaser—thus unsettling titles, and stripping hundreds of their vested rights, according to the earlier opinions.

The law of lien, for the purchase money of land, as laid down and settled about forty years ago, in Stouffer vs. Coleman, 1 Yeates 393, as also in Irvine vs. Campbell, 6 Bin. 118, was reversed and nullified in 1821, in Kauffelt vs. Bower, 7 Ser and Rawle 64. Your life judges change the law according to their own caprice, to the ruin of thousands of your citizens.

The law of slander and libel, as long understood in England, and recognised in Pennsylvania in the year 1808, in Tracy vs. Harkins, 1 Bin. 395, was changed independently of the legislature, altered by your life judges in 1821, M'Connell vs. M'Coy, 7 S. and R. 223.

Again, sir, the law of inheritance, as settled in Walker's Admin'r. vs. Smith, 3 Yeates 480, also in Kerlin's lessee vs. Bull, 1 Dallas 175, was reversed, the rule of property changed in 1821, Bevan vs. Taylor, 7 S. and R. 397.

So the law of vendor and vendee, as laid down in Willing vs. Rowland, 4 Dal. 106, is changed, in Bevan vs. Taylor, 5 S. and R. 359.

The law in relation to malicious prosecution, as settled and solemnly decided in Shock vs. M'Chesney, 2 Yeates 473, is reversed and nullified in Shock vs. M'Chesney, 4 Yeates 507.

The law in relation to the last wills and testaments, as laid down in 4 Dallas 120, Calhoun's lessee vs. Demming, is changed and altered by judicial authority, in Duer vs. Boyd, 1st S. and R. 203.

The law in relation to the liability of corporations, (a subject of deep interest) in Buckhill vs. a turnpike company, was reversed in the case of North Whitehall vs. South Whitehall, 3 S. and R. 117.

Again, the law regulating defalcations, as settled in McCullough vs. Houston, 1 Dal. 441, is flatly contradicted in Lewis vs. Reader, 9 S. and R. 195.

Sir, I will not continue this list of contradictions. I have given you some nine or ten cases, from the numerous cases appearing in the books,

which are all sufficient to show, that under our present judicial system we have nothing like uniformity of decision—nothing like a known and ascertained rule of property, the great desideratum in all codes. But this continual fluctuation of the rules which are brought to bear on the vested rights of every man in the community, is amply sufficient to overthrow the proposition of the honorable President—"that our system has been found to work well."

All these fluctuations, and all others of a similar character, may have originated in an honest and unavoidable change of judicial opinions, and something of the kind may have occurred under a system of a limited tenure of short periods. So far, it has not been my purpose to show the superiority of limited tenure, (although it may have been incidentally done) but my main object has been the refutation of the President's proposition—"that our present system has worked well." The cases to which I have referred you, do this, in my humble opinion, most effectually.

I now wish to refer you to a different class of cases—a class of cases which show clear and undeniable usurpation of legislative power, by your courts of justice—cases in which the judges unblushingly avow their determination to *make law* in certain cases, where in their opinion the legislature neglects its duty—cases in which is distinctly seen the effect of making the judges (in the language of the President) "irresponsible to any human power"—cases which show what such judges would do when clothed with despotic power—cases of unqualified usurpation of legislative power by the judiciary. A practical comment upon unlimited tenure.

An act of assembly was passed, the substance of which was that promissory notes *drawn in the city and county of Philadelphia*, and having the words "without defalcation," should not be subject to set off, as they were in all other parts of the state. This act, thus local in its operation, limited to the city and county in express terms, has been, by your irresponsible judges, extended in its operation to the remotest corner of the commonwealth. The plainly expressed *intention* of the legislature has been disregarded, or in other words, a local law has been extended and enlarged by judicial construction. I do not complain that any injury has resulted to society. The principle may have been a good one. I only refer to this case, to show you with what calm complacency your judges irresponsible, (as the President would have them) to any human power, encroach upon the perogatives of a co-ordinate branch of the government.

But I will now refer you to a different class of decisions. A class of cases in which your acts of assembly are virtually repealed, contemned and nullified, to the violation of vested rights, and to the ruin of thousands of your citizens.

On the 8th of April, 1785, an act of assembly was passed, and yet remains on the face of the statute book, in the following words: "Every survey hereafter to be returned into the land office of this state, upon any warrant which shall be issued after the passing of this act, shall be made by actually going upon and measuring the land, and marking the lines to be returned upon such warrant, after the warrant authorizing such survey shall come to the hands of the deputy surveyor, to whom the same shall

be directed; and every survey made theretofore shall be accounted clandestine, and *shall be void*, and of no effect whatever."

Sir, there is no ambiguity in this act, it is not in the power of any man to imagine two constructions; the plainest, most unlettered man in this commonwealth cannot mistake its meaning. I defy the most astute member of this convention to suggest even a plausible construction, other than that which would strike every man at first blush, as being so plain that "he that runs may read." The legislature was especially careful in this case, that the effect of its mandate should not be evaded by the stale trick of the judiciary in declaring the act "merely directory," a trick by which your irresponsible judges have very often set at defiance the expressed will of the people as declared by the legislature. The legislature in this case, took especial care not to be misunderstood, and seemed resolved, that in a case involving the rights, the *vested* rights of many thousand citizens, to coerce the judiciary into respect to the mandates of the law. For this purpose after directing the manner of making surveys, it cautiously added the words "and every survey made theretofore shall be accounted clandestine, and *shall be void* and of no effect whatever." And yet, sir, your irresponsible, despotic judiciary have declared in Oyster vs. Bellas, 2 Watts Reports, 397, that "a chamber survey is not void." They have there decided that a survey made on paper, without the deputy surveyor going on the land, is a good and valid survey, by which the land speculator may take to himself the property of, and turn out pennyless on the cold charities of the world, the honest hardworking *settler*, who has expended his labor, and the vigor of his manhood, in acquiring vested rights under your pre-emption laws. Chief Justice Gibson delivered the opinion of the court in this case.

Again, in Caul vs. Spring, 2 Watts, 390, (Judge Rogers delivered the court's opinion) it was decided by the same irresponsible court that a survey proved and admitted to have been made in this city, of lands situate in the county of Northumberland, when the deputy surveyor had never been within a hundred miles of the land, *after the warrant came to his hands*, was a good and legal survey. Would you believe it sir, with the law before them declaring that such survey *shall be void*, the court has the assurance, the unblushing hardihood, to adjudge that such survey shall not be void, but valid and legal.

Again, sir, in Bellas vs. Levan, 4 Watt's Reports 294, the court, (Judge Kennedy delivering the opinion) decided that a chamber survey is not only good and valid, but that the court, after a certain number of years, will not *even hear testimony* against the validity of a chamber survey, thus limiting, in point of time, the operation of an act of assembly which on its face is without any limitation whatever. Nay, more sir. In one of three cases just cited, the court, in a total disregard of the fact, has the unblushing assurance to declare, that this act of assembly "is only directory."

Sir, are we to sit here and look calmly on such a glaring usurpation of legislative power, and do nothing to correct the evil or to save from absolute ruin, the thousands—the tens of thousands of the honest settlers in the northern counties, who have braved the ten thousand hardships of a pioneer settlement, upon the faith of this act of assembly, and upon the

faith of your pre-emption laws? Shall we, who have the power to correct the evil by *dethroning* the present judges, become participators in the injustice? Shall we tremble and quail before this terrific tribunal, and see the vested rights of these settlers torn from them; see them with their wives and little ones turned destitute and pennyless into the streets? Sir, I happen to *know* many thousands in Northern Pennsylvania, (who have a *perfect right* under the pre-emption laws) who will and must be beggared if a corrective be not, by us, applied; who must share this hard fate, if the present judges be not displaced; who will be brought to the conviction that a republican government, with a despotic judiciary, is more cruel than any European monarchy.

I ask again, sir, shall we fold our arms and see these judges, "irresponsible to any human power," disregarding, extending, limiting, nullifying, misconstruing, contemning, and trampling upon your acts of assembly, beggaring your honest hard working citizens, violating their rights, and divesting them of their property to fill the coffers of the land speculator, and not to make an effort to displace them? And all this in the face of the positive written law of the land. Nay, sir, the adoption of the new constitution would itself leave them out, unless we interfere to retain them. And shall we, by a saving clause in their behalf, perpetuate these usurpations of power, and thus sanction and legalize the monstrous injustice which this course of *judicial legislation* must inevitably inflict on vast numbers of your pioneer settlers? Forbid it justice—forbid it Heaven!

Sir. we have heard, on this floor, expressions of fear to speak of, or canvass the merits or demerits of our judicial tribunals, lest members might, in after life, be made to feel their power. Members have told us, that they were under the silencing influences of this sort of intimidation, and that prudence dictated silence on this subject.

I too, as the representative of a humble client, have often trembled in the presence of these dread tribunals—but here, the representative of the sovereign people, thank God, I fear them not. I too am an advocate of the independence of the judiciary: I mean an independence resulting from manly firmness and honesty of purpose, and not from the uncontrolled exercise of despotic power.

Mr. MERRILL, of Union, said he did not intend to detain the convention any length of time; but that inasmuch as he and some of the cases, which had been referred to by the gentleman from Susquehanna, were old friends, and as those cases, if not properly understood, might be turned to a wrong use, he would take leave to say a few words in explanation of their merits.

Under the land laws of Pennsylvania, the land is to be surveyed by the officer of the commonwealth. A purchaser can have no manner of control over his survey, except that he may direct where his warrant shall be located. The officer returns to the surveyor general that he has done his duty, and since the revolution that officer acts under the solemnity of an oath. The act of assembly directs the steps that shall be taken to perfect the title; but it does not in express terms declare a forfeiture, if those steps have not been taken. It was always a pretty hard construction of the law, that the state might sell the land over again, if her own officer

neglected his duty. The case of Spring vs. Coul, does not change this law, nor repeal, as has been said, the act of assembly. The survey is as necessary now, as it ever was. It only decides, that after a certain length of time, the law will presume all *official* acts to have been done rightly.

Here was warrant, survey and patent granted by the commonwealth for this land, its location undoubted—being surrounded by older surveys on two or three sides, and one mark, of which no account could be given, unless marked for this survey—about forty years after all this, a stranger sets up the title of a second purchase from the commonwealth, who has declared to the officers of the land office, that this land was vacant. He says the first purchaser has forfeited his right, because it does not now appear that the original deputy surveyor had done all he was bound to do by law.

When the cause comes on for trial, do the court say a survey is unnecessary? By no means. They decide expressly that a survey is necessary.

But that considering how the arts of the enemy, time, wind, fire and storm may destroy the evidences on the ground, of what the surveyor had done, the papers in the office after twenty-one years, shall be taken to be true. They say that after the lapse of so long a time, none ought to find fault; an actual possession of so long a time, will authorize the presumption of a grant, and no evidence to the contrary will avail. Time will turn a fraudulent or forcible adverse possession to a legal one, conferring right. Where would be the security for property, if it were otherwise?

I ask gentlemen to consider for one moment. How is the survey to be made? by marks on the trees. How many ways are there of destroying trees? There is probably not an original survey within fifty miles of this city; and is there to be no evidence of title to land, because the evidences of that survey are gone? No man can preserve his trees alive, nor can he hinder the marks from being defaced.

Will it now be alleged that the courts have disregarded the act of assembly? on the contrary, do they not receive the highest and best evidence of the survey, the universal consent of all men for such a period of time as will enable a man who obtains adverse possession wrongfully to acquire by the same universal acquiescence an indefeasable estate? In the case of Oyster vs. Bellas, I labored hard to convince the court, that the above return of survey, not ratified by patent, stood on different ground from the other case of Spring vs. Coul. The new title there had the first patent, or if not the patent on the old title issued irregularly in disregard of a covenent then pending and undecided. The distinction was not required. The new deputy returned that he had done his duty. It was indisputable that he had been there and done nothing. The court said, that after more than thirty years, it did not lay in the mouth of a mere volunteer with a new warrant to complain of his defective performance of his duty: and were they not right? and will gentlemen gravely tell us that the courts have repealed an act of assembly?

It is on these grounds that these decisions rest, and I hope it is manifest to every one, that their foundation is a solid one. If after the lapse of forty years you can open this subject for dispute, if you can inquire

whether the deputy or his principal, the surveyor general, were duly commissioned, or whether the governor who made the appointment were duly elected, there can never be an end to law suits. It would be contrary to all the analogies of the law; and to all other transactions of human affairs. Time instead of establishing would weaken his title; until at the end of a century there might not be a vestage of title left.

But gentlemen need hardly be reminded of the action of the claimants; but they may not know, that in hundreds and thousands of instances, the opposing claimant comes there with his axe. Only a few years ago, while the world was mad after coal land, a man in Harrisburg, stated in company at an hotel, that he had been out in the mountains, cutting, grubbing up and destroying live trees at three dollars a piece, for the purpose of destroying the evidences of the old title, and procuring it to be entered again as vacant lands. One, who heard him, turned on him and said, "do you presume to *sit down* in the company of gentlemen, and make such an avowal?" The fellow sneaked off; but hundreds have done such things, who never told of it. It is argued that because an act of assembly requires a survey to be made on the ground, men's titles are to remain forever subject to all these contingencies, constantly accumulating in number and constantly increasing in strength. How slight is the connexion between the premises and conclusion! Its unsoundness must be manifest to every one.

But it is said that settlers are deceived. In the first place settlers are only licensed to go on the land of the commonwealth. If they go on to the land of an individual they do it at their peril. Their mistake ought not to affect the interests of a stranger, who did nothing to endanger, or omitted nothing that the laws requires to secure his title. But with due diligence it is in most cases not difficult to avoid mistakes. They have also twenty-one years in which to show the defect of the first title. How much longer would gentlemen want?

There is a cry abroad, that the degree of security, to which a man is entitled for his property, must depend, in some measure, upon the mode of acquiring that property; and also somewhat upon the amount of it he happens to possess. I hope no gentleman here entertains any such opinion. I do not. The rich land holder, and the poor settler, are entitled to equal and exact justice. More than that neither ought to want: and to grant more would take away the very strongest motive men can have for entering into society and forming government.

I did not intend to consume time, but I have thought it right to say thus much from a desire to give all men, judges among the rest, fair play. These things are presented as enormities committed by judges; and well calculated, I will not say intended, to undermine the confidence of our people in the administration of the law. Knowing the facts and the points on which these cases turned, I cannot persuade myself that the decisions ought to have any such effect. I will do my best to prevent it. But why are these things brought forward now: surely not for any effect they may have here. It is said, that for these and other atrocious offenees, judges cannot be removed. If a judge is prosecuted from a principle of revenge, he ought not to be removed lightly. That saved one judge and yet afterwards, when the people thought he had served long enough, he resigned. Another judge had quarrelled with one of the younger mem-

bers of the bar, and application was made for his removal. I remember being in company with a pretty large number of mechanics in Harrisburg, when the subject was discussed. They admitted that he was not a very respectable man, nor very fit to be a judge, but they said the great body of the people did not suffer under his administration of justice. They asked why he should be removed in order to gratify a few young lawyers? afterwards, when the people thought he ought to go, he did go—he resigned—and yet gentlemen complain because the utmost degree of infamy and misery is not measured out to these officers.

I hope and trust such a spirit does not generally prevail. It is enough, that they are to lose their places so far as our power extends. They ought not surely in addition to this to be subject to the misrepresentations and sarcasms of the gentleman from Susquehanna.

Mr. PURVIANCE rose, and said:

Mr. President: Inasmuch as my colleague and myself refrained from a participation in the discussion of the present question, while in committee of the whole, I will now ask the attention of the convention, for a short time while I submit the reasons which have influenced me in opposing what has usually been termed the good behaviour tenure. I have listened, with much attention, to the discussion from its commencement up to the present time, and occuping in age, the relation I do, to the venerable judge who opened the debate, I felt it to be my duty, and found it equally my pleasure, to weigh deliberately every thing which emanated from a source so worthy and disinterested. The language of the father of his country, to which that gentleman most eloquently referred, could not have been more impressive than was the appeal made by himself, which will be remembered long after the voice which gave it utterance shall have ceased to reverberate through this or any other hall. Although compelled to differ from that gentleman, I shall nevertheless continue to cherish his sage and patriarchal advice, and watch with jealous care the independence of the judiciary up to the latest moment of my existence.

Although I shall vote in favor of the limitation of a judicial tenure, I should nevertheless regret to see the judges of the court in the *last resort* removed from office, at least as long as they continue in the faithful and dignified discharge of their official duties. An acquaintance personally with some of the distinguished gentlemen who constitute the court referred to, enables me to say that, no appointing power would exclude from the bench such well tried public servants. The chief presiding officer of that body, at home and abroad, alike respected and esteemed, has become in effect, the nucleus around which, all our rights of property are made to rally.

The venerable associate, whose honors have kept pace with his age, and who has contributed so largely toward the reputation of our judiciary, will, I trust, be exempt from the danger apprehended from the appointing power. That veteran of the law, by universal acclamanion and consent, would be continued from time to time, as long as he himself would consent to continue in the public service. The associate, who sits upon the right of your chief justice, is equally endeared to the public, by an attentive, able and faithful discharge of his onerous duties. The two associates, more recently appointed, have thus far fulfilled the public expecta-

tions, and will, if they continue in their present course, secure to themselves an equal share of public confidence. So far as my observation has extended, the judges of the supreme court, as all judges should, have kept themselves aloof from the contaminating influence of politics, and thus are they exempt from that censure and suspicion, which must and should rest upon political judges. Judges may be decided in politics, but should never be partisans. The moment a man assumes the ermine, that moment should he relinquish all connexion with politics.

The advocates of the good behaviour or life tenure, have carried us back to the history of England, and other countries, to show the necessity of an independent tenure. But, how has this been done?—in no other way than by referring us to the corrupt and licentious practices of the English judges, who were subject to the will of the crown or sovereign. Is there any analogy between the tenure referred to and the one contended for by the opponents of life office? In my opinion, there is no analogy whatever. In the one case, the judge was a tenant at will, and bound to obey the appointing power but, in the other case, the judge is a tenant for years, and until the expiration of his commission is subject to no control, nor is he liable to removal by any power on earth, except for the commission of some offence. The case of Cromwell, to which reference was made, was an extreme one—an extraordinary exercise of most tyrannical power. The judges were his creatures, appointed by him, controlled by him, and removable by him. A tenure for years, during its existence, is absolute and uncontrolled—and not subject to interruption by a removing power. No Cromwell in this country, under a limited tenure, could direct or influence judicial action. The commission of the judges, although for a limited time, would furnish them a shield against executive encroachment, and would enable them to enjoy, without interruption and in the most independent manner, the high functions of their office.

Experience and observation, derived as well from this as from other countries, conclusively shew, that the independence of the judiciary consists in its responsibility to the people, and not in its entire exemption from their control. Sir, the people—I mean every enlightened people—foster and encourage the promotion of virtuous principle, and universally frown upon the least violation of official faith or official misconduct. In England, to which reference has been chiefly made, and from which we derive many of the features of our government, as well as many of our laws, the judges during the reign of Edward the 1st, Richard the 2d, Henry the 8th, James the 1st, Charles the 1st and Charles the 2d, received their appointments from the crown and could only be removed by the crown. This tenure, which was created for the purpose, ostensibly so at least, of rendering the judiciary independent, produced such an independence as caused agitation and convulsion amongst the people, resulting in the banishment and execution of the judges, and in the entire prostration of public confidence in the judicial fiduciaries of the government. In the reigns referred to, Sir Ralph De Hanagan, chief justice of the kings bench, Sir Thomas Mayland, chief justice of the common bench, and Sir Adam De Shallon, chief baron of the exchecquer, were convicted of and severely punished for their corrupt exactions in the administration of justice. The Earl of Suffolk, the lord chancellor of the kingdom; the Duke of Ireland, and the Arch Bishop of

York, were declared guilty of high treason. Other judges, among whom were Sir Robert Belknap and Sir Robert Treshan, the latter chief justice of the king's bench, were also involved in the comdemnation.

Sir, the English history does not stop here, but to the list already given may be added the names of Sir William Scroggs, lord chief justice king's bench, Sir Francis North, chief justice of the common bench, and, Sir Richard Weston, one of the barons of exchequer, were impeached for partialities in the administration of justice. Sir Thomas Eurpean and Edward Dudley were guilty of exaction, the great Lord Bacen of corruption, Finch, Davinport, Crowley and Berkley of attempts in the pretended administration of justice, to userp powers beyond the scope of their legitimate duties. And why was all this so? Because the tenure was subject to the will of the crown, and not dependant upon the principles, which should stimulate men to a faithful, honorable and virtuous discharge of their official duties. The evils of this system in the British court, were so manifest, and at the same time, so oppressive, that an act of parliament was passed in the 13th year of William the 3d, which fixed the salaries of the judges, and provided that the king should remove them upon the request of a bare majority of that body. The change, sir, was in its effects electric. The judges felt that they were called to depend (for a continuance of their offices) upon principle, and not upon the desire of gain from bribes, or a willingness to gratify the rapacious desires of the crown. To get rid of bad judges, the people were no longer driven to the necessity of hanging or banishment. The fountain of justice was thus purged of its foul pollution, and the stream which emenated therefrom, rendered pure and wholesome; and since those days, England has been distinguished for the high character of her judiciary, and the ability and integrity of its fiduciaries.

Thus it will be perceived that while the judiciary of England could be operated upon by the people, through their representatives, justice was administered impartially and fearlessly, and that in every instance where that department was too remote from the people, injustice and oppression were almost universally the result.

But sir, let us advert to the history of other counties, where a system or accountability prevailed, and see, whether popular influence tended to impair judicial independence. By the system of jurisprudence in China, where justice is said to be administered as purely as in any other part of the world, the judges are subject to a revisiory power by *mandarins*, selected from the people, and whose power extends even to a revision of the conduct of the Emperor. A part of the system of the great Lycurgus provided for the election of magistrates, called the Ephori, whose powers were paramount to those of both king and senate, and who, being subject to periodical removals, were, of course, subject to no improper influence either from the people or any of the departments of government. The system of Solon, where we meet with the Areopagus, was justly and peculiarly characterised for its wisdom and virtue. That tribunal was rendered justly celebrated for the immaculate purity of its judges, and yet they owed their office to the faithful discharge of the duties of another, through which they were previously compelled to pass; I mean that of *Archon*. Sir, it was in those days that the judiciary was in its highest repute, when

prompt and speedy justice was administered, and when judges kept themselves aloof from the influenee of politics, or any thing else, save the virtue and integrity for which they were so eminently distinguished. It was then sir, that the ermine was unsullied by the foul waters of the political cauldron. The judges were subject to removal by the people; and, to the discredit of the age in which we live, in the days of Solon, a judge who would mingle in politics, or be guilty of any malpractice, would be removed, if not by an irresistable current of public opinion, by the application of another and much more severe remedy, to wit: that system of ostracism, which, while I will admit sometimes affected good men, much oftener removed the mischievous and troublesome, to where they could inflict upon their country no further injury.

Thus again it will be seen, that where a system of accountability prevails, justice is best administered, and yet we are asked to deny the application of this doctrine to American institutions. Officers, judicial or otherwise, are but agents; and agents of every discription should be amenable to the power from whence they derive their authority.

We have been told by the gentleman from Northrmpton, (Mr. Porter) that some of the signers of the Declaration of Independence were opposed to the constitution of 1776, which embraced the limited tenure. This argument I have examined, and find that they were not opposed to the judicial features of that instrument, but confined their opposition to the legislative department, which, under that constitution, was embraced in a single body.

Again, it has been said by the gentleman from Union, (Mr. Merril) that William Penn gave to the colonial government a permanent judiciary, and the weight of his great name is invoked against a limited tenure. The charter of this great and good man, as early in date as 1682, provided for a limited period of judicial appointment, about two years, which lasted until 1706.

The same gentleman asserted that the council of censors recommend life offices. This body was, as is well known, one of limited powers, requiring two-thirds to render effective the calling of a convention, and yet on the vote being taken on that question, but twelve voted in the affirmative, and ten in the negative, the latter including your Smilies and Findleys. Thus it would seem, that the constitution of 1790, was conceived in a direct violation of the provisions of that which was framed in the very midst of the revolution.

It has been said, that a tenure for good behaviour is not and cannot be considered a tenure for life. Mr. P. referred the convention to page 340, American state papers, where judge Richard Basset and twelve others, in a memorial to congress remonstrated against the repeal of the law, which created their offices, on the ground alone, that their commissions were during good behaviour, and that as long as they behaved themselves well, they were entitled to the offices for life, thereby reversing the doctrine, that offices are created for the public, and not for the benefit of those who may fill them.

These judges, said Mr. P. (like most others) were the strong advocates of vested rights, and when jurists themselves will declare this to be the nature of their official tenure, the opinions of the rest of mankind would

be of but little avail. A limitation of tenure, by this convention, will forever put this "vexed question" to rest.

Two objections to a limited tenure have been zealously and ably, but, as I shall proceed to show, not successfully argued.

1st. That competent men cannot be found to accept the office for a short period, to relinquish a lucrative practice for an office, the re-appointment to which is rendered uncertain.

2dly. That judges would become subservient to the powers from whence they derived their commissions.

To the first of these arguments I answer, that the presidents of several districts in this state are in favor of limited tenure, among whom, I believe, will be found the worthy and estimable gentleman who presides over the Northampton district, (Mr. Banks.) That gentleman, as my colleague well knows, left a practice in the west, worth perhaps double the amount of his salary, and yet that gentleman accepted his present trust with a readiness at any time to yield it when the public interest should require.

To the second argument I answer, that independent judges are not to be influenced by a feeling so disreputable as that of cringing to the appointing power; and a man naturally timid, and who might be disposed to bend to executive will, would not do so for the best reason imaginable, to wit, the uncertainty of the political character of the executive who might be in office at the expiration of his commission. Judges under a limited tenure would see that the people were their final arbiters, and their ambition would be to pursue such a course as that neither friend nor foe could impeach their integrity. Make a judge independent of the appointing power during his period of appointment, and he has no favor to solicit; the governor being *functus officio*, and constitutionally ineligible before a re-appointment, he of course falls into other hands, who will judge him alone by his merits.

The evils of a life tenure may be considered under the following heads:

1st. It begets tyrannical feelings.

2d. It begets indolence on the part of the judges.

3d. It enables ambitious judges to become politicians, without the fear of being removed.

4th. It begets carelessness in the discharge of their duties.

5th. It not unfrequently begets a want of courtesy to the bar and people.

The case of Judge Peck, (to which Mr. P. referred) was a cool, deliberate, and premeditated outrage on the rights of a member of the bar, perpetrated under the guise of judicial sanction, and yet the peaceful citizen, whose liberty was in this instance assailed, after bringing this constitutional judge before a constitutional tribunal, was compelled to hear announced, the mortifying decision, that the judge was not guilty of the offence for which he was impeached.

He (Mr. P.) also referred to the official conduct of the Hon. George

Turner, one of the territorial judges, who was charged with oppression in holding courts in the extreme parts of counties, in levying fines upon citizens quietly travelling upon the Ohio, and in taking possession and retaining the property of intestates, minors, &c. In addition to these acts of tyranny, the result doubtless of life tenure, he (Mr. P.) referred the convention to page 214 American state papers, vol. 1, to a law passed by the governor and judges of the Mississippi territory, appropriating to themselves, certain fees on the granting of tavern licenses, &c.—thereby taking to themselves the character of legislators, and requiring the interposition of congress, to arrest assumptions of power, having no legitimate connexion with their official duties. The four additional evils of life tenure (said Mr. P.) are such, as necessarily results from the peculiar nature of the present judicial tenure. Judges are frequently indolent, careless in the discharge of their duties, wanting in courtesy to the bar and people, and violent partisans and political aspirants—and for all these evils, no constitutional remedy has been or can be prescribed. A limited term, by which they will be periodically accountable to the people, will prove the best corrective to all the enumerated evils, and if, occasionally, an improper person should be called upon to assume the ermine, it would be some consolation to the public to know, that a constitutional limit would terminate his official career, and enable the people to supply his place with one less exceptionable, both as regards character and conduct.

But (said Mr. P.) we have been repeatedly told that life tenure was essential to the independence of the judiciary. This argument, to my mind, is a singular one. It is, as I have on a former occasion said, an argument of deep and lasting implication upon judicial officers. It is in effect saying, give them the office for life, and they will be honest; reduce it to years, and they will be dishonest. From whence comes this honesty of principle? Is it a gift of the God of nature, or does it proceed from the artificial restraints which you throw around the incumbent. A fearless and independent man by nature, cannot be warped by the nature of judicial tenure; while, on the other hand, a man naturally timid, dependant, or corrupt, is not in the least bettered by removing him entirely beyond the influence of the people. In my humble opinion, such protection best affords encouragement to that timidity and dependence, and gives an additional license to the corrupt purposes of one already naturally corrupt. I rest upon the broad premises, that men, to be qualified for official stations, must be naturally honest as well as capable, and a short or long term of office cannot in the least affect the principle. The independence of an honest heart and mind, is the noblest kind of independence, and is such as knows no surveillance, acknowledges no vassalage, and is subject to none of the corrupt passions of our nature. An honest man requires neither to be watched nor fettered by any unnecessary restraints, nor aided in his honest purposes by any extension of his term of office. A nearness to, or remoteness from the people, will in no wise affect his integrity. A remoteness from the people may produce in public agents, an indifference to the public interest, and may afford to a bad man, an opportunity of effecting his wicked purposes; while a nearness to the people, begets an affinity of purpose, and even prevents a man naturally vicious, from doing harm. I am speaking of the relative effects of the two systems upon good and bad men. On the former, neither can have any influence, while the latter will meet with a proper restraint in the limitation of judi-

cial tenure. But a man whose integrity is uniform and hereditary, possesses within himself enough of intrinsic worth, to resist temptation and to disregard popularity.

Mr. President, the hour assigned by our rules for speaking, having nearly expired, I am compelled to abridge my argument, and in closing my remarks, as it is the last time I shall probably address this convention, I cannot refrain from an expression of feeling, connected with the dissolution of this body. The time is now rapidly approaching, when the members, one and all, will be called upon to part, perhaps to meet no more forever. Approximating as we are to the period when we shall take each other by the hand, to bid an affectionate, and to some of us a lasting farewell, it becomes us to temper our deliberations with a solemnity worthy the occasion. When I look around me, and behold forty members and more, whose heads have blossomed for the grave, some of whom are upon their staffs, and bending to mother earth, as if in anticipation of finding there, a refuge from life and infirmities, I am forcibly reminded of the folly of indulging here or elsewhere, in political asperity or personal crimination. Whatever of this feeling may have found its way into this body, let it be among the first to be forgotten, and let the pleasing office of memory hereafter be, to remind us, that our last act was that of burying, in one common grave, the petty feuds with which the councils of this convention have been occasionally distracted.

Mr. President, twenty years hence, some two or more of us may meet in this city. If so, curiosity would doubtless prompt us to visit this hall. What, let me inquire, would be the reflections, which would naturally force themselves upon us. We would stand here in solemn silence, with the eye of memory fixed upon the places we now occupy; and when that silence should be interrupted, it would be by inquiring, where now are our fellow members? Where is the venerable judge who sat upon the right of the seat occupied by myself, whose soul-stirring eloquence has more than once enchained the convention in almost breathless attention? The answer would be, that he, and others of our fellow members, are now no more. Such reflections, if indulged in, impart the happiest influences, and are productive of the most valuable and lasting results.

Mr. DORAN, of Philadelphia county, said that the arguments which had been offered on this subject, were principally confined to the good behaviour tenure. Some gentlemen were of the opinion, that it had failed not only in this country, but in England also. He begged to take issue with gentlemen on that point. The question, however, now under consideration was—how shall the supreme court be constituted? How shall that tribunal be constituted, which was to control the action of the inferior tribunals? How was the court of last resort to be established? which by the constitution of Pennsylvania, was vested with the power of protecting the life, the liberty, and the reputation of every member of the community.

He understood the gentleman who brought forward the proposition, to say, that he intended to couple with it an amendment that the judges of the supreme court, shall be removed by a majority of both houses of the legislature—that his purpose was not to ask, that the tenure of good behaviour shall be applied only to the inferior tribunals, but that it shall be confined only to the supreme court.

If this were a general question, in relation to the judicial tenure—if the question was whether the good behaviour tenure should he made applicable to the judges of all the courts, he would now certainly consider it his bounden duty, to record his vote against the amendment of the gentleman from the city of Philadelphia. But, the question that we were to determine, was—whether the supreme court judges alone were to be appointed for a limited tenure, or during good behaviour, so that the highest tribunal in the state might be placed in such commanding and elevated station as to have in its charge the constitution, and to keep the inferior courts in their proper spheres.

The proposition was not a new one, for one of a similar character had been adopted in the state of New York. He found that by the revised constitution of that state, that the chancellor and the judges of the supreme court shall hold their offices during good behaviour, while the judges of the county courts, and the recorders of cities shall hold their offices for five years, but may be removed by the senate, by and with the consent of the governor, in certain cases therein mentioned.

He felt no personal interest in the matter. He did not know that he could number, among those officers on the bench, one individval whom he could call by the cordial name of "friend." Indeed his acquaintance with them was but slight; and it was only under a sense of what was due to his state, under a sense of duty which he owed to his constituents of the county of Philadelphia—that he felt himself bound to raise his humble voice in support of this amendment, which he believed connected with the salvation of the state.

His opinion was, that no amendment could be offered to the consideration of the convention, of more importance to the community at large than one which had reference to the constitution of the state, and the practice of the tribunals under that constitution.

The judicial tribunals were instituted for the protection of liberty, and were fearless of any regard for popular opinion, and acting only in the conscientious discharge of the duties imposed upon them by the constitution of the commonwealth, to administer the law between man and man, and thus secure to all justice and liberty.

But, when they failed to effect these objects, no man could be safe, for they became engines of tyranny. The supreme court in particular, had been established for the purpose of carrying out and protecting those great and hallowed principles of the constitution, which every Pennsylvanian must admire. Why, he asked, had this change being required in the judicial system? Whence came this cry against the judges of the courts? For what reason was it that the community had asked the convention to insert a new provision in the constitution instead of the one limiting the tenure of the judges to "good behaviour?"

So far as his knowledge extended, he had no hesitation in declaring that he had heard no complaint on the part of the people in regard to the judges of the supreme court bench. But, he had heard much said here against those judges.

It had been broadly and boldly stated on this floor, that there had been many cases decided in violation of the laws of the land and which involved

a usurpation of legislative authority. What, he asked were those cases referred to? Were they connected with moral circumstances? Were they not rather errors of the head than those of the heart? And, where was the gentleman in this convention who would undertake to say, that a judge, who discharged his duty fearlessly and conscientiously, and whose motives were proper, was to be removed from the bench, and succeeded by some man who had no regard for the dictates of conscience and morality? He maintained in opposition to what had been said, that the cry which was said to have been raised against the judges of the supreme court was altogether a mistake, for the cry was against the judges of the county courts. He would repeat that the supreme court judges were not complained of, and for the reason that they had administered the law to the satisfaction of the people.

The fact was, that the complaints that were made, were confined to those judges who had the appointing of inspectors. the granting of tavern licenses. The legislature had conferred these extraordinary powers on these judges, and doubtless they had been used, from time to time, to their own personal aggrandizement.

He would say that this evil was attributable to our own law and that the representatives of the people, who passed it, were to blame for having done so, and which had made the judges what some gentlemen say they are—corrupt men, in whom there is not a spark of morality. Let this patronage and political power be taken away from them, and the corruption and the complaints would cease.

As he had before observed, the only question before the convention was in regard to the supreme court—whether the tenure of the judges shall be what it is now, for good behaviour, or whether it shall be limited to a certain period of time?

This was emphatically and truly a country of constitutional law. In all the states of this Union, there was a code of laws—a frame of government formed, by which the rights of every man residing within their jurisdiction was ascertained and well defined. In this respect we differ from the countries of Europe. And although England has her Magna Charta, her bill of rights, and a vast number of acts of parliament to prevent aggressions on the rights of the people by the crown, yet that country does not possess a code setting forth and defining, particularly, what rights they have. The judicial tribunals were vested with the power and authority to protect, guard and define what were the rights of the community. Fortunately for the people of this happy and prosperous commonwealth, they possessed a constitution in which their rights were well and clearly defined.

The powers of their government, are plainly and explicitly expressed in that instrument. They are executive, legislative and judicial. And it was conceded by every delegate, in the course of their arguments, that in order to the preservation of liberty and justice, it was absolutely necessary that these three different departments of the government should be kept separate, distinct and independent. It was admitted that there was danger to be apprehended from allowing any one of these powers to trench upon the other—that the consequence might be to overturn the balance of the constitution, and thus to render the country, so far from being what

it now is—free and happy—a miserable despotism, equally as much so as any country in Asia.

But not only did gentlemen here admit the absolute necessity of keeping the legislative and executive powers separate and distinct, but they also conceded the same argument in reference to the judiciary and legislative branches of the government.

He (Mr. D.) conceived the judiciary to be appointed for the purpose of regulating, controlling and carrying into effect the acts of the other branches of the government. But, how were they to perform their constitutional functions in a proper, fearless and independent manner, if deprived of that protection which was thrown around them by the constitution of 1790?

He wished to know whether gentlemen were in favor of giving the executive control over the judiciary, or were they disposed to give the legislature the control over it? He (Mr. D.) had supposed that the supreme court of Pennsylvania, was constituted and established expressly for the purpose of guarding the rights of individuals under the constitution. They are a tribunal of the last resort; they are individuals who are to pronounce what the constitution is, and they are to guard and watch over the rights of citizens, as expressly set forth in the bill of rights. The judges of the supreme court are vested with this great power and authority, and in order that justice may be dealt out fairly and impartialy by that tribunal, to every man, nothing ought to be done by this convention that had the slighest tendency to prevent them from exercising their powers as independently, as honestly, and as fearlessly as heretofore. He maintained that the tenure of the supreme court must be permanent, and that personal liberty and rights would be jeoparded, if it should be changed. What, he asked, did the amendment of the committee propose? Why, to place the supreme judges entirely at the mercy of the executive.

His friend from Butler, (Mr. Purviance) had said there was a vast difference between a tenure at will, and a tenure for life, and that it was not essential that a judge should be appointed for life, in order to secure his independence. Now he (Mr. D.) did not mean to say that it was in every instance; but in the general, it was a surer mode of obtaining honest, impartial and independent judges, who would do their duty fearless of consequences.

Supposing the judges of the supreme court to be appointed for fifteen years, would they not, he asked, be in the course of time, at the will of the executive? In his opinion they would. He called upon gentlemen to say whether they were prepared to go so far, as to say that the executive shall have the control over the judiciary. He felt quite sure that such a tenure as proposed, would increase the power of the governor to a most dangerous extent; and that it would be extremely impolitic and unsafe to adopt a limited tenure in regard to the judges of the supreme court as well as of the inferior tribunals. There was not a man in this body, but must admit that the executive of the commonwealth, would have immense influence over the judges of the supreme court.

It was impossible to say whether they would resist that influence; but, looking at human nature, frail and weak as it is, it was not too much to suppose that they would yield to it. He thought it not at all improbable that

when the terms of the supreme judges were about to expire, the judges of the lower courts would slander them and intrigue to obtain their places. Supposing then, the judges of the supreme court to be under the influence of the executive, and that a writ of *quo warranto* were to be issued by that court, against the president and directors of the Bank of the United States, and the matter was about to be argued, and knowing as every body does know, that the governor is friendly to that institution, what sort of a decision might we expect under such a state of circumstances? Certainly in his (Mr. D.'s) opinion, not one unfavorable to that great moneyed corporation. It was almost ridiculous and absurd to suppose that a governor, unfavorable to a great corporation, like that of the Bank of the United States, and having the appointment of the judge of the supreme court for fifteen years, could prevent them from being influenced if they were so disposed, in favor of that institution. Here then, we had one of the results arising from placing the judiciary at the mercy of the executive. Now, this was a circumstance not unlikely to occur.

He would ask the democrats of this convention—and he claimed to belong to their party—to look at the condition in which the judiciary would be placed, if the amendment of the committee should be agreed to. Were they, he repeated, going to place the judiciary at the mercy of the executive? For, it might happen that the present governor might be elected although he did not say, nor did not think so. On the contrary, the impression on his mind was, that the democratic candidate would succeed by a large majority. But still, for the sake of the argument, he had a right to suppose that the present incumbent of the executive chair, would be re-elected.

And was this convention about to give the governor who was known to entertain certain political doctrines—and which he (Mr. D.) was about to say, no man ought to approve—an opportunity of moulding and framing a judiciary to suit himself and those of his political friends. He sincerely trusted that the convention would pause long and deliberate much, before they came to the conclusion to adopt an amendment, which was calculated to place the whole judiciary completely at the mercy and under the control of the executive of the state of Pennsylvania.

He (Mr. Doran) for one, was most unequivocally and entirely opposed to the adoption of any amendment that had any such tendency.

Well then, he would ask gentlemen, if they were disposed to put the judiciary under the control of the legislature? Were there any periods at which they might tyrannise over the people? There had been instances of the legislature having committed the most tyrannical and despotic acts that had ever disgraced the annals of any country. Under the amendment if adopted, the governor and senate of Pennsylvania, would have the appointment of the judges of the supreme court for fifteen years. Now, was it at all unreasonable to suppose that the judges, in giving their judgments, would be disposed to lean to the individual who possessed the power of keeping them in office, and of turning them out, if they decided in opposition to his known sentiments?

There was another point of view, in which this amendment of the committee should be considered, and it was this: he would not say there was ill-will, but there was jealousy existing between the inferior tribunals and

the supreme court. If the tenure of the supreme judges was to be reduced to fifteen years, what would be the consequence? Why, the judges of the inferior courts would go into the field and operate and intrigue against their re-appointment, as their terms were about to expire. And, it would be found to bear with the most powerful effect. One result of limiting the tenure of the supreme judges to fifteen years would be the reversal of many more of the decisions of the inferior tribunals than otherwise would be the case under judges whose continuance on the bench was, as had been heretofore, because there would be a change in the principles that governed the court, and in the rule of action. This would create dissatisfaction among the judges and members of the inferior tribunals. It was, therefore absolutely necessary in his opinion that the supreme court should be placed on a more independent, stable, and unchangable footing than was proposed by the committee. For, every new set of judges that were seated on the supreme bench would bring in a new set of opinions; and, consequently, the reversals of decisions made by the inferior tribunals, would be greatly augmented in number.

He had heard in the course of this debate that the judges which had been appointed for good behaviour had given dissatisfaction.

I should like to know the instances, any instance, of a judge appointed to a superior tribunal. What was the instance cited by my friend from Butler county, (Mr. Purviance?) There it was a case of limited tenure, and not of a tenure during good behaviour: I allude to the case of Judge Turner; and notwithstanding his appointment was for a term of years, and that he was liable to be removed—notwithstanding, to make use of a favorite phrase, that he was subject to the control of the people, we, nevertheless, find him disregarding the opinion of the community, and resorting to acts of a disgraceful character.

What do we find in the cases cited by the gentleman from Butler, (Mr. Purviance) as to the judges in England. They are instances of judges who were appointed for a limited term of years. They are not instances of the tenure of the judicial office during good behaviour, and, therefore, the argument is not applicable. If there is any thing in the argument, it is in favor of that tenure being applied to the judges of the supreme court, who, if they are honest men, will discharge their duty as well under one tenure as another.

I do not think, Mr. President, that the convention will be exactly disposed to concur in the amendment of the gentleman from the city of Philadelphia, (Mr. Meredith;) but knowing that my colleagues differ somewhat from myself on this matter, I have thought proper to explain my reasons for desiring that that proposition should be carried out. I shall vote in favor of appointing the judges of the supreme court during good behaviour, but removable by the address of the legislature; and I shall vote for a tenure of a limited term of years, for the judges of the inferior courts. I am anxious that the judges of the inferior courts should be subject to the will of the people, to the action of the executive, and to the superintending wisdom of a higher tribunal.

Mr. Brown, of Philadelphia county, said that after the time which he had occupied in the discussion of this subject in committee of the whole, at Harrisburg, it had not been his intention to say any thing more before

the final vote was taken. Nor, said Mr. B., has that intention been changed until a few moments ago; and should still have carried it into effect, but for the course which the gentleman from the county of Philadelphia, (Mr. Doran) has deemed it his duty to pursue, and which, I think, demands from me, if not from any other member of this body, who is associated with him, some especial notice. I am the last delegate from that county, who would wish to bring into this hall any of the differences of opinion which may exist among its representatives; but the gentleman has told us that a sense of duty to his constituents has prompted him to the course he has pursued. If the gentleman had confined himself to his own sense of duty, I should not have done any thing to interfere between him and the vote he might feel disposed to give. He, and I, and all of us, are responsible to no other tribunal for the votes which we may give here, save to our own consciences alone. But when the delegate from the county of Philadelphia tells us, that a sense of duty to his constituents compels him to say, that they are desirous that any officer of any court in this commonwealth should hold office during good behaviour—or, what is essentially the same thing, for life, I feel it to be my duty to disavow the existence of such a sentiment among any portion of the people whom we represent.

The gentleman has appealed to the reformers—to the democracy, as he calls them. I profess to be one of that number, and I have avowed openly that I was for abolishing all life offices. I have seen the signature of the gentleman from the county attached to a written pledge of such import, in the same broad bold hand which characterises that signature where ever it is to be found. This wasthe sentiment avowed to the democracy of the county. Since that time I have seen the democracy assemble in their strength—I have seen a resolution passed there, approving the course of the democratic delegates in this convention, and urging them to go on and to persevere in their good work—in their resolution to abolish these life offices from the commonwealth of Pennsylvania; urging us to go on until not a life office should be left to disgrace the constitution of the state. This, sir, is the voice of the democracy of the county, whose representative the gentleman declares himself to be. Sir, in behalf of that democracy, I disavow the sentiment which he has uttered, it belongs not to them; they have no part in it. The gentleman tells us that he is entirely disinterested. I have no wish to impute bad motives to any man; but when gentlemen—members of the bar, as was the case with his colleague from the county—tell us how little interest they have in the decision of this question, I cannot forget, that it is in the smiles of these courts that they "live, and move, and have their being;" and that, with them, every thing in life is held by the smiles or frowns of these same judges.

I disavow any intention to impute unworthy motives to my colleague or any other member of the legal profession, but I say that I cannot close my eyes to constructions which must present themselves forcibly to the mind of every man who has given any attention to this subject. Where is the lawyer of eminence who pleads before the bar of the supreme court, who will say that the judges of that court ought to be removed, that the tenure of good behaviour is prejudicial to the interests of the people, or that the judges have not faithfully performed the duties of their office?

Sir, to expect this, is to expect more than human nature can be expected to do. And, in doing this, I impute no weakness that is not an incident to the highest and the greatest of our race. When they do thus yield to circumstances, they do it not willingly—but it is in their hearts—it is the frailty of their natures.

The gentleman from the county would separate the county courts, and makes this high principle of responsibility to the people for re-appointment or rejection to have grown out of paltry tavern licenses, or elections of school directors. It is no such thing; it has grown out of another principle of the democracy in Pennsylvania, who have opposed this principle of irresponsible offices, from the establishment of the constitution down to the present day—who have complained of that principle as being anti-democratic, anti-republican, dangerous in itself—and a principle calculated to do much injustice to many parts of the commonwealth. What kind of judges have you had under this feature of the constitution? Dare any lawyer who practices at the bar come here and say what kind of judges you have? Sir, let gentlemen beware what they are doing.

If the amendment of the gentleman from the city of Philadelphia, (Mr. Meredith) should be adopted, you do not know what the result may be. There may be life judges. I ask again, what lawyer is there who will dare to step forward and tell us of the crimes or the weaknesses of any one of these judges? We do not hear of their defects. It is true that when their defects become enormous—when they become such as can no longer be concealed—they are then brought before the legislature. But how often does this happen? How many causes of just complaint may there be which never are redressed? How many vexatious—how many tyrannical acts are there, which may never be known, beyond the immediate sphere in which they may have occurred! Look at the favors which are shown on one hand, and at the petty jealouses which are shown on the other, towards certain men, who may, or may not be in good liking with the judges of the court. Look at their want of industry—at their bad habits—at their strong and bitter prejudices. Who is here to bring all these things before us? There is none. If at any time, now or hereafter, there were men upon the bench of the supreme court whose private character might be in every respect disgraceful—a man who spent his nights at the gambling house, or in the lowest haunts of dissipation—where is the lawyer to be found who would come here and tell us of his misdeeds.

If upon the bench, now or at any time, there were a man who was dishonest in the common transactions of life, where is the lawyer to be found who would have independence enough to come here and tell us of the fact? Where is the lawyer who would go before the legislative body, and impeach such a judge? To do so, would manifest a degree of independence which human nature is rarely capable of exhibiting. If on the bench there were a judge so deaf as to be incapable of hearing my voice, which—thanks to the kindness of nature is none of the weakest—what lawyer would dare to go before the legislature, and make such a complaint—or, if he did, is it probable that any one would pay attention to it?

If upon the bench, now or any time, there were a man so intoxicated as to require to be led to his seat, or to be supported from it, who

would come here and tell us of it—or who would go to the legislature and make a complaint? None. Sir, the system is rotten in itself. It prevents that wholesome action which will re-appoint a judge who has been faithful and upright in the discharge of his duties, and which will silently leave at home the man who has not been faithful. This is a provision which is wanted every where. It is democratic in its character and in its influence; it is republican; it is such as may be relied upon for the salvation of any state.

And what is the reason which the gentleman from the county of Philadelphia, (Mr. Doran) assigns, why he would separate the high tribunals of the land from those of a more inferior character? Have not the people as great an interest in the administration of justice in the county courts, as they have in the supreme court of the state?

The people of the county of Philadelphia knew their magistrates, and where to find them. But where, he would ask, was a man residing in in Philadelphia, to ascertain where the supreme court was sitting? The county courts are courts of popular opinion, and if those courts were influenced at all, they were influenced by it. But, he denied that they were influenced at any time. Popular phrenzy might disturb a particular district; but it would not extend over the whole state. In the state of New Jersey, the highest courts, or those of last resort, both in law and equity, were elected annually—the governor being the chancellor, and the council being the high court of error and appeals; and yet, after fifty years' experience, no attempt had been made to amend the constitution; for, the fact was, that no inconvenience had been felt by the people of the state. He maintained that there was no foundation whatever, for apprehending dangers in reference to the establishment of a limited tenure. Some gentlemen here had talked of popular opinion and the danger incident to removing all the judges at the end of ten or fifteen years; why all this was gratuitous, and was an unnecessary alarm, as it rested upon no foundation whatever; for not a delegate present had advocated such a principle, or proposed the introduction of it into the constitution. No gentleman here had thought of turning out all the judges at one time. On the contrary, it had been conceded on all hands that they are to be appointed at different periods of years. Supposing that each judge went out of office at the end of fifteen years, nine years must necessarily expire before there could be a change of the opinions of the supreme court. He contended that it was far from being a democratic opinion, which had been pronounced in this body, to suppose that the people would run mad and wild, in consequence of a change in the judicial tenure—putting the judges more within the reach of responsibility to those whose servants they are. Such an opinion as that was totally at war with democracy, and democratic notions. It was altogether too much to suppose that the people would run mad, when this change took place but once in nine years.

He ventured to say that if the popular phrenzy, which had been spoken of, should ever rage in this commonwealth, it would be in the form of a fine, strong, substantial popular opinion, that would sweep the constitution from the land. And, rightly so, too; and he who would attempt to prevent the expression of popular opinion, by the adoption of any course of action, or policy, could not be a sound republican.

He knew it was the doctrine of ancient times to regard an outbreak among the people, as popular phrenzy, and which generally indicated that the people were suffering under a sense of wrong. This had occurred in Greece and Rome; perhaps, too, it had shown itself in Paris, and probably in the city and county of Philadelphia.

But, however, popular phrenzy might rage in the city and county of Philadelphia, it would spread itself over the mountains among a population, here and there entirely different in their habits and manners, but intelligent and of strong judgment, and who, if they partook of this phrenzy, as it was called, would soon put into the gubernatorial chair of Pennsylvania, a man who would carry out their wishes.

But he (Mr. Brown) would say that it was a slander on our institutions, to suppose that the popular will, expressed through the ballot-box, would be dangerous at any time. The danger to be apprehended was in acting contrary to the popular will. The people of Pennsylvania are never wrong. And, they are opposed to these life offices; and therefore he would not vote in favor of them, but for a limited tenure.

Mr. PORTER, of Northampton, observed that he had not intended to have said a word on the subject, inasmuch as he had given his views at Harrisburg. He, however, in consequence of what had fallen from the delegate from the county of Philadelphia, (Mr. Brown) felt himself called upon to say a few words.

He (Mr. P.) preferred the tenure of good behaviour, in all cases, in all judicial offices; but he could not, and would not, vote for a term of years, because the legislature would not give sufficient salaries to secure the independence of the judges.

But what had induced him to rise now, was to say a few words in reference to the unwarrantable attack of the gentleman from the county of Philadelphia. That gentleman had asked if we did not find judges of bad habits—if we did not find them so ignorant that they could not attend properly to their duties—so regardless of an oath as not to perform their duties with fidelity—so deaf that they could not hear his (Mr. Brown's) voice, or his, (Mr. P's.)—or judges so drunk as to require to be led to their seats on the bench, or to be supported from them——

[Here Mr. BROWN interrupted Mr. Porter, and was understood by the reporter to say that he had spoken hypothetically.]

Mr. PORTER resumed, by saying that he did not understand this kind of broken evidence of the gentleman. He, however, would tell that gentleman, and the world, that the lawyers of Pennsylvania are not found recreant to their duties. Need he refer to the war of the revolution, and point out those distinguished men, who boldly avowed the principles of our government, and fought for the independence of their country? Who was it made the hills and valleys to ring with the shouts of liberty and independence? Who was it inculcated the principles of liberty and of free government among the people? It was the lawyers. On every occasion had they been ready to defend their country, not only with their pens, but with their swords. Yes, their eloquence in the councils and among the people, and their courage in the field, had always been eminent, upon all occasions, in asserting and maintaining the liberties of the country.

He would undertake to say, and he would appeal to the history of the last war, in proof of what he said, that more lawyers, in proportion to the number of the profession, and what the law required, had turned out in defence of their country, than in any other profession. The Philadelphia bar was almost deserted by our young lawyers, and students at law were found braving the dangers and hardships of the tented field.

He (Mr. P.) did not believe, that men of their character, then, who had a moral duty to perform, as judges, would be found recreant when the ermine of purity and justice was around them. He denied the charges that had been brought forward, and would maintain that the bar have faithfully done their duty. He had known no judge in the state of Pennsylvania, who had come to the bench so drunk as to be obliged to be led away from it. And, he (Mr. Porter) would ask the proof of this foul charge. Neither did he know of any judge in Pennsylvania who spends his nights at a gaming-table; and, he would ask the gentleman from the county of Philadelphia to tell him who it is that does so. Also, who the judge is, who is so deaf that he cannot hear him, (Mr. Brown.) He (Mr. P.) would inquire, too, where are the judges of such bad habits and so negligent, as the gentleman intimated they were, and whom the representatives of the people have not been faithful enough to call to an account. He (Mr. P.) knew of no such judges. But he knew that if such men could be found, there were lawyers who would bring them to an account for their misconduct—who would not shrink from the duty one moment.

But the gentleman from the county of Philadelphia had said, that the system was rotten and defective. He (Mr. P.) had ever been opposed to Eutopian schemes, because always ineffectual and unavailing. He would not give up a system which had been found to be good, merely for the purpose of trying an experiment. He would say that experience had proved that the present system had worked reasonably well in practice. He did not say entirely well, because no system, merely the work of humanity, had worked to perfection. There were errors in the system, but they were only those of poor humanity. And, all that could be done was to guard against errors, as much as possible, and make the system, whatever it was, as perfect as we could. He despaired of ever seeing a system entirely perfect in this world. He knew of no judge in Pennsylvrnia who has bean elevated to the bench, we would be afraid t› trust with the common affairs of life. And he would ask the gentleman from the county of Philadelphia, for the name of the judge to whom he referred. He (Mr. P.) believed that the delegate in his zeal, had drawn upon his fancy for the pictures he had presented to the notice of the convention. He believed that the gentleman was rather seeking for extreme cases against which he would guard—cases which had never existed. He (Mr. Porter) was aware that there had been improper men elevated to the bench, in this and in all countries, and in all ages. He wanted to learn from that delegate, or any other, if changing the judicial tenure would better the men? If appointing them for ten years would make them better men than if appointed for a less period? In his (Mr. P.'s) opinion, it would not. The fault lies in the men.

The delegate from Susquehanna (Mr. Read) had argued that the judges should be frequently tured out of office in order to avoid the danger of

their changing their opinions. Now, he (Mr. P.) did not apprehend himself, that there was as much danger of a judge changing his opinion and changing the law, as of a new judge making new decisions.

But he did not rise for the purpose of saying any thing on the subject of the judicial teure, but merely to reply to the charges of the delegate from the county of Philadelphia, who, in his great zeal made very serious charges against the judges, and for which there was no foundation whatever. He was quite sure that if the gentleman would refer to the journals of the legislature, that nine or ten complaints had been made, and that the judges were brought up by members of the bar. He (Mr. P.) would ask, then, where the case was of a judge, who ought to have been turned out, that the object was not attained either by impeachment, or by removal? Having accomplished the purpose for which he had risen, he would resume his seat.

Mr. DORAN said, that he desired to say a few words in answer to matters which had been broached by his colleague from the county of Philadelphia, (Mr. Brown.)

It is always unpleasant to my feelings, said Mr. D., to introduce local matters into a discussion such as this. But when I find myself charged with a violation of a sacred pledge I have given, it is due to myself, not less than to the people of Southwark, that I should say a word in my own defence.

If I understand correctly the allegation of my colleague, it is, that I have violated a pledge which I had given to oppose what are called life offices in this commonwealth. I have lived in the county of Philadelphia for the period of seven years; I have lived in Southwark for seven years; during which time I have mingled freely with the people. I am not one of those individuals who are to be found to-day in the state of Virginia, and to-morrow in the county of Philadelphia; but I have been constantly mingling with the people, and attending every democratic meeting in the city and county of Philadelphia for the last seven years; and I now declare that, until I came into this body, I never heard of such charges as have here been made against the judges of the supreme court; that I never heard it even so much as whispered that they had violated the principles by which they ought to be governed either as men, or as judges. I never heard such an allegation.

In reference to the more immediate charge which the gentleman brings againt myself—that I had violated my solemn pledge—I have to say that he is in error. I have ample authority for the course I have taken here. I might appeal to my colleague from the county of Philadelphia, (Mr. Ingersoll,) who introduced a resolution at Harrisburg, the object of which was to continue to the judges of the supreme court the term of good behaviour, provided that they were made removeable by the majority of the legislature. Does the gentleman who has brought this charge against me suppose, that my colleague who sits near me, (Mr. Ingersoll,) would have violated a written pledge with a view to obtain popularity? No—and the gentleman (Mr. Brown) dare not make the charge that he has made against me, that there has been a violation of a solemn pledge, because he may be willing that the tenure of the judges of the supreme court during good behaviour, should be confirmed.

Mr. President, I made no effort to procure a seat in this body. God knows I never saw my name on the democratic ticket. But I know that there are persons here who desired a nomination on that ticket. I say that there is one individual here, unknown to the county of Philadelphia, in opposition to the wishes of the great body of the people of that district—without popularity—and who got his fri nds, drummed up to secure his nomination, and to obtain his own personal ends. I came into this body, not seeking the position I occupy. I do not ask popularity. I know what my duty is, and I shall perform it, without reference to the charges that may be brought against me, of violation of pledges. My constituents know me, and will judge me by my acts. I have no fears as to the result, for I know that they will judge me impartially. I live in the district of Southwark; I see my constituents every day, and they can teach me whenever they may please to do so. I have placed confidence in them, as I believe they have in me. They sent me here to do my duty to the country at large, and I shall do it. I shall vote in favor of the proposition of the gentleman from the city of Philadelphia, (Mr. Meredith,) and I have not a doubt that they will approve my course.

One word now, and I will take leave of the subject. Something has been said about the wishes of the people of the county of Philadelphia. If I were to form my opinion on the subject of reform, by the votes polled in the county of Philadelphia, I might say that the people of the district of Southwark are entirely opposed to reform. I have in my desk, the returns of the inspectors of elections, from which it appears that there are 1032 votes in that district in favor of reform, and 1700 opposed to it.

If then I were disposed, I might say, on this data, that my own immediate constituents were entirely opposed to reform.

Mr. Brown, of Philadelphia county, said, that gentlemen need not expect that he was about to raise a hornet's nest, for that he had never in the whole course of his life, felt in more perfect good humor, than he did at the present moment. I was surprised to find, said Mr. B., that the remarks which I made when last on the floor, should have given any offence to the gentleman from the county of Northampton, (Mr. Porter.) My colleague from the county of Philadelphia, (Mr. Doran) might probably have had more cause to have taken umbrage.

Mr. Porter, of Northampton, rose in explanation. He declared he was not angry at the time he made his remarks in reply to the gentleman from the county of Philadelphia, (Mr. Brown.) On the contrary, said Mr. P., I spoke in the most entire good humor. I had no cause to be angry. But I spoke loud—that was all.

Mr. Brown resumed. I have at least a glorious opportunity presented to me now of eulogizing the lawyers. I have not a doubt but that the lawyers of this body will vote like men upon any question which may come up for decision here. It requires much less courage to face an enemy, than to face a judge. In the first place, there is more glory to be gained in the former case, than in the latter. In the second place, I doubt whether either glory or money is to be obtained in the other instance. I say nothing about them, however, personally. All I say is, that if gentlemen should happen to fall in with such men as I have spoken of, no one will apply the remedy.

My colleague from the county, (Mr. Doran,) tells us that he has in his desk evidences to shew that the citizens of his district have arrayed themselves in opposition to the subject of reform. Being a reformer myself, I do not deem it necessary to get evidence against reform; but if my colleague has known so long that our constituents in the county of Philadelphia are opposed to reform, why did he sign pledges on all the subjects of reform, which we are now advocating in this body? as for instance, the abolition of life offices; the reduction of executive patronage; a change in the right of suffrage, and other matters. This is a singular proceeding. If my colleague over the way, (Mr Ingersoll) to whom the gentleman (Mr. Doran) has alluded, did attempt to violate his pledges, I should soon notice him as I would notice any other member of this body. I have no apprehensions on that score; and I shall say what I believe to be right, without stopping to calculate in what quarter my remarks are to fall. If the gentleman from the county of Philadelphia, (Mr. Doran) goes by himself, he may go and welcome; but I do not choose, that he should take it for granted, that the opinions which he may entertain, are the opinions of his, or of my constituents; or that he should take his will as their will. He says that he has lived in the county of Philadelphia for the period of seven years. In answer to that, I have to say, that I was born there, and educated there, and that I lived near there for a number of years. But if he means to say that I either sought a nomination, or drummed up my friends to get me elected, or came here for any personal purposes—if, I say, he intended any of these remarks to apply to me, I must take the liberty to tell him ———

The CHAIR here interposed, and said that he did not understand the gentleman from the county of Philadelphia, (Mr. Doran) as reflecting personally on the character of his colleague, (Mr. Brown.)

Mr. BROWN resumed. I was only going to say, Mr. President, that if those remarks were intended to apply to me, they are, without qualification or reservation of any kind, entirely false.

Mr. DORAN, amidst much confusion, was understood to say that his remarks were not intended to apply to his colleague from the county, (Mr. Brown.)

A motion was made by Mr. INGERSOLL,

That the convention do now adjourn.

Which motion was agreed to.

And the convention adjourned until half past 3 o'clock this afternoon.

WEDNESDAY AFTERNOON, JANUARY 24, 1838.

The convention resumed the second reading of the report of the committee to whom was referred the fifth article of the constitution, as reported by the committee of the whole.

The amendment to the second section of the said report being again under consideration;—

Mr. BELL, of Chester, rose and said, that he would not trouble the convention with any remarks at this time, if the proposition which was now before the convention, had ever been considered, discussed or decided.

I was not present at Harrisburg, said Mr. B., during the discussion in committee of the whole on this important topic of the independence of the judiciary; and it was not until I had consulted the journal of this body that I found that a direct action on this proposition had been evaded by another proposition which was introduced by the gentleman from Beaver, (Mr. Dickey) and upon which, at last the previous question was called and sustained. Notwithstanding the momentous character of this question—its important results—the immediate effect which its decision must have, for good or for evil, upon the whole mass of the people of this commonwealth—still I would not obtrude myself on the notice of the convention, but that I think that some of the arguments that might be brought to bear upon the decision of this question have been omitted, and others of them not sufficiently pressed.

Before I proceed to the discussion, permit me to say that, standing here as a member of the democratic party,—proud to be so—always from my youth upwards supporting its men and measures—ranking myself here as a reformer—a rational reformer—because, from some sentiments which have been expressed here, I must draw the line of distinction, though I trust, not very broad or deep—and intending as I do, to vote in favor of the amendment of the gentleman from Philadelphia, (Mr. Meredith) I feel that it is done not only in justice to myself, but with reference to the constituents whom I represent—and who on this subject, I think, nay, I may speak with more confidence and say, (so far as I know,) have formed no opinion, I owe it, I say, to them, although at so late a period in the debate, to express the opinions I have entertained from the first agitation of this question in the state of Pennsylvania. This I will do with as much brevity as possible; at all events, I will contrive to keep within the hour prescribed by the rule.

I have said in reference to my constituents, or at least, in reference to a large portion of them, that there has been no expression of opinion in regard to the tenure of the judicial office; and when I recur to the limited knowledge which I possess of the sentiments of the people in relation to this convention, and to the causes which brought us here together; to the amendments which are most desired by the people, I am of opinion that any proposed change in the tenure of the judicial office had nothing to do

with the call of this convention. For what purpose then were we called together? why, the only subject on which there has been no dissenting voice, in which the speaker and the listener have been unanimous, has been the subject of the reduction of executive patronage—that which has filled the state of Pennsylvania with corruption and moral intrigue from one end to the other, until the people were led to believe that the introduction of this vast engine of power would finally lead to their destruction. It was this, probably I should not say alone, but it is this mainly, which led to our assembling here and not to any question as to a change of the judicial tenure. Since the call of this convention has been sanctioned by the people, there has been, and I speak with sincere contrition, as I always do when I speak of the errors of my own party, upwright and pure, as I believe it to be, and having in view, as its leading object, the good of the whole people, I say there has been an outcry encouraged, if it did originate in the city and county of Philadelphia, against the judicial department of our government. No man, (and I say this with fear and trembling,) no man can look at the city and county of Philadelphia, at its people and their opinions, and for an instant run counter to them without endangering himself in public estimation, here and elsewhere. But I must say, that this outcry has been originated in the city in which we are now assembled. There is no spot on the face of the earth where more honesty, more refinement of intelligence, or more learning are to be found than in the city and county of Philadelphia. Yet here, in the midst of this city, a cry has gone forth against what has been termed the life office. Yes, sir, the war cry has been "life offices;" and, taking advantage of the known opinions of the people of Pennsylvnnia against any thing which has a tendency to elevate one man over another, those who have raised this cry, have, with great adroitness, induced a portion of the people, without looking at the question presented, or at its details—without understanding its results and without regard to the good or the evil which was to result from their movements—I say, a portion of the people have been induced to seize hold of this idea, and to hold up life offices as odious.

A portion of the people have thus been induced to shut their eyes to light and truth; and we are here assembled within these walls by the inconsiderate and unconsidering resolutions adopted at county meetings for to subserve the ends of particular and local party politics. I speak not of one party alone; the fault is with all parties and a most lamentable fault it is; for its tendency is to lead to great errors. For my own part, I put away for the present time, and I trust forever, all feelings which may have been generated by this party cry—and yet not a party cry, because it has been raised among all parties in our state—among the democrats as well as among those who are known by the title of whigs and anti-masons.

All parties have raised this cry of life office, and all have assumed the ground that those who held these offices lived in the enjoyment of privileges which are not known to the mass of the people of Pennsylvania. I beg leave to say to my friends on this floor, solemnly, that this is a great mistake—a mistake to which the indulgence of an undue feeling has led them—a mistake to which they have been led by a desire to alter some of the organic features of the constitution. I ask gentlemen, I pray of them, now to step boldly forward with me, and to divest themselves, so far as it is in their power to do so, of all party considerations, and all party feelings,

and so to give their final votes upon a question which is not only agitating this body, but for months and years has been agitating the public mind of Pennsylvania. I ask them, ere they give that final vote to reflect whether, in the views they have taken of this matter, they have not subjected themselves to the false and clamorous demands of party, rather than to the suggestions of reason and the voice of truth!

What then is the question before us? When I reflect on the result to which the gentleman from the county of Philadelphia, (Mr. Ingersoll) has arrived—after a speech fraught with learning—and when I remember that, after repudiating the idea of what he was pleased to denominate life offices—when, I say, I remember that, after all this, I heard him express the conviction he entertained that there was no such thing as the independence of the judiciary without the tenure of good behaviour—and when I saw him actually offer resolutions to that effect, I fear lest, before I shall have ended, I may myself also commit some great error.

What then is the question which we have to decide? It is nothing less than the question whether one of the co-ordinate branches of the government of this commonwealth, as it has existed since the settlement of the country, and before any of our constitutions were formed, should be merged in another; whether it should be utterly obliterated and stricken out of the statue book; whether it should be expunged from the constitution of Pennsylvania. Upon this subject, although the idea has now, I believe, been given up, a gentleman (Mr. Doran) proposed to introduce a distinct declaration, as a leading change of that sacred instrument, that hereafter the powers of the government of this commonwealth should be distributed between three distinct, separate and independent branches. Did not the gentleman make such a proposition? The gentleman who, according to the statement of his colleague, is pledged to interfere with the independence of the judiciary of Pennsylvania—that gentleman, I say, first introduced a resolution declaring that the three branches of the government should be forever distinct and separate—that is to say, the executive, the legislative, and the judicial. Up to this time, we have been in the habit of thinking that the independence of the judiciary was necessary to the community in which we live. I ask gentlemen to say, these ideas are now to be cast aside as worthless theories; and whether they are now of opinion that, in practice, this wholesome distinction of power should not be preserved. I would like any gentleman to answer, are we willing to say that this has been all a dream; that it has had its existence only in our imagination; and that although we have been taught by our constitution, and have listened with veneration to our jurists who have instructed us to cultivate it in our youth, and to practice upon it in our manhood—are we, I ask, about to say that this which we have regarded as the corner stone of all our free and glorious institutions is nothing worth—that it is the mere "baseless fabric of a vision," existing merely in the fancies of men, and having no existence in fact? Why do I say so? What is the proposition which has been adopted in committee of the whole? It is to reduce one of the independent branches of the government to a subordinate condition. It is to merge it in the executive and in the senate. That which heretofore we have been taught to believe was essential to the preservation of the rights and the liberties of the people, not less than to their happiness, it is now to merge, and merge forever; for if the judiciary

is once made subject to the executive, it is in vain for us to hope that it will ever recover its ground.

The question which we have now to meet and to decide is, whether by this new constitution which we are about to send forth for the government of the people of this commonwealth, we are willing to merge, and to merge forever, one of the three co-ordinate branches of the government. This is the issue, and this issue it is for us now to determine.

The change here proposed, changes the form of our government. Are gentlemen aware of this? or, have they reflected upon it? Have they reflected that, if this amendment of the committee of the whole should be engrafted into the constitution, we shall hereafter have two branches of the government, and not three, as we have heretofore been accustomed to have? Have gentlemen reflected that this proposition is, in fact, a proposition to destroy—to blot out of existence one of the branches of the government of Pennsylvania?

The gentleman from the city of Philadelphia, (Mr. Scott) who so eloquently addressed the convention yesterday said—and said with truth,—although the figure was a bold and strong one—that this was a proposition to change our government from a republican form of government to an oligarhcy so far as one arm which ought to be the strongest,—but which I regret to say, is the weakest,—was concerned. So far as that branch is concerned, this is a provision to change our republican form of government to an oligarchy. That such is its tendency, must, I think, be clear to every mind.

It is a matter of sincere regret to me, that the committe on the judiciary to whom this important article of the constitution was referred, and at the head of which stands the highly respectable judge from the city of Philadelphia, (Mr. Hopkinson) should, in their deliberations upon this subject, have abandoned a principle. Yes, sir, that they should have abandoned a principle! for there can be no doubt that that committee did abandon a principle, when they consented to give to the people—for whom I entertain as much regard as any other gentleman in or out of this house,—the right to elect justices of the peace. They abandoned a principle; there is no sophistry under which this fact can be disguised.

In a former debate at Harrisburg, I listened, as I always do, with delight and pleasure to the venerable gentleman from the city of Philadelphia, (Mr. Hopkinson) when he undertook to make an apology for that with which he had been taxed in private—that is to say, with the abandonment of a principle in requiring that the appointment of the justices of the peace should be given up to the popular will. And, Mr. President, if I stand here alone in my opinion in relation to the justices of the peace—knowing as I do the vast influence which they exercise at all times, for good or for evil, upon the mass of the people, over those who are not able to protect themselves,—I now give notice that, when that question shall again come before this convention, I will use my utmost exertions—however unavailing they may be—to rescue that humble but highly important branch of the judiciary, from the influence of popular election. If I am to place confidence in the opinions I have heard in different parts of the house, it is supposed that the majority of the people of Pennsylvania, without looking at the results which must inevitably follow from such a

provision, are in favor of the election of justices of the peace, yet I trust that, even if I am in error in my views, I shall at least be able to give such reasons for those views as will bear examination, and that I shall be acquitted of any desire ignorantly to change the current of popular opinion.

But, with reference to the magistrate, he exercised a more pernicious influence over the body of the people than the judges of the supreme court. He would be found in every township, every ward, and was ever ready to carry into effect his authority. He would have occasion by and by, when he came to refer to the judiciary of Pennsylvania generally, to examine how far a judge might be influenced in the decision he might give, and judges are but men.

From the first settlement of these colonies—now called the United States—down to the present time, we had been in the habit of considering the judiciary as one branch—an equal branch of the government—as a co-ordinate branch—as one entitled to be regarded as independent of all the other branches of the government. It had been always so considered. No man would deny it. The judicial power, then, ought to be independent of the executive and legislative branches of the government. The happiness of the people of Pennsylvania depends much on where the power of appointment is vested. Let these judges be appointed by the executive of this state, or the legislature of the state, he, (Mr. B.) cared not where the appointing power was placed, so long as the happiness of the people was consulted in the choice. But he would ask the question in all candor—was it proper?—was it consistent with our ideas of right?—was it consistent with the happiness and welfare of the commonwealth of Pennsylvania, that the judicial power should be made an independent power? Upon whom, then, should it be made to depend? He asked the question.

Supposing, (said Mr. B.) it cannot be answered. Upon whom will you make it dependent, because you must make it dependent upon something, —you cannot make it independent. Upon whom, then, will you rest this arm of your government? Upon what loop will you suspend it? Will you trust it to the executive? Will you trust it to the legislature? Will you make it dependent on the popular will? Let us see how far it will be wise, and see how the people are instructed upon the question, and how far they depend on one power, or the other. The proposition of the committee of the whole is to give the appointment of the judges to the executive. Who, I ask, is the executive? A man, it may be, selected for his talent. It may be, on account of his political party. It may be, for the good of public affairs.

Mr. B. went on to say that if the judges were made appointable for a limited term, by the executive, it might happen that cases would arise in which we could scarcely expect the judges to act independently, as, for instance, in passing upon the conduct of the governor himself. They would have to take one of two courses, either to justify it, or to condemn it. Now, this would be placing the judges in a very unpleasant position, to say the least of it. Justice, under such circumstances, could scarcely be expected. What, he asked, would be the condition of a judge entirely dependent upon the governor? Why, on the one hand he must either act to please him, or on the other, if he honestly discharged the duties of his office, especially in cases that were opposed to the political power of

him by whom he was appointed, he would in all probability be dismissed. So, that a judge who would act independently, when opposed to the executive, must be prepared for beggary and content. For, it was too true, that he who was dismissed office, with or without reason, drew down upon him the frowns of the community. He trusted that the time was far distant when it would be necessary for the judicial power of the commonwealth to place themselves in hostility to the executive. He could scarcely bring himself to imagine such a state of things possible, and therefore would not dwell further on that point.

Supposing the judges of the supreme court to be opposed in sentiment to the governor, in relation to the Pennsylvania Bank of the United States, and here he (Mr. B.) would take occasion to remark, that the executive, in speaking on the subject of banks, generally, in Pennsylvania, had gone further than he (Mr. B.) dare venture to go, or probably further than any radical on this floor would in recommending restrictions, regulations, &c. in reference to those institutions, and the validity of its charter, and concerning which many men of character and learning had given it as their opinion that it ought to be forfeited.

Suppose that question to come before the supreme court, the judges being appointed for a limited tenure by the governor, in what a position would they be placed. Now, no man here or elsewhere, felt greater respect for that tribunal than he did. Many of the members of the bench of that court were fast approaching old age, and their pecuniary necessities were greater now, perhaps, than they had been, and consequently it was the more desirable to themselves and families that they should remain in their seats. What, he (Mr. B.) would ask, would be their condition in reference to the question, if it was to be proposed to them? They might rise superior to the position in which they found themselves, and look only to the welfare of Pennsylvania. And, if they were to do so, it would be at a sacrifice, which could never be too highly prized. But what, he inquired, would be the fate of that corporation, if the judges were dependent on the popular will, or the legislature for their seats on the supreme bench? He would ask the presiding officer of this convention, who had had much experience in reference to the action of judicial bodies, as well as others, what would be the probable result of a contest between such a corporation, and a powerful party arrayed against the existence of it, and upon which party the judges depended for their existence? He had argued that it was essential to the welfare of the whole community, that the judges should retain the independence they now enjoyed. He maintained it on other grounds. The judges of the commonwealth of Pennsylvania, whether of the supreme court, or of the inferior tribunals, exercise political power. Political power was not confined to the governor and the legislature. The judiciary exercised political functions also; they had to declare and administer the law, the duty of the governor being to take care that the laws were faithfully executed. Both the superior and inferior tribunals had necessarily to exercise a portion of political power. They had to issue writs of *quo warranto mandamus*, &c. They had to investigate the rights or claims of individuals connected with political offices.

Mr. B. went into a minute detail of the duties and modes of proceeding adopted by the different courts, and particularized some judicial offices, the

incumbents of which are compelled to act in a slavish and servile manner towards those who appointed them.

He (Mr. Bell) would ask, who are the commissioners in the city and county of Philadelphia? They are selected by the popular dominant party, particularly of the county. He would maintain that the judges ought to be independent of the popular will. The question had been discussed by this body, as to whether they should be kept independent of the executive will. And, this question was suggested to his mind by the remarks which had fallen from a delegate this morning, and who said that the judiciary was beyond the reach of the popular will. And was it, he (Mr. B.) would ask, proposed that the judiciary shall be independent of the popular will? No man had had the boldness to present a proposition of that kind to the notice of this convention. No one had said that the judiciary was objectionable, because it was without the reach of the popular will.

Mr. Bell here made some remarks on the argument that had been dwelt on, that the judges were not in sufficient awe of the popular will, nor under its control.

Now, (said Mr. B.) let us come to the question, ought these judges to be dependent on the popular will? Is it right, is it for the interest and the happiness of the people themselves, that this should be so? There is an objection to this state of things, and that objection is the one which I have been discussing. What is the popular will? Who is it that directs the popular will? Is it the mass of the people? I suppose I am uttering a very unpalatable sentiment, although if properly understood, it is not so. Is it the mass of the people? Is it those who devote their time and study to the advancement of the public good? Or, is it not the man who chooses to constitute himself a popular leader, to make judges dependent upon him? And what is the condition of the mass of the people of whom we ought to be particularly careful—I mean the poor, the weak men who require the arm of the law to protect them against the strong and the powerful? What is the condition of such a man? There sits your judge, clothed in all the imposing majesty of law, empowered to do justice between man and man, without fear, favor, or hope of reward. Upon the one side stands the rich suitor, upon the other a wretch in rags. The judge's commission is about to expire; he knows one and the other of the suitors. What are you to expect? That he will give his decision upon the merits of the case? No. Will he investigate fearlessly, as he does now, the right and justice of the case, and give his decision accordingly? Can we expect this from him? Sir, I fear not. Upon the one hand is removal from office; upon the other, a strong recommendation to office. What would our knowledge of human nature paint out to us as the inevitable consequence, if we lay before a judge so great temptation to depart from the path of right and justice? I need not answer the question; it is one which every man within the sound of my voice is fully capable to answer for himself.

But, Mr. President, another objection which has been urged against the judiciary of Pennsylvania, as at present constituted, is that the judges are political judges. Political judges, sir! Is this so? What! your judges who are elevated, and properly elevated above the mass of the people, by

the simple character of the ermine which they wear,—who are sworn to administer equal-handed justice between man and man—will they descend into the arena of party politics, soiling their ermine, and prostituting their high offices to aid in the corruptions, or secure the petty victories of party! Is it so, sir? If this be inherent in the system, that your judges are political judges, in Heaven's name abolish it from your constitution as though it were a pestilence. It is the most insufferable and overwhelming objection that can be raised against any system, that its agents and servants descend to do the paltry work of political and partisan warfare. Who has been charged with this vile degradation of himself? Who is the judge that is said to be such a character? I know of none—I have heard of none. It may be that there are men in this commonwealth, who so far forget the character of the office they hold, who so far forget its high and solemn duties as to descend from the judicial bench, for the purpose of taking part in the conflicts of party. If this is so, I know them not. But this I have to say, and I urge it upon the attention of those who object that, under the system as it now exists, judges have been political characters—I have to say, that if hereafter the judges are to be appointed for a term of years, you do, by that very act, necessarily and most assuredly make them political judges.

What then will be the position of a judge? He will be dependent upon a breath. How is he to secure party favor? The answer is obvious—by party activity. I have heard it stated by high minded men of party that they deserve not the support of the party, because they will not advocate the interests of the party. Make, then, your judges dependent upon party, and they cannot escape from becoming political partisans, for, if they do not become so, they must either resign their high office, or be turned out of it. Political judges! Who is it—where is it? In those states the constitution of which have been so much vaunted by different gentlemen in the progress of this discussion, where the judicial tenure is limited. Where do you look for the reign of Lynch law? Where does mob law reign triumphant, desecrating every thing that it approaches? In those states where the tenure of the judicial office is limited. Where is it that you find a judge declaring that a mob is not amenable to the action of the law? In those states where the tenure of the judicial office is limited. It will be in the recollection of every professional gentleman who hears me, that a judge, (very correctly named judge Lawless,) a man occupying a high judicial station in one of the states of this Union, not long since, so far forgot the oath he had taken when he was raised to a seat on the bench, and so far forgot his duty as a man and a citizen, as to declare that a mob which set at naught the laws of the country, closing their eyes to the dictates of humanity, trampling down every suggestion of reason, dragged a poor negro forth, and that, not awarding him even the merciful death which the laws of Pennsylvania award to their most guilty convicts—they burned him at a stake, and as in ancient days, when death by the axe and block were a mercy, they heaped faggots upon him, and, with slow torture, burned him to death. And yet, sir, this judge, this man dependent upon the popular breath, surrounded by the popular will, and the creature of the popular will, proclaimed from the judgment seat, that the authors in the tragedy, this mob, were not amenable to the judgment of the law, because that mob was constituted of a large portion of the most respectable citizens in the

community. This, Mr. President, is one of the results of judicial dependence. I do not say that judge Lawless, by the nature of his office was dependent; but from the nature of the feelings of that people, every office is subject to the popular will.

And here you see the result of such a state of things. You see a repudiation of all law! you see a judge throwing down his power, and refusing to punish a violent breach of the law, as he was sworn to do.

The CHAIR here interrupted Mr. Bell, and announced the expiration of the hour.

Mr. FLEMING, of Lycoming, said that he had only a few remarks to offer on the subject now under consideration, and that he would detain the convention only a few moments. I merely wish, said Mr. F., at this late date of the discussion, to say a few words in reply to some of the observations which have fallen from my worthy democratic friend from the democratic county of Chester, (Mr. Bell.)

In the first place, we have been told by the gentleman that the provision contained in the report of the committee of the whole in relation to the judiciary and the judicial tenure is uncalled for by the people. We have been told that he is one of a party which, as we all know, has been by turns denominated loco foco, radical and democratic, and that he has never heard of any demand asking for such a change of the tenure. Moreover, the gentleman attributes the origin of such an idea mainly to the people of the city and county of Philadelphia. Now, it is probable, according to my view of the matter, that the city and county of Philadelphia may have sins enough to answer for, without being charged with this additional sin, if a sin it be. He seems to leave the whole matter to this particular portion of our people. In reply to this, I would tell the gentleman that the people in that section of the country from which I come, have talked of this matter with much earnestness, long before the gentleman from Chester county was chosen to represent his constituents in this body; that there, at least, the people have spoken of this judicial tenure, that they have felt and seen the injurious effects of the present tenure of the judicial office, and that they believe it is to be called by no other name than that of a life office. If it were necessary to my purpose to bring forward the history of attempts which have been made to remove the judges of courts from their situations, I might probably trouble the convention with some details on that head. But the history of such cases is too familiar to need any recapitulation from me, and I shall not, therefore, occupy the time of this body in an attempt to elucidate matters which are known to the gentlemen who hear me, as well as they are known to myself.

Mr. F. proceeded a sentence or two, but the disorder and confusion in the hall were so great as to render his voice entirely inaudible.

After a brief space, Mr. F. said:

Mr. President, I will defer the other observations I had intended to submit, until some day when there is less confusion in the hall, and when we are not all talking at the same time.

Mr. F. then took his seat.

The CHAIR having restored something like momentary tranquility in the hall:—

Mr. DOWELL, of Bucks, rose and addressed the convention:

[The remarks of Mr. M'DOWELL, not having been returned in time for their insertion in their proper place, will be given in the APPENDIX.]

Mr. BELL rose and expressed his regret that he felt himself compelled to resort to an apparent encroachment on the rule (limiting members to speak but one hour,) in order to enable him to close his remarks; and he would take this opportunity to apologize to the convention, for the time that he had already consumed in laying before them his sentiments on this very important subject. After adverting to the closing remarks that he had made when last up, he proceeded to notice, and reply to the various arguments and objections urged by the delegate from Bucks, (Mr. M'Dowell) in relation to the existing tenures of the judiciary—particularly to the supreme branch of it. The gentleman from Bucks (he said) had found fault with the supreme court, on the ground of its decisions having been unstable. He (Mr. B.) begged to call the attention of the convention to a fact—one which was an answer to the whole argument. It was indeed, a fearful and melancholy fact—it was that death had been busy among the members of the supreme tribunal, and new members had come in; and this was the reason we found vascillation and instability in its decisions. This accounted for the new decisions which had been made. Let the gentleman examine the matter more closely, and he would discover that this was the solution of the mystery. This was the why and the wherefore, and the secret of an apparent inconsistency on the part of the tribunal in question. How, he (Mr. B.) would ask, did gentlemen propose to remedy the evils of which they complained, in regard to the supreme court? There was a contrariety of opinions on the subject. The delegate from Bucks, would limit the tenure of the supreme judges to fifteen years, and would thus more frequently unsettle the decisions of that court by the introduction of new judges, with all their prejudices and passions about them. In the first instance, the appointment of new judges to fill up vacancies, occasioned by death, could not be avoided, but in the last, whatever evil might result from new appointments, we brought upon ourselves.

The gentleman from Susquehanna, (Mr. Read) had commenced with the judicial history of the commonwealth, and traced it down to the present time, with a view to show that judges under the life tenure, had not been so distinguished for their wisdom and learning as some gentlemen here contended to the contrary. And, the gentleman had quoted about half a dozen cases decided by the supreme court of Pennsylvania, to prove that the decisions made by it had not been uniform, and had been frequently reversed. Now, looking at the vast number of cases that court had decided, under a great variety of circumstances, and by different judges, he asked if the charge could be fairly made against it, that it had unsettled the foundations of the law so much that no man could tell what is the law? He argued against the adoption of the amendment of the committee of the whole, for limiting the tenure of the inferior court judges—insisting that the limited tenure proposed, would be productive of incalculable evils. It would produce change and vascillation, and other ill consequences. The gentleman from Susquehanna, with his well known habits of industry and

research, would not have overlooked a single argument that would have aided him in establishing his favorite theory, if they were to be found; but he had not succeeded in establishing it. Mr. B. next adverted to the charge made by the gentleman from Susquehanna, of a violation of an act of assembly by the judges, in extending the operation of promissory notes beyond the city and county of Philadelphia, contrary to the intention and meaning of the framers of the act. He contended that the gentleman was entirely in error in his statement of facts, and went into a recital of the circumstances connected with the passing of the act in question, to show that there had been no violation of the act.

Mr. B. argued that the decision which had been made, that there could be no set-off in the country on notes containing the words "without defalcation," as the act of assembly had declared there should not in the city of Philadelphia, amounted to no more than a decision that a man might, by express agreement, waive a right which, by the common law, he was entitled to. These decisions, spoken of and characterized by the delegate from Susquehanna, as contradictory to one another, had been consulted at home and abroad. It had been his pride to see that the decisions of the supreme court of Pennsylvania had been eagerly sought after by our sister states, as being excellent and as containing the most conclusive reasoning.

Now, with regard to the only remaining objection to the present judicial tenure of Pennsylvania.

The gentlemen from Susquehanna, from Luzerne, and from Bucks, insist upon a change of the tenure, because, in their estimation, the leading sin of it—that which was most abhorrent to their feelings, was the irresponsible character of the judges office—that the judge is accountable no where—that although he was to administer the law, he was himself above the law, and above the agents of the people. Why, is it so? The gentleman from Bucks (Mr. M'Dowell) said that this irresponsibility was not in the legislature—not in the senate—but that it was in the highest court known in the country. The gentleman had told the convention that there had been about forty-five judges arraigned at the bar of the senate, under a constitutional provision—that they had been subjected to the almost inquisitorial power of the two branches of the legislature.

What has been the action of the most popular branch of the legislature? You have heard that they listen with open ears to any accusation which may be brought against a judge. You have before you the case of Judge Anderson, who was removed by the senate and house of representatives, for a fault comparatively venial. You have the case of Judge Cole, who was removed when there was not matter sufficient to arraign him at the bar of the senate. He complained, that although the legislature could not find matter sufficient, upon which to found a constitutional impeachment, that, nevertheless, they availed themselves of the other power granted by the constitution, and removed him from his office by address.

Again, Mr. President, as to the difficulty which is said to exist in getting the legislature to listen to any charges that may be made against the judges. I remember, that within a few years, a most estimable man has been dragged by the popular branch of the legislature, to the bar of the senate, upon points which, when an investigation was made into them

were discovered to have their foundation in a desire to do justice between man and man, and faithfully to discharge the duties of his office. It is only necessary for me, in support of this assertion, to turn to the case of Judge Cooper. It has been distributed among us, and is open to all of us. For years, an eye of jealousy was fixed upon him. For years, his enemies were industriously engaged in collecting materials for an accusation; and, after a world of trouble, and after enlisting all the talent necessary to sustain the charges, a committee of the legislature was procured to examine the grounds of the accusation; and, after days and weeks spent in the discussion of the most high and serious charges made against the judge, what was the result?

I do not remember the exact number of the charges; but I know, that from the perusal of the case, the impression must be left upon the heart of every honest man, that, in every instance in which that judicial officer was charged with judicial fraud—in every instance in which he was charged with judicial misdemeanor—in every instance where he was charged with making use of his high office to oppress the citizen—in every one of these instances he was moved by motives which ennoble the human character. And the consequence was, that, after a full examination, there was an acquittal—I believe a unanimous acquittal. Upon this subject, however, I have only one additional remark to make; as to the peculiar difficulty of carrying into effect the constitutional provision which provides for the impeachment of a judge, and the difficulty of procuring an address of two-thirds of the legislature for his removal. If these difficulties are honestly urged, as reasons why we should vote against the amendment of the gentleman from the city of Philadelphia, (Mr. Meredith) allow me to say, that that which has come in as supplementary, enabling a majority of the legislature to remove them, meets every objection.

What do gentlemen want? At whose mercy do they wish these judges to be put—these men who hold these high and responsible offices? To whom would they make them responsible? To the people? Very well—you can only do that through the action of the people's representatives. Do they want that the judges should be removed on the address of a minority, and, if so, of what minority? Do they want that the judges should be removable on the address of one, or two, or twenty? Appoint your judges, so as to make them not of party politics. Make them amenable to a majority of the representatives of the people.

This is what was asked in the beginning, and, if this is refused, I must very reluctantly conclude that there is some objection to the present tenure of the judicial office, which has not been revealed.

A motion was made by Mr. STERIGERE,

That the convention do now adjourn.

Which motion was agreed to.

And the convention adjourned until half past nine o'clock to-morrow morning.

THURSDAY, JANUARY 25, 1838.

Mr. BIDDLE presented a memorial from citizens of Philadelphia, praying that the constitution may be so amended as more effectually to secure the freedom of speech, of the press, and of public discussion, as well as for preventing violence by mobs and riots, and for compensating those or their heirs, who may be injured in person or estate thereby.

On motion of Mr. B., the said memorial was read and laid on the table.

Mr. COATES, of Lancaster, presented a memorial of like import, from citizens of this commonwealth.

Which said memorial was also laid on the table.

Mr. EARLE presented a memorial of like import, from citizens of the city of Philadelphia.

Which said memorial was also laid on the table.

Mr. ROYER, of Huntingdon, presented the memorial of eighteen citizens of Huntingdon county, members of the grand jury of said county, at the present court of quarter sessions, and of two of the commissioners of said county, remonstrating against an extension of the session of the convention beyond the second day of February next.

Which said memorial, on motion of Mr. R., was read and laid on the table.

A motion was made by Mr. MEREDITH,

That the convention proceed to the second reading and consideration of the resolution read on yesterday, as follows, viz:

Resolved, That the secretary be directed to make arrangements, if practicbale, for supplying each member of the convention with two daily papers during the remainder of the session.

Which said motion was agreed to; ayes 57; noes, not counted.

The said resolution being under consideration;

A brief discussion took place, in which Messrs. MEREDITH, BANKS, SHELLITO, MARTIN, and HAYHURST, participated;—

When Mr. DARLINGTON said, that as the question was one of so very plain a character, that no gentleman could have any difficulty in making up his mind to vote on one side or the other, he would move the previous question.

Which said demand was seconded by the requisite number of delegates.

And on the question, "Shall the main question be now put?" was then taken, and decided in the affirmative, without a division.

So the convention determined that the main question should be now taken,

Will the convention agree to the resolution?

The yeas and nays were required by Mr. SMYTH, of Centre, and Mr. DARRAH, and are as follow, viz:

YEAS.—Messrs. Agnew, Ayres, Baldwin, Barclay, Barndollar, Barnitz, Bedford, Bell, Biddle, Bigelow, Bonham, Brown, of Northampton, Chambers, Chandler, of Chester, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Coates, Cochran, Cox, Craig, Crain, Cunningham, Darlington, Dickerson, Donagan, Donnell, Doran, Fleming, Foulkrod, Fry, Hays, Henderson, of Allegheny, Henderson, of Dauphin, High, Hopkinson, Houpt, Ingersoll, Kennedy, Konigmacher, Long, Mann, Martin, M'Cahen, M'Dowell, M'Sherry, Meredith, Merrill, Miller, Montgomery, Nevin, Payne, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Reigart, Read, Riter, Rogers, Royer, Russell, Saeger, Scheetz, Sellers, Serrill, Snively, Stickel, Taggart, Thomas, Todd, Weaver, Weidman, White, Woodward, Sergeant, *President*—77.

NAYS—Messrs. Banks, Brown, of Lancaster, Carey, Clarke, of Indiana, Cleavinger, Cope, Crawford, Crum, Cummin, Curll, Darrah, Denny, Dickey, Dillinger, Dunlop, Forward, Fuller, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hiester, Hyde, Jenks, Keim, Kerr, Krebs, Lyons, Maclay, Magee, Merkel, Overfield, Purviance, Ritter, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Sturdevant, Young—43.

So the resolution was adopted.

A motion was made by Mr. HASTINGS of Jefferson,

That the convention proceed to the second reading and consideration of the resolution read on yesterday, as follows, viz:

Resolved, That the resolution to adjourn *sine die* on the second day of February next, be, and is hereby rescinded, and that this convention will adjourn *sine die* on the 22d of February next.

And on the question,

Will the convention agree to the motion?

The yeas and nays were required by Mr. FULLER and Mr. DICKEY, and are as follow, viz:

YEAS—Messrs. Ayres, Bigelow, Brown, of Northampton, Craig, Crain, Crawford, Cummin, Curll, Fleming, Fry, Gamble, Hastings, High, Hopkinson, Houpt, Ingersoll, Mann, Martin, M'Cahen, Meredith, Merrill, Payne, Porter, of Northampton, Read, Riter, Scheetz, Sellers, Shellito, Weaver, White—30.

NAYS—Messrs. Agnew, Baldwin, Banks, Barclay, Barndollar, Barnitz, Bedford, Bell, Biddle, Bonham, Brown, of Lancaster, Brown, of Philadelphia, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clarke, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Coates, Cope, Cox, Crum, Cunningham, Darlington, Darrah, Denny, Dickey, Dickerson, Dillinger, Donagan, Donnell, Doran, Dunlop, Forward, Foulkrod, Fuller, Gearhart, Gilmore, Grenell, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hyde, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Magee, M'Dowell, M'Sherry, Merkel, Miller, Montgomery, Nevin, Overfield, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigert, Ritter, Royer, Russell, Saeger, Scott, Seltzer, Serrill, Smith, of Columbia, Smyth, of Centre, Snively, Sturdevant, Taggart, Thomas, Todd, Woodward, Young, Sergeant, *President*—87.

So the question was determined in the negative.

A motion was made by Mr. BEDFORD,

That the convention proceed to the second reading and consideration of the resolution read on the 20th instant, as follows, viz:

Resolved, That the following rule be adopted in convention, viz: "That when any thirty delegates rise in their places, and move the question on any pending amend men

it shall be the duty of the presiding officer to take the vote of the body on sustaining such call; and if such call shall be sustained by a majority, the question shall be taken on such amendment without further debate."

And on the question,

Will the convention agree to the motion?

The yeas and nays were required by Mr. DARLINGTON and Mr. BEDFORD, and are as follow, viz:

YEAS—Messrs. Banks, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Indiana, Cline, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dillinger, Donagan, Donnell, Doran, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Hiester, High, Hopkinson, Hyde, Ingersoll, Keim, Kennedy, Krebs, Long, Lyons, Magee, Mann, M'Cahen, M'Dowell, Merkel, Miller, Nevin, Overfield, Payne, Porter, of Northampton, Purviance, Read, Riter, Ritter, Royer, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Weaver, White, Woodward-67.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barclay, Barndollar, Barnitz, Biddle, Brown, of Lancaster, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clark, of Dauphin, Coates, Cochran, Cope, Craig, Cunningham, Darlington, Denny, Dickey, Dickersen, Dunlop, Forward, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Houpt, Jenks, Kerr, Konigmacher, Martin, M'Sherry, Meredith, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Reigart, Russell, Scott, Serrell, Thomas, Todd, Young, Sergeant, *President*—47.

So the motion was agreed to.

And on the question,

Will the convention agree to the resolution?

The yeas and nays were required by Mr. DICKEY and Mr. DARLINGTON, and were as follow, viz:

YEAS—Messrs. Banks, Barclay, Bedford, Bell, Bigelow. Bonham, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Indiana, Cline, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dillinger, Donagan, Donnell, Doran, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Hiester, High, Hyde, Keim, Kennedy, Krebs, Long, Lyons, Magee, Mann, M'Cahen, M'Dowell, Merkel, Miller, Nevin, Overfield, Payne, Porter, of Northampton, Purviance, Reigart. Read, Riter, Ritter, Royer, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Weaver, White, Woodward—67.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Barnitz, Biddle, Brown, of Lancaster, Carey, Chambers, Chandler, ofChester, Chandler, of Philadelphia, Clapp, Clark, of Dauphin, Coates, Cochran, Cope, Craig, Cunningham, Darlington, Denny, Dickey, Dickerson, Dunlop, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Houpt, Ingersoll, Jenks, Kerr, Konigmacher, Maclay, Martin, M'Sherry, Meredith, Merrill, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Russell, Saeger, Scott, Serrill, Thomas, Todd, Young, Sergeant, *President*—49.

So the resolution was agreed to.

Mr. INGERSOLL rose and said, that as the hour for the consideration of resolutions had expired, he would ask leave of the convention to offer the following, which he desired might be read for information, viz:

Resolved, That the journal of the seventh of June last, be corrected by omitting the name of C. J. Ingersoll, inserted by m stake, as one of those calling for the previous question."

Leave having been granted, and the said resolution having, on motion of

Mr. I, been read a second time, and the same being under consideration;

A motion was made by Mr. BROWN, of Philadelphia,

To amend the resolution by correcting an error of a similar character in relation to himself, where it occurs in page 200 of the journal.

Mr. INGERSOLL hoped that the gentleman from the county of Philadelphia, (Mr. Brown) would not press his amendment in this place. Not that I have any objection, said Mr. I., that such a correction should be made, but I desire that the two motions should be kept separate.

The members of this body will do me the justice to recollect that, within a day or two of the time at which the error appeared, I protested against it. I have opposed the previous question in all shapes and forms, moods and tenses; and I am, therefore, anxious not to see my name recorded as supporting it. I have never been its advocate; and I hope that the truth may be allowed to appear.

Some desultory conversation ensued, which resulted in a motion, made by Mr. INGERSOLL, to postpone the further consideration of the subject until to-morrow;

Which motion was agreed to.

FIFTH ARTICLE.

The convention resumed the second reading of the report of the committee, to whom was referred the fifth article of the constitution, as reported by the committee of the whole.

The amendment to the second section of the report being again under consideration,

Mr. M'DOWELL,* of Bucks, resumed and concluded his remarks.

Mr. PORTER, of Northampton, said—the delegate from Bucks (Mr. M'Dowell) alleges that the people have been complaining of the judicial tenure for thirty-three years past, and assigning it as one of the prominent causes for the call of a convention to alter the constitution, and in support of this allegation, he has produced one of the petitions presented to the legislature in 1805, which appear to have been signed by citizens of Northumberland county.

By those whose recollections will carry them back so far, it may be recollected, that the call of a convention was, in the year 1805, coupled politically with the opposition to Governor M'Kean. By many of those who on that occasion advocated the election of Simon Snyder, the agitation of the question of altering the constitution, was considered a powerful auxiliary to their cause. Others of the democratic party, who disapproved of the conduct of Governor M'Kean, doubted the policy of touching this exciting subject, and the result showed that they were right in their fears of its politcal effect. The more active, and if you please, ultra, prevailed and compelled the more reluctant members of the party to go with them in support of the call of a convention. Petitions were drawn, I think origi-

*See Appendix.

nally, by Jesse Heggins, the author of "Sampson against the Philistines," as they are a transcript of the language of that pamphlet, and having undergone the supervision of Dr. Lieb, Col. Duane, and perhaps some more of the prominent members of the party, were ushered forth to every part of the commonwealth, as extras of "The Aurora" and "The Lancaster Intelligencer," the two leading democratic papers of the day, in order no doubt to save postage, and they were thus circulated and signed for political effect. On reference to the petition produced here, I find it headed "Lancaster Intelligencer—Extra."

These petitions were then widely circulated throughout every part of the commonwealth, and the effect of bringing the question into consideration, defeated the election of Simon Snyder in 1805. A considerable portion of the democratic party, especially in the German counties, became alarmed at the prospect of the call of the convention, and with the aid and influence of the office-holders, the entire federal party went for Governor M'Kean, and secured his election by some five thousand majority. The belief of the best informed men of the day was, that had not the constitutional question been coupled with the election of governor, Mr. Snyder must have succeeded.

The democrats in 1808, thus taught by experience, did not again agitate the question, and in consequence, elected Mr. Snyder by an overwhelming majority, and for some time thereafter nothing was heard of the proposition. Towards the close of his administration, some petitions were again presented, principally from the west. But never since 1805, until within a few years, has there been a large number of the citizens of the commonwealth petitioning for it.

Mr. P. expressed his belief that if the question, as to whether or not a convention should be called, had been put to the people plainly and distinctly, and unconnected with other matters, this convention would not have been called. The convention, however, was now assembled, and whatever the subject might be that required amendment, ought to be well and deliberately considered, and our judgment given to the people—leaving it to them to say whether they will accept the amendments or not. The whole body of this convention were to recommend to the people whatever alterations they might deem proper for their acceptance or rejection. He thought that little was to be said in favor of the petitions referred to in regard to the adoption of the provision now proposed.

There were two circumstances in relation to the judiciary which must be kept continually in view: they were—the independence of the judiciary and their proper responsibility. By independence, he did not mean irresponsibility. He held that every public functionary in this country, and every country, should be responsible for the abuse, or the use of the power committed to his charge. And, the whole argument in favor of a limited tenure for the judges, has been based upon the assumption that we have not been able to remove judges who have abused their power, and been accused.

Now, he would ask, if this argument did not involve a contradiction? Gentlemen had said that the judges should not be appointed except by and with the advice and consent of the senate; and yet, they said the senate had not faithfulness and firmness enough to remove judges when their

acts were improper. There certainly was a contradiction involved in this argument.

Gentlemen, in consideraing this subject, which he regarded as one of vital importance, must take care to keep the three branches of the government distinct, and that no one is subscribing to the other.

The gentleman, from Bucks (Mr. M'Dowell) said there was likely to be an attempt made by some gentlemen here, perhaps from their having been members of the legislature, to heap power on that body. He said also, that gentlemen were trying to heap power on the legislative department at the expense of all the others.

Now, he (Mr. P.) wanted to know whether the legislative department was composed of abler or purer men than the judiciary? Are the materials better than the materials of which the other is composed? Would they exercise the powers committed to their charge with more fidelity? Gentlemen of the legal profession were chargeable with partiality to the profession. Perhaps they were amenable to the charge. But, on the other hand, if those who made charges against others, and they were not fulfilled, would it not be supposed that they had a partiality for that department of the legislature. And, he would appeal to the experience of the gentleman and that of others to say, whether they thought this quite as short, quiet and safe a way of arriving at a conclusion, as by a legal trial?

The delegate had said that forty judges had been brought before the legislature, and only two disposed of—one by impeachment, and one removed. The gentleman might be right as to the impeached, but he thought he was wrong as to the removed.

He (Mr. P.) thought there was an associate judge from Huntingdon county, and others were removed. We know that Judge Cooper was removed by address, and that out of forty, thirty-seven were acquitted. Why, instead that affording an argument against the judiciary, it should rather be considered an evidence of the integrity of the judicial character in the commonwealth of Pennsylvania—a matter of great pride that in the long course of fifty years, only three men had been found to have abused the power committed to their charge!

He did not think it was an argument calculated to elevate the state character, or to foster the justice of state rights, to say that men were guilty, although acquitted. Neither ought your tribunals to be changed, unless it could be shewn that they had acted improperly. He trusted that it never would be done in Pennsylvania.

Every man was presumed innocent till proved guilty. It would be well for gentlemen to prove the guilt of men, before they circulated charges. In most of the cases that were brought before the senate, the judges were acquitted—the subject matter of the charges not being of an impeachable character. Undoubtedly in many instances the charges themselves were not supported by evidence. But, in others, if supported by evidence, the parties had undertaken to prefer articles of impeachment, in cases that were unimpeachable, instead trying to get the judges removed by address. Now, all this was rather to the glory of Pennsylvania than otherwise, because the facts were not made out, and the offence charged, not of an

impeachable character. The gentleman from Bucks, who was a distinguished member of the bar himself, asserted that lawyers were afraid to bring charges against the judges.

The gentleman speaks of young lawyers playing the parts of sycophants, and of the advantage which is to be reaped from being the favorites of the court. So far as my own experience enables me to form any opinion on this point, I can say that I have seldom seen a man who played the part of a sycophant to the judge or the court, who was possessed of sufficient ability to raise himself to any thing like eminence in his profession. The very fact of his sycophancy will be, to every intelligent mind, proof sufficient that he has not the elevation of character or the moral principle which is requisite to attain the pinnacle of that profession. I have found, too, that he who attempts sycophancy to the court, has generally failed to accomplish his purposes; while a man of manly bearing and of plain dealing, who, if occasion should render it necessary for him to do so, will express, firmly but courteously, his disapprobation of an act of the court in the tone and manner which always characterize the gentleman, rises far above the grovelling miscreant who would bow and cringe for favor.

A reference to the charges which have been adduced against the judges of Pennsylvania, will show that, in nine cases out of then, the prominent men in the exhibition of those charges have been lawyers. The profession of the law, high and honorable as it is, is composed of men who have the same feelings as other human beings. And a man who has been disappointed in the issue of a suit, may give vent to his feelings in complaints against the judges.

I have never known an instance where a judge ought to be complained of, in which he has not been complained of; but I have also known instances where the private griefs of the lawyers have induced them to make complaints, which they were not able to sustain. Private parties, also, in pique at the loss of a suit, will, under the excitement attendant on defeat, lend themselves to complaints against judges, when, in their more calm and reflecting moments, they would not do so. We know, also, that there sometimes unfortunate collisions take place between the bench and the bar. There have been such in Pennsylvania. These things, however, pass off when the excitement of the hour is over; and when the parties, engaged in such controversies, look back upon them—after the lapse of time—they wonder how such angry feelings could have been engendered on causes so inadequate.

I have no doubt, in my own mind, that one-half of the difficulties which exist in relation to the judiciary, grow out of the locality of the judges, as the gentleman from Bucks county (Mr. M'Dowell) has justly remarked. I believe that much would be gained to the judiciary of Pennsylvania, and much to the complacency with which suitors would look to the decision of the cases in which they might be engaged, if this locality were avoided. They see all the peculiarities of a judge from term to term, and from year to year.

A judge, however, goes to hold a circuit court, he lays down the law and he gives his opinion of the facts to the jury. And I ask the lawyers of this body whether there are many instances in which a jury find their verdict against the charge of the judge, and whether, if they do, the judge

does not set aside their verdict, while but very little excitement is produced by the act.

This system of circuit courts, if ever it should be adopted in the state of Pennsylvania, will remedy nine complaints out of ten; and any provision in the constitution which will look to such a result, will meet with my approbation. But I do not believe that we can correct all these abuses that are complained of, by changing the tenure of the judicial office. I am not very tenacious as to the tenure of good behaviour; but I am free to confess that I should prefer it.

If, however, you can adopt a provision which will secure to the judges a competent support, so that when they go out of office they need not look for a renewal, I am willing to go for a term of years. Upon this subject I never have had but one opinion, and I shall still adhere to it. I do not believe that you can make an imbecile man independent, whether you appoint him for a term of years or during good behaviour. The independence must be in the man; and, if it is not there, you have no means of imparting it to him. But I do conscientiously believe that, under a tenure of good behaviour, you will secure as judges, abler and better men, than you can possibly obtain under a tenure for a term of years. I believe that men may be induced—as in the case alluded to by the gentleman from Butler county, (Mr. Purviance)—the case of the present excellent president of the third judicial district—men I say, may be induced to quit their practice and take a seat upon the bench, when they are assured that they are to hold it while they behave themselves well, who would not accept a seat on the condition of a tenure for a term of years.

I fear the effect of this tenure for a term of years, more on account of persons who may be willing to serve under it, than for any other cause. I think lawyers in their prime make the best judges, and will a lawyer in his prime and in full practice, quit it to take a judgeship for seven or ten years, with a salary not amounting to more than half his practice? Gentlemen who have acquired something, or who may be desirous of quitting the turmoil and excitement of the profession at the bar, may be induced to take the station with a moderate compensation, when assured they will hold it so long as they behave well. But this cannot be expected, while the tenure is for a few years, and with a low salary. I took occasion heretofore to advert to the fact, that men who had grown old at the bar in full practice, did not always make the best judges, and my observations on that subject, were grossly misrepresented in some of the newspaper reports of the day. What I said was this—that when gentlemen continued at the bar and in large practice to an advanced age, the habit of the advocate became so incorporated with their menial efforts, that they found it difficult to take an impartial view of both sides of a question presented to them, and thus there were sometimes found instances in which the habit of the advocate was carried with the judge upon the bench, and that I therefore thought it generally best, that men should be placed on the bench, before they began to descend too far in the vale of years. The proposition now before us, would, to some extent at least, prevent this, and leave but the alternative of a young or middle aged man, who could not earn his subsistence at the bar, or an old man who had grown rich and lazy, and had sought the bench as a species of retire-

ment. Neither of these, in my judgment, are calculated to make the best judges that might be had.

Can you expect to take a man at thirty-five or forty years of age, and place him upon the bench of the court of common pleas, at a salary of sixteen hundred dollars per annum? If he be forty-five, he will have grown himself out of practice, and at the age of fifty-five when he is much better qualified to perform the duties of a judge, he will have grown out of practice. The courage of youth may have gone, and yet, by study and practice, he may be able to discharge the duties of a judge to the satisfaction of all. But if he is not a partisan, he need not look for a re-appointment. "To the victors belong the spoils" is a doctrine which belongs to all parties. I challenge any gentleman to show me a period in the last ten years, when this doctrine has been dissented from. Did the last admirable incumbent of the gubernatorial chair, or did the present, appoint any but his own friends and advocates to the bench? I should like gentlemen, if they can, to point me to the instance. I ask for the instance in which, during the last ten years, a man has been appointed a judge who did not belong to *the* party; and I ask if this doctrine has not been rather gaining favour among us than otherwise? I do not say that this is wrong; because, every party must support itself, by rewarding its friends. We must, therefore, argue from things as they are, and not from things as they ought to be, or as we could desire to see them.

What do you then do? You affect the judiciary by the appointment of incompetent men. You will, as I have said, either get men who have not capacity enough to grow rich by means of their practice at the bar, or you will get men who have grown rich and lazy. You will make men dependent on the aspirations of party for their re-appointment to office? I do not believe that judges are any worse than other men; but I believe that they are operated upon by the same motives as the rest of the world. And, although it is degrading to human nature, we nevertheless know that, when interest touches the balance, it is very difficult to adjust it: and that when a man's commission is at stake, he must be composed of different stuff to the rest of mankind, if his interest does not prompt him to take that course which will most effectually tend to secure it in his possession. It is for this reason that I give the preference to the tenure during good behaviour, because I believe, in the first place, that you will get better men than you can procure under the tenure for a term of years; and, in the next place, because, I believe that the tenure for a term of years will have the tendency to destroy that stern integrity of purpose which is so essential an ingredient in the constitution of a judge's mind.

I am not able to discover how the argument in reference to the responsibility of the judges, is met by the proposition to appoint them for a term of years. I do not see how gentlemen propose to remedy the evil, unless it be to get rid of the judges who have not been political leaders, but who have acted with such honesty and integrity in the discharge of their official duties, that they cannot be removed for any other cause—judges who have possessed minds too elevated to submit themselves to the dictation or control of political leaders. The argument in favor of the tenure for a term of years is, in my judgment, an argument calculated to depreciate the judges in point of independence, and of standing in the

community; and it is for this reason, that I have at all times and on all occasions, expressed my disapprobation of the tenure for a term of years, unless it should be coupled with such a compensation as will render it unnecessary or improper for the judge to seek a re-appointment; which seeking for a re-appointment will, in my opinion, be one of the heaviest blows which can be inflicted on the independence of the judiciary.

Mr. MEREDITH then modified his amendment by striking therefrom the words "now in office and their successors."

Mr. M. explained, that he would leave that question to be settled, when the convention should come to the consideration of the schedule.

And on the question,

Will the convention agree to the amendment as modified?

The yeas and nays were required by Mr. DICKEY and Mr. REIGART, and are as follow, viz:

YEAS—Messrs. Agnew, Baldwin, Barndollar, Barnitz, Bell, Biddle, Brown, of Lancaster, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Cline, Coates, Cochran, Cope, Craig, Cunningham, Darlington, Denny, Dickerson, Doran, Dunlop, Farrelly, Forward, Hays, Hopkinson, Jenks, Konigmacher, Long, Maclay, M'Sherry, Meredith, Merrill, Merkel, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Reigart, Royer, Russell, Saeger, Scott, Sill, Snively, Sterigere, Thomas, Todd, Weidman, Sergeant, *President*—49.

NAYS—Messrs. Ayres, Banks, Barclay, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Carey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cox, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dickey, Dillinger, Donagan, Donnell, Earle, Fleming, Foulkrod, Fry, Fuller Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, High, Houpt, Hyde, Ingersoll, Keim, Kennedy, Kerr, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, M'Dowell, Miller, Montgomery, Nevin, Overfield, Payne, Purviance, Read, Riter, Ritter, Rogers, Scheetz, Sellers, Seltzer, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Sturdevant, Taggart, Weaver, White, Woodward, Young,—78.

So the amendment was rejected.

A motion was made by Mr. CRAWFORD,

To amend the said section by striking therefrom, in the seventh line, the word "fifteen," and inserting in lieu thereof the word "twelve," and by striking from the twelfth line the word "ten," and inserting in lieu thereof the word "eight."

Mr. BROWN, of Philadelphia, asked for a division of the question, so as to take a direct vote on the separate terms.

The CHAIR, (Mr. Banks) decided that the question was not divisible.

And on the question,

Will the convention agree to the amendment?

The yeas and nays were required by Mr. MANN and Mr. SMYTH of Centre, and are as follow, viz:

YEAS—Messrs. Banks, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Indiana, Crawford, Cummin, Cunningham, Curll, Darrah, Donnell, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gilmore, Grenell,

Hastings, Hayhurst, High, Houpt, Hyde, Keim, Kennedy, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, Miller, Montgomery, Nevin, Overfield, Read, Ritter, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Sturdevant, Taggart, Weaver, Weidman, White, Woodward,—55.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barclay, Barndollar, Barnitz, Bell, Biddle, Brown, of Lancaster, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Beaver Clark, of Dauphin, Cleavinger, Cline, Coates, Cochran, Cope, Cox, Craig, Crain, Crum, Darlington, Denny, Dickey, Dickerson, Dillinger, Donagan, Doran, Dunlop, Farrelly, Forward, Gearhart, Harris, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Ingersoll, Jenks, Kerr, Konigmacher, Long, Maclay, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Payne, Pennypacker, Pollock, Porter, of Lancaster Porter, of Northampton, Purviance, Reigart, Riter, Royer, Russell, Saeger, Scott, Serrill, Sill, Snively, Thomas, Todd, Young, Sergeant, *President*—72.

So the amendment was rejected.

A motion was made by Mr. FULLER,

To amend the said section, by inserting after the word "shall," in the fourteenth line, the words "be elected by the electors of the several counties in which they are to exercise their offices and"

Mr. F. said, he had but a single remark to offer in explanation of his amendment. He thought that the citizens of every county were as capable to elect their associate judges, as they were to recommend proper persons for appointment to the governor. He could, at all events, speak for his own district. The people in that district wished to have the authority to elect their associate judges. He believed them fully competent to do so, and he hoped the amendment would prevail.

Mr. CLARKE, of Beaver, demanded the previous question, which demand was seconded by the requsite number of delegates.

And on the question,

Shall the main question be now put?

The yeas and nays were required by Mr. FULLER and Mr. SMYTH of Centre, and are as follow, viz:

YEAS—Messrs. Agnew, Baldwin, Barclay, Barndollar, Barnitz, Biddle, Bonham, Brown, of Lancaster, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Coates, Cope, Cox, Craig, Darlington, Dickey, Dickerson, Doran, Farrelly, Fleming, Gearhart, Harris, Hastings, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hyde, Jenks, Kerr, Konigmacher, Maclay, Mann, M'Sherry, Meredith, Merrill, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Reigart, Royer, Russell, Seager, Scheetz, Scott, Seltzer, Sill, Snively, Thomas, Todd, Weidman, White, Woodward, Young, Sergeant, *President*—61.

NAYS—Messrs. Ayres, Banks, Bedford, Bigelow, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Indiana, Cleavinger, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Darrah, Denny, Dillinger, Donagan, Donnell, Dunlop, Earle, Forward, Foulkrod, Fry, Fuller, Gamble, Gilmore, Grenell, Hayhurst, Helffenstein, High, Hopkinson, Houpt, Ingersoll, Keim, Kennedy, Krebs, Long, Lyons, Magee, Martin, M'Cahen, M'Dowell, Merkel, Miller, Nevin, Overfield, Payne, Porter, of Northampton, Purviance, Read, Riter, Ritter, Rogers, Sellers, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Sturdevant, Taggart, Weaver,—64.

So the convention determined that the main question should not now be put.

The question then recurred upon the amendment of Mr. FULLER.

Mr. INGERSOLL rose and said, that he had received a letter from a distinguished president judge of a very considerable district in this state recommending him to procure the insertion of such amendment in the constitution, as the gentleman from Fayette, had proposed, if possible, believing it would prove to be one of decided advantage to the people. He (Mr. I.) would most cheerfully vote for the amendment, because he believd it would be a very great improvement.

Mr. AGNEW would ask the gentleman from Fayette, (Mr. Fuller) whether he intended by this amendment, that the associate judges of the court of common pleas, when by law they should be required to be learned in the law as in the county of Philadelphia they now were, should be elected by the people.

Mr FULLER said he intended just what his amendment proposed.

Mr. EARLE, wished simply to suggest to the gentleman from Beaver, (Mr. Agnew) that if he desired that judges learned in the law in the county of Philadelphia or elsewhere, should be appointed by the governor, he could add a proviso afterwards to that effect.

Mr. AGNEW said, the amendment would lead to this—that when the increased business of any county, like that of the county of Philadelphia should hereafter require, that the associate judges should be learned in the law, those associates would be elected by the people, and thus we should have the novelty of a judiciary of the most important kind elective and dependent upon the people, even where they presided. The most important interests of the community every fifth year would be brought before the people, and the multitude made a court of errors and appeals. The general provision in the preceding part of the section, that judges learned in the law shall be appointed by the governor for a term of ten years, might be construed so as not to apply to associates of the common pleas, because they are specially named and provided for in this part of the section; and must upon a fair construction, be considered as exempted out of the preceding part of the section. At all events that the subject could be left in doubt and uncertainty. He hoped that the amendment would not be agreed to.

Mr. BIDDLE said that it was well known to the majority of gentlemen here, at least, that most of the associate judges of the common pleas could set in judgment on the rights of citizens. Why not give that advantage to all our fellow citizens? If gentlemen intend to mete out one measure of justice to one portion and another to another, they would attain the object by this amendment.

Mr. BROWN, of Philadelphia county, said that the construction of the amendment as it stood, was plain enough—that judges learned in the law should be appointed by the governor.

Mr. DICKEY, of Beaver, did not think so. There are associate judges in the county of Philadelphis, learned in the law.

Mr. DENNY, of Allegheny, said he would vote for the amendment, because be believed the people themselves were capable of making a better selection than the senate was; and because further, he was desirous of stripping that oligarchy, the senate, of at least some portion of the power which we were about conferring upon it.

Mr. FULLER and Mr. DARRAGH, asked for the yeas and nays, which were ordered.

And the question being then taken on agreeing to the amendment, it it was decided in the negative.—yeas 62—nays 64.

YEAS—Messrs. Banks, Barclay, Bedford, Bigelow, Brown, of Northampton, Brown of Philadelphia, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Darrah, Denny, Dillinger, Donagan, Donnell, Doran, Earle, Foulkrod, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, High, Houpt, Hyde, Ingersoll, Keim, Krebs, Magee, Mann, Martin, M'Cahen, Merkel, Miller, Montgomery, Nevin, Overfield, Payne, Purviance, Read, Riter, Ritter, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Taggart, Weaver, Weidman, Young,—62.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Barnitz, Bell, Biddle, Bonham, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Indiana, Cline, Coates, Cochran, Cope, Cox, Craig, Darlington, Dickey, Dickerson, Dunlop, Farrelly, Fleming, Forward, Fry, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Jenks, Kennedy, Kerr, Konigmacher, Long, Lyons, Maclay, M'Dowell, M'Sherry, Meredith, Merrill, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Reigart, Rogers, Royer, Russell, Saeger, Scott, Seltzer, Serrill, Sill, Snively, Sterigere, Sturdevant, Thomas, Todd, White, Woodward, Sergeant, *President*—64.

A motion was made by Mr, STERIGERE,

To amend the said section by striking from the sixth and seventh lines the words "shall hold their offices for the term of fifteen years," and inserting in lieu thereof the words "now in office and their successors shall hold their offices until the age of sixty-five years;" and by inserting after the word "well," in the eighth line, the words "but may at any time be removed from office on the address of both branches of the legislature;" and by striking therefrom in the twelfth line the word "ten," and inserting in lieu thereof the word "seven;" and by inserting after the word "well," in the thirteenth line, the words "unless the law establishing any court shall limit the offices of the judges thereof to a shorter period."

Mr. REIGART observed that, as it was obvious that there were yet fifty amendments, or more, to be offered, not one of which would probably receive any favor from the convention, he would ask the convention to sustain him in he previous question, which he now demanded.

Mr. STERIGERE insisted that he had not yet yielded the floor, and that therefore, the motion of the gentleman from Lancaster, (Mr. Reigart) could not be entertained.

The CHAIR decided that the gentleman from Lancaster, had addressed the Chair in order, after the gentleman from Montgomery, (Mr. Sterigere) had offered his amendment; and that therefore, the motion for the previous question was perfectly in order.

Some debate arose on the point of order.

After which, the question having been put,

The demand for the previous question was seconded by the requisite number of delegates.

And on the question,

Shall the main question be now put?

The yeas and nays were required by Mr. REIGART and Mr. LONG, and are as follow, viz;

AYES—Messrs. Agnew, Ayres, Baldwin, Barclay, Barndollar, Barnitz, Bedford, Biddle, Bigelow, Bonham, Brown, of Lancaster, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Coates, Cochran, Cope, Cox, Craig, Crawford, Crum, Cummin, Cunningham, Curll, Darlington, Darrah, Denny, Dickey, Dickerson, Doran, Dunlop, Farrelly, Fleming, Forward, Foulkrod, Fuller, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, High, Hyde, Jenks, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Maclay, Meredith, Merrill, Merkel, Montgomery, Nevin, Overfield, Payne, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Read, Ritter, Rogers, Royer, Russell, Seager, Scott, Seltzer, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Thomas, Todd, Weaver, White, Woodward, Young, Sergeant, *President*—95.

NAYS—Messrs. Banks, Bell, Brown, of Northampton, Carey, Clarke, of Indiana, Crain, Dillinger, Donagan, Donnell, Earle, Fry, Helffenstein, Hopkinson, Houpt, Ingersoll, Keim, Mann, Martin, M'Dowell, M'Sherry, Miller, Porter, of Northampton, Scheetz, Sellers, Sill, Sterigere—26.

So the convention determined that the main question should be now taken.

And the question recurring,

Will the convention agree to the report of the committee of the whole so far as relates to the second section?

A division of the question was called for by Mr. STERIGERE.

The first division to consist of the following, viz: "the judges of the supreme court, of the several courts of common pleas, and of such other courts of record, as are, or shall be established by law, shall be nominated by the governor, and by and with the consent of the senate, appointed and commissioned by him."

The second division to consist of the following, viz: "the judges of the supreme court shall hold their offices for the term of fifteen years, if they shall so long behave themselves well."

And the third division to consist of the remainder of the section.

The CHAIR, (Mr. Banks, of Mifflin, *protem*) decided that it was not in order to call for a division, after the previous question had been called upon agreeing to the report of the committee of the whole.

From this decision, Mr. STERIGERE appealed.

And on the question,

Shall the decision of the Chair stand, by the judgment of the convention?

The same was determined in the affirmative.

So the appeal was not sustained.

And the question again recurring,

Will the convention agree to the report of the committee of the whole, so far as relates to the second section?

The yeas and nays were required by Mr, CLARKE, of Beaver, and Mr. CRUM, and are as follow, viz:

YEAS—Messrs. Agnew, Ayres, Banks, Barclay, Barndollar, Barnitz, Bedford, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Carey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cochran, Cox, Craig, Crain, Crawford, Cummin, Curll, Darrah, Dickey, Dickerson, Dillinger, Donagan, Donnell, Doran, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, High, Hyde, Keim, Kennedy, Kerr, Krebs, Lyons, Magee, Mann, M'Cahen, M'Dowell, Miller, Montgomery, Overfield, Payne, Pollock, Purviance, Reigart, Read, Riter, Ritter, Rogers, Saeger, Scheetz, Sellers, Seltzer, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggert, Weaver, White, Woodward, Young—86.

NAYS—Messrs. Baldwin, Bell, Biddle, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Cline, Coates, Cope, Crum, Cunningham, Darlington, Denny, Dunlop, Farrelly, Forward, Hopkinson, Houpt, Ingersoll, Jenks, Konigmacher, Long, Maclay, M'Sherry, Meredith, Merrill, Merkel, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Royer, Russel, Scott, Sill, Sterigere, Thomas, Todd, Weidman, Sergeant, *President*,—39.

So the report of the committee of the whole was agreed to.

A motion was made by Mr. REIGART,

That the convention do now adjourn.

Which was agreed to.

And the convention adjourned until half past three o'clock this afternoon.

THURSDAY AFTERNOON, JANUARY 25, 1838.

FIFTH ARTICLE.

The convention resumed the second reading of the report of the committee to whom was referred the fifth article of the constitution, as reported by the committee of the whole.

The question being,

Will the convention agree to the second section, as amended by the committee of the whole?

Mr. HIESTER said, that his name was recorded in favor of the amendment of the committee of the whole. He had always been in favor of the judicial tenure for a limited term. He was unavoidably absent from the convention this morning. Several questions had been taken in that time. He did not wish to be regarded as having dodged this question, and he would be glad to have an opportunity of recording his vote upon the section as amended.

Mr. EARLE said, he thought that the section, as it now stood, was imperfect, and calculated to do injury. And, although, (said Mr. E.) I

have little or no hope that I shall be able to carry an amendment through, I shall nevertheless feel it to be my duty to offer one. I shall then, a least, have the satisfaction of knowing that I have done my duty.

The amendment of the committee of the whole permits the judges of the supreme court to hold their offices for the term of fifteen years. Now, the evil I apprehend is this; that when a good judge arrives at the age of fifty, or sixty, or sixty-two or three years of age, the long term of service here prescribed, may be an objection to his re-appointment, when it would be desirable for the commonwealth that his services should be retained for a few years longer.

In this state of things, the appointing power must take one of two courses; that is to say, either to forego the service of an able judge, or to appoint him for such a term, as that, before it expires, he will be too old to discharge the duties of the office.

In order to avoid the necessity of a resort to either of these alternatives, I propose to amend the report of the committee of the whole by adding thereto the following, viz:

"Provided, That no judge shall continue to hold his office, after he shall have attained the age of seventy years."

I will add, that if there is any other age which the convention would prefer, as the limit to which a judge should be confined, I will cheerfully modify my amendment to meet that view. The amendment as it now stands, is in conformity with a principle adopted in the constitutions of many of our sister states; and I think that its adoption is of more importance, under a limited tenure, than it would be under the tenure of good behaviour.

And the question on the said amendment was then taken, and decided in the negative, without a division.

So the amendment was rejected.

And the question then recurring,

Will the convention agree to the section as amended by the committee of the whole?

The yeas and nays were required by Mr. HIESTER and Mr. FOULKROD, and are as follows, viz:

YEAS—Messrs. Agnew, Ayres, Banks, Barclay, Barndollor, Barnitz, Bedford, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Carey, Clapp, Clarke, of Beaver Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cochran, Cox, Crain, Crawford, Cummin, Curll, Darrah, Dickey, Dickerson, Dillinger, Donagan, Donnell, Doran, Earle, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Henderson, of Dauphin, Hiester, High, Keim, Kennedy, Kerr, Krebs, Lyons, Magee, Mann, M'Dowell, Miller, Montgomery, Overfield, Pollock, Purviance, Reigart, Read, Riter, Ritter, Scheetz, Sellers, Seltzer, Serrill, Shellito, Smyth of Centre, Snively, Stickel, Taggart, Weaver, Woodward 74.

NAYS—Messrs. Baldwin, Bell, Biddle, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Cline, Coates, Cope, Crum, Darlington, Farrelly, Henderson, of Allegheny, Hopkinson, Houpt, Ingersoll, Konigmacher, Long, Maclay, M'Sherry, Meredith, Merrill, Merkel, Pennypacker, Porter, of Lancaster, Royer, Russell, Saeger, Scott, Sill, Thomas, Todd, Sergeant, *President*—33.

So the second section as amended by the committee of the whole was agreed to.

The third section of the said report being under consideration, in the words following, viz:

"SECTION 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."

Mr. WOODWARD offered the following amendment, as a new section to be called section third.

"The state shall be divided by law into convenient districts, none of which shall include more than six, nor fewer than three counties. A president judge shall be appointed for each district, and two associate judges for each county; and the president and associates, any two of whom shall be a quorum, shall compose the respective courts of common pleas. The legislature may unite two or more of the said districts in each county, of which the respective presidents of the districts so united may be required to hold the several courts alternately, and in rotation, with the assistance of the associates of the proper county."

Mr. W. said, that he had not offered this amendment with any view that it should lead to a debate, nor had he risen for the purpose of saying more than a very few words in explanation of it.

The report of the committee of the whole strikes out the fourth section of the fifth article.

Mr. DARLINGTON, of Chester, here rose and submitted to the Chair that the motion of the gentleman from Luzerne, (Mr. Woodward) was not in order, unless a motion should first be made, and agreed to, that the further consideration of the said third section should be postponed for the present.

The CHAIR said, that the course pointed out by the gentleman from Chester, (Mr. Darlington) was the only correct course, and gave his decision accordingly.

A motion was then made by Mr. WOODWARD,

To postpone the further consideration of the third section, for the purpose of enabling him to offer the section which had been read.

Mr. DICKEY said, he could see no good reason why the motion to postpone should be agreed to. He thought that this was a subject which ought to be left to the legislature. He did not see what necessity or propriety there was in adopting the proposed amendment of the gentleman from Luzerne, (Mr. Woodward) and he should therefore vote against the postponement.

Mr. WOODWARD proceeded with the explanation of the object of his amendment. I think, said Mr. W., that every gentleman who will look at it carefully, will concur with me in the propriety of its adoption. Its main object is to enable the legislature, when in their opinion it may be necessary to the welfare of the people, so to arrange the judicial districts of Pennsylvania, as to produce a circulation of the present judges of Pennsylvania, about certain portions of the state, in order that the courts may be held by men who do not reside in those counties, who have not friends and extensive acquaintance there, and who come into court free from the influence of the thousand considerations which always weigh upon a man

in the discharge of his duty when it has reference to his friends and neighbors.

It is known that, under our present judicial establishment, a judge is appointed to a district,—lives in a village,—draws around him a circle of friends, that he probably marries into some rich family,—that he adopts the opinions and prejudices peculiar to his location, and that when he comes to try the causes in court, there will probably be found upon the jury a brother or cousin of the parties concerned; or a son or cousin at the bar; and that every man brought before him is either a friend or an enemy—a relative or a friend; and thus that justice is dispensed not upon those pure principles by which its administration ought alone to be governed but under the influence of the strongest feelings and passions of man.

We know that the people of Pennsylvania, without distinction of parties whatever may be their occupation or their circumstances in life, have all an equal interest in the impartial administration of justice. How is this great end to be attained? I answer, by putting the judges to a sort of rotary motion, in such a way as to prevent those connexions and influences which are always incident to a location in one place, so that if a case comes on for trial before a judge who lives in the place where the controversy may have arisen, you may postpone the trial until another judge, not liable to yield to any extraneous considerations or influences, shall come round. In the words of the amendment:

"The legislature may unite two or more of the said districts in each county, of which the respective presidents of the districts so united may be required to hold the several courts alternately and in rotation, with the assistance of the associates of the proper county."

This, Mr. President, is the main feature of my amendment. The former part of the amendment I would dispense with, but it is first necessary to district the state, as a preliminary measure to the circulation of the judges.

There are more words in the amendment than I could wish, but I am unable to improve it in this particular. I will thank any member of the convention, however, who will make a suggestion calculated to improve the phraseology, without touching the main features of the amendment.

In reference to that part of it, which provides for the rotary motion of the judges, the testimony of the gentleman from Berks (Mr. M'Dowell) —of the gentleman from Northampton, (Mr. Porter) and of the other members of this body, as well as the wishes of the people, all conspire to convince me—and ought, I think, to convince this convention, that something of the kind is necessary, and, probably, more necessary now that we have agreed to change the tenure of the judicial office, than it would have been if the constitution of 1790 had not been altered in this respect.

The plan which I have here proposed, is precisely that which was suggested to the legislature of Pennsylvania some years since, by a distinguished lawyer, who, if I am not mistaken, now holds a judicial station in this city; at all events, the plan is the same as that proposed by him. At that time, the legislature satisfied itself that it had not the constitutional

power to carry such a plan into operation, although, they thought it necessary for the welfare of the people. Still, as I have said, they had not the power.

All I propose, is, to place in our fundamental law a provision, under which it may be in the power of the legislature to district the state, whenever it may become necessary to do so. I hope the amendment will be adopted.

Mr. DICKEY said, it appeared to him that the proper time at which this subject ought to have been acted upon, would have been when the fifth article of the constitution was before the committee of the judiciary, to whom it had been referred, at which time some recommendation might properly have been made upon it, either by the majority or the minority of that committee. But, said Mr. D., on reference to the report, both of the majority and the minority, I find that no notice, of any kind or description, has been taken of it. I object to its consideration at this late period of our session, because I believe that the power of the legislature is ample, if not to enable the judges to alternate, at least to enable them to establish a circuit court system, which would answer every object that could be desired. At more than one period of our history, we have had a circuit court system enacted and repealed. And I confess that I am not able to see, so clearly as the gentleman from Luzerne, (Mr. Woodward) the advantages to be derived from the plan of alternating in the manner proposed. The prejudices spoken of may exist, but there is always a remedy in the court above. I hope that the motion to postpose will be rejected. It is too late in the day to enter upon the consideration of such an amendment.

Mr. PORTER, of Northampton said, that he was in favor of the proposition of the gentleman from Luzerne, and that he thought there should be some discretionary power in the legislature in relation to the organization of our courts, beyond that which the constitution, as amended, would confer. And, said Mr. P., I will beg gentlemen to bear in mind, that they have struck out from the constitution the fourth section of the fifth article, which did give a discretionary power to the legislature; and that they have undertaken, in this new constitution, to chalk out an entire system, beyond which the legislature cannot go. In the constitution of 1790, there was no provision making it imperative that there should be associate judges; in the new constitution you have made it imperative at all hazards. So far as my own experience enable me to judge, I should say that the associate judges are about as necessary to a court as the fifth wheel to a wagon, and not much more. I would not, therefore, take from the legislature the power to make the enactments provided for by the amendment of the gentleman from Luzerne. I will also ask gentlemen to recollect that the amendment does not make it imperative on the legislature to make such enactments, but only confers the discretionary power upon that body, if they should be of opinion that the interests of the people of the commonwealth should require its exercise. I am likewise desirous to go a little further, and to introduce an amendment giving a little more latitude of discretion to the legislature, in relation to the organization of our courts than is given by the article as it now stands amended.

And on the question,

Will the convention agree to postpone the further consideration of the third section for the purpose indicated?

The yeas and nays were required by Mr. DICKEY and Mr. AGNEW, and are as follow, viz:

YEAS—Messrs. Agnew, Ayres, Banks, Barclay, Bedford, Bell, Bonham, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Clarke, of Indiana, Cleavinger, Cline, Cochran, Cope, Cox, Crain, Cummin, Cunningham, Darrah, Dillinger, Donagan, Donnell, Doran, Earle, Farrelly, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Henderson, of Dauphin, Hiester, High, Houpt, Hyde, Ingersoll, Keim, Kennedy, Krebs, Long, Lyons, Magee, Mann, Martin, M'Cahen, Meredith, Merrill, Miller, Montgomery, Overfield, Porter, of Northampton, Purviance, Read, Riter, Ritter, Royer, Scheetz, Scott, Sellers, Seltzer, Serrill, Sill, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Todd, Weaver, White, Woodward, Young—79.

NAYS—Messrs. Baldwin, Barndollar, Barnitz, Biddle, Brown, of Lancaster, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Crawford, Crum, Curll, Darlington, Dickey, Dickerson, Harris, Hays, Henderson, of Allegheny, Hopkinson, Kerr, Konigmacher, Maclay, M'Sherry, Merkel, Pennypacker, Pollock, Porter, of Lancaster, Reigart, Russell, Saeger, Shellito, Smith, of Columbia, Thomas, Sergeant, *President*—35.

So the further consideration of the section was postponed.

Mr. WOODWARD then offered his amendment which, on the suggestion of some friend about him, he had, he said, modified to read as follows, viz:

"The state shall be divided by law into convenient districts, no one of which shall include more than six counties; a president judge shall be appointed for each district, and two associate judges for each county, and the president and associates, any two of whom shall be a quorum, shall compose the respective courts of common pleas. The legislature may unite two or more of the said districts to form circuits, in each county of which the respective presidents of the districts so united, may be required to hold the several courts alternately and in rotation, with the assistance of the associates of the proper county."

Mr. MERRILL suggested to the gentleman from Luzerne, so to modify his amendment as not to require a president and an associate to constitute a court of common pleas, but to leave it to the president alone to constitute it.

Mr. DICKEY reminded the convention that when the fifth article of the constitution was under consideration before the committee on the judiciary, the fourth section was struck out by the majority; and that when the gentleman from Luzerne, (Mr. Woodward) subsequently moved to substitute the report of the minority of the committee, the motion was disagreed to, and that the report of the majority was sanctioned by the convention;—thus leaving the whole subject to the legislature. He (Mr. D.) would not speak positively, but he believed that one of the reasons which governed the majority of the committee on the judiciary in striking out that section was, that the whole matter should be left to the legislature. He repeated, he did not speak with entire certainty; but, unless he was greatly mistaken, such was the fact. He would ask why the convention should now insert an amendment, when they could not take time to give to it the consideration which was due.

Mr. CHAMBERS, of Franklin, after explaining the terms of the fourth section of the constitution of 1790, which vested power in the legislature to carry certain of its provisions into effect, said that some such provision as had been introduced by the gentleman from Luzerne, was necessary. He could not say, at present, whether he would vote for it or not. It was certainly a most important provision, and time should be given in order to its being properly examined and considered. It ought to be printed and laid before every member of the convention. He would, therefore, move that it be postponed for the present, so that it might be printed and deliberately examined, before being taken up for disposal by the convention. [Mr. C. withdrew his motion.]

Mr. PORTER, of Northampton, moved to amend the amendment by inserting before the word "the," in the first line, the words "until otherwise directed by law;" and by striking from the first line the words "by law;" and by striking therefrom, after the word "president," where it occurs the second time, the words "and associates, any two of whom," and inserting in lieu thereof the words "alone, or any two of his associates;" and by adding to the end of the amendment the words "and the legislature may, if they deem it necessary, abolish the office of the associate judges or supply their places by legislative enactment."

Mr. MERRILL, of Union, moved to postpone the further consideration of the amendment to the amendment, together with the amendment for the present, and that they be printed for the use of the delegates.

Which was agreed to.

The fourth section—being the third of the old constitution—was next taken up, read, considered, and agreed to:

SECTION 4. 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.

The convention concurred in the report of the committee of the whole, to strike out the following section—being the fourth section of the old constitution:—

SECTION 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.

The following section was taken up, and read:

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 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.

Mr. PORTER, of Northampton, moved to amend the said section by adding to the end thereof the following, viz: "That the salary of the chief justice shall never be less than four thousand dollars; of the associate justices of the supreme court, never less than three thousand five hundred dollars; of the president judges of the common pleas and district courts, never less than two thousand dollars per annum."

The amendment was rejected, and the section as read, was agreed to.

The following sections, being the sixth, seventh, eighth, and ninth, were severally read, considered, and agreed to:

SECTION 6. 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.

SECTION 7. 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.

SECTION 8. The judges of the courts 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.

The convention concurred in the report of the committee of the whole, to strike out the following—being section tenth of the old constitution.

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, on the address of both houses of the legislature.

The following remaining sections of the fifth article, were then severally read, considered, and agreed to.

SECTION 10. 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 11. 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."

The PRESIDENT having propounded the question:

Shall the amendments to the said article be prepared and engrossed for the third reading?

A motion was made by Mr. MERRILL,

To postpone the further consideration of the said article for the present;

Which was agreed to.

SIXTH ARTICLE.

On motion of Mr. DICKEY, of Beaver,

The convention proceeded to the second reading of the report of the committee to whom was referred the sixth article of the constitution, as reported by the committee of the whole.

The first section was read as follows:

SECT. 1. Sheriffs and coroners shall, at the times and places of election of representatives, be chosen by the citizens of each county. One person shall be chosen for each office, who shall be commissioned by the governor. They shall hold their offices for three years, if they shall so long behave themselves well, and until a successor be duly qualified; but no person shall be twice chosen or appointed sheriff in any term of six years. Vacancies in either of the said offices shall be filled by an appointment, to be made by the governor, to continue until the next general election and until a successor shall be chosen and qualified as aforesaid.

A motion was made by Mr. MARTIN,

To amend the said first section as amended, by inserting after the word "county," in the second line, the words "and the citizens of the city of Philadelphia."

Mr. M. said, the convention would perceive that the object of this amendment was, that the county of Philadelphia should elect a sheriff and a coroner, and that the city of Philadelphia should also elect a sheriff and a coroner. It is not necessary, said Mr. M., that I should occupy your time with any lengthy remarks on this proposition. When we take into consideration the vast population of the city and county of Philadelphia, it will be obvious to every man who turns his attention to the subject, that the duties of these offices were too onerous and unwieldly to be transacted by one individual in each. I have been told by the late high sheriff, that the proceeds of that office, as it is at present constituted, exceed the sum of twelve thousand dollars per annum. One thing is certain. There is more duty attached to it than one man can perform,

and the emolument derived from it is higher than that which ought to attach to any one office in a government like this. The coroner also, I am told, receives about five thousand dollars a year. I propose to give a sheriff and a coroner to the city of Philadelphia, and a sheriff and a coroner to the county of Philadelphia. I will say no more, than express a hope that the amendment may succeed.

Mr. BIDDLE said that, although differing somewhat in politics, the city and county of Philladelphia had heretofore gone on side by side together. We have had, said Mr. B., our court of common pleas, and one district court for the city and county. I cannot understand how we shall be able to manage our business with anything like regularity, if we are to have one court of common pleas for the entire county of Philadelphia and two sheriffs—one for the city and another for the county. Heretofore, whenever a writ has been issued by the prothonotary, it gives to the sheriff who exercises it a jurisdiction co-extensive with the jurisdiction of the court. As sheriff, his jurisdiction ought to be precisely over the same district of country as the jurisdiction of the court extends to. It appears to me, that the amendment now proposed is a dangerous experiment, and that, acted upon, it will be productive of injurious results.

The gentleman from the county of Philadelphia (Mr. Martin) has told us, that the fees of the sheriff of the city and county of Philadelphia, are very high; that they are greater than ought to appertain to any one officer under our republican form of government. Sir, it should be borne in mind, that if the fees of this office are large, the responsibility is also very great; and that while a few individuals, who have held that station, have been so fortunate as to retire with a decent competency, other incumbents had been ruined by the heavy weight of the reponsibilities which they had assumed, in connexion with the duties of their office. It may pay if an individual is fortunate; but the result may be otherwise. I think, therefore, that this may be regarded, at least in some measure, as an answer to the objection which has been raised as to the amount of the fees. If, however, the proposition of the gentleman from the county of Philadelphia were to go a step further, and were to provide that the city of Philadelphia should form a political district by itself, that it should have judges, and a court confined to the district of the city of Philadelphia, I do not think that any inconvenience would attend the movement. But, as it is, I do not see that any thing but inconvenience can result from the adoption of the amendment. The effect of it will be, to make more offices to gratify expectants; and as it is my opinion that offices are to be created solely with reference to the public necessities and the public welfare, and not for the purpose of gratifying expectants—and as I think that the present proposition would properly be ranked under the latter class—I shall feel compelled to vote against it.

Mr. MARTIN said, that, as a court had lately been established in the county of Philadelphia, and as another might be established during this or the next session of the legislature, he could not see why a provision of this character could not with perfect propriety be inserted in the constitution, and that, too, without any of the inconvenient results which were anticipated by the gentleman from the city of Philadelphia, who had just taken his seat. I know, said Mr. M., that there has been dif-

culty in the present state of things, and the subject had been laid before the legislature that some attention might be paid to it. The manner in which our courts was at present conducted was embarrassing. A small matter of one hundred dollars might remain year after year, before it can come up in its numerical order. I think that there should be some provision made in this section with regard both to the sheriff and the coroner. Still I am not anxious to force this amendment on the consideration of the convention, if they are not prepared to receive it; and as there seems no disposition at this time to vote for it, I will withdraw it.

So the amendment was withdrawn.

But Mr. MARTIN again rose, and said, that as he found that several gentlemen were desirous that a vote should be taken upon it, he would renew his amendment.

And on the question,

Will the convention agree to the amendment?

The yeas and nays were required by Mr. MARTIN and Mr. CURLL, and are as follow, viz:

YEAS—Messrs. Banks, Barclay, Bedford, Brown, of Philadelphia, Clarke, of Indiana, Cummin, Curll, Dillinger, Donagan, Donnell, Doran, Earle, Foulkrod, Fuller, Gilmore, Grenell, Hastings, Hiester, High, Hucpt, Ingersoll, Keim, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, Miller, Overfield, Payne, Porter of Northampton, Read, Ritter, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Sturdevant, Taggart, Weaver, Woodward—44.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Barnitz, Bell, Biddle, Bonham, Brown, of Lancaster, Brown, of Nothampton, Carey Chambers, Chandler, of Chester, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Coates, Cochran, Cope, Cox, Crain, Crum, Cunningham, Darlington, Darrah, Denny, Dickey, Dickerson, Farrelly, Fleming, Forward, Fry, Gamble, Gearhart, Harris, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Hyde, Jenks, Kennedy, Kerr, Konigmacher, Long, Maclay, McDowell, McSherry, Meredith, Merrill, Merkel, Montgomery, Nevin, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Royer, Russell, Saeger, Scott, Seltzer, Serrill, Sill, Snively, Thomas, Todd, Weidman, White, Young, Sergeant, *President*—75.

So the amendment was rejected.

And, the question having been then taken,

The report of the committee of the whole was agreed to.

And, the question having been then taken,

The section as amended was agreed to.

And the second section of the said report being under consideration, in the words following, viz:

"SECT. 2. The freemen of this commonwealth shall be armed, organized and disciplined for its defence, when and in such manner as may be directed by law. Those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service."

A motion was made by Mr. BELL,

To amend the same, by striking out all after the word "but," in the

fourth line, and inserting in lieu thereof, the words "may be required by law to pay an equivalent therefor."

Mr. Bell rose and said, that it was not his design to occupy the time of the convention in again bringing to view the various arguments which were urged *pro* and *con*, when this section was under consideration in committee of the whole.

It is well known, said Mr. B., that there is a certain class of our citizens, who honestly entertain scruples against bearing arms at any time, or under any circumstances; and that an attempt was made in committee of the whole at Harrisburg, to exempt them from the necessity of being compelled to bear arms at any time, or under any circumstances. At that time, there appeared to be a disinclination on the part of the members of this body, to introduce a provision of such a nature into the constitution.

A proposition was made, similar to that which I now present, and it was cut off by the demand for the previous question. The amendment which I propose, gives to the legislature a discretionary power, on the subject of requiring from those who entertan conscientious scruples, the payment of an equivalent for their personal service. As the constitution stands at present, injustice is inflicted upon this class of citizens, inasmuch as they are excused from bearing arms, but must, *must* pay an equivalent for personal service; thus leaving no discretion to the legislature to relieve them from what they consider an oppressive measure.

The simple question now for us to decide, is, whether we prefer to leave the constitution as it is—*compelling* them to pay an equivalent in time of peace; or whether we will leave the discretionary power with the legislature, if they deem it wise to exercise that power, to exonerate them in a time of profound peace, not only from the necessity of bearing arms, but also of paying an equivalent which they regard as oppressive.

I trust, at least, that the convention will favor me so far as to allow the votes to be recorded.

Mr. Cummin, of Juniata, said, that this was a subject which had been ably and amply discussed on first reading, in committee of the whole. It was a subject, the consideration of which had occupied the space of six days, and at that time the question had been decided in opposition to the principle of the amendment introduced by the gentleman from Chester, (Mr. Bell). I consider it, said Mr. C., a very important question; it is a question of civility, on the one side, and of presumption on the other. To say, on the one hand, that any society of men should set themselves up above their fellow mortals, or, on the other, that any set of men would record their deliberate opinion, that they were below their fellow mortals in any of those attributes which belong to men and christians, is more than can be expected. We have heretofore gone into all the details of this question of people bearing arms, and the proposition is again before us to exempt a particular class of citizens from the performance of that duty.

When they asked a favor they should prove that they are entitled to it. Their petition was a slander upon every man who had defended his coun-

try. These Quaker petitioners asked to be excused from doing military duty, and their representatives in this convention went so far as to vote in favor of an amendment excusing those from service who entertained any religions scruples to bear arms. This question had been discussed for two days, and yet we had come to no conclusion on it, although it might have been disposed of long ago, for there was really nothing in it to warrant so much delay. Consistency is an ornament, but little of it had been exhibited by those who would be excused from defending their country, or paying an equivalent. In the debate to which he had referred, on the motion to strike every thing out of the constitution which related to religious scruples, great power and ability had been displayed by gentlemen on both sides of the question. There was one gentleman—whom he did not see now in his place—who had spoken on the subject, and in the course of his remarks pointed out the unpretendingness and simplicity which characterized the Quakers—that they might be seen in the workfield as well as in the parlor, and that none refused to lend their aid to the government when it needed aid.

Now he (Mr. C.) would like to know how these Quakers made it appear that they assisted the government—that they defended the country. The very doctrines they profess, and the sentiments they utter, are entirely opposed to all fighting. He had said, on a former occasion, in answer to his friend from Northampton, (Mr. Porter) that any man who voted in favor of the prayer of the Quaker petitioners, must entertain similar opinions, and be opposed to compelling every man to defend his country in the hour of danger. There are only two parties on the face of the globe—the one being christians, the other anti-christians. Gentlemen around him might smile, but the position he advanced was nevertheless true. He pretended to some knowledge on the subject; and he would show before he concluded his remarks, how far the petitioners were entitled to be regarded as the followers of the Prince of the Peace, as they professed to be. They must furnish better proofs of their being so before his mind would be convinced. On examination it would be found that they were wanting in every thing requisite to constitute them what they would have us believe they are.

Mr. C. would advert to the course of Mr. Dunlop on this question, which he characterized as inconsistent—he having argued one way and voted another—that he had in his, (Mr. C's.) absence, turned round and voted (as did others also inconsistently,) to reconsider a former vote, which was adverse to the claims of the petitioners, and it was successful—the vote being 60 to 55. Such conduct as this he could not regard as very honorable or fair.

With respect, then, to the claims of the petitioners to be excused from military duty, and from fine likewise, for non-compliance with the law of the land. He (Mr. C.) had fully and deliberately examined them, and came to the conclusion that they had neither right nor justice to sustain them. He should like to know how it happened that these Quakers could, as they had already done, send representatives of their own creed and religious notions, to this convention, from the city of Philadelphia, and the counties of Bucks, Delaware, Lancaster and Chester, and at the same time refuse to render their assistance to their country when assailed by a foreign foe. Notwithstanding that these men are privileged to fill the

highest offices in the gift of the people, yet would they refuse to serve in the tented field, and beg to be excused from contributing towards carrying on the expenses of a war, if one should take place! Yes! they would enjoy all the rights, privileges and benefits of their country, but desire to be excused from the patriotic service and duty of defending it, or of contributing towards its defence and safety!

These are the sentiments of these Quaker petitioners. They say that all wars and fightings are anti-christian—that wars are inconsistent with the spirit of the Gospel. Now, he would undertake to show that they were no such thing. The Holy Scriptures were full of accounts of wars and fightings. The meekest and best men that had ever lived were the greatest warriors, from Moses to General Jackson. In proof of what he (Mr. C.) had just asserted, he would read a portion of the 31st chapter of the Book of Numbers:

"And the Lord spake unto Moses, saying,

"2. Avenge the children of Israel of the Midianites: afterward shall thou be gathered to thy people.

"3. And Moses spake unto the people, saying, arm some of yourselves unto the war, and let them go against the Midianites, and avenge the Lord of Midian.

"4. Of every tribe a thousand, throughout all the tribes of Israel, shall ye send to the war.

"5. So there were delivered out of the thousands of Israel, a thousand of *every* tribe, twelve thousand armed for war.

[This was one of the last wars in which Moses was engaged.]

"6. And Moses sent them to the war, a thousand of every tribe, them and Phinehas the son of Eleazer the priest, to the war, with the holy instruments, and the trumpet to blow in his hand.

"7. And they warred against the Midianites, as the Lord commanded Moses; and they slew all the males."

The result of the battle was, that they slew the five kings of Midian, and the prey, or booty captured by the Israelites was, six hundred and seventy-five thousand sheep; seventy-two thousand beeves; sixty-one thousand asses; and thirty-two thousand young women that had not known man by lying with him. And all the men were slain.

Now, this war and its consequences—that great man Moses was the author of. And, would any one here venture to deny that he was not a good, a holy, and an upright man? He (Mr. C.) presumed not. The Israelitish army must have been under the protection of God, or they could not have done what they did, and have come off so victoriously, as we read of them, even without the loss of a single man. In the 48th and 49th verses of the same chapter, it is recorded:

"48. And the officers which *were* over thousands of the host, the captains of thousands, and captains of hundreds, came near unto Moses:

"49. And they said unto Moses, Thy servants have taken the sum of the men of war which *are* under our charge, and there lacketh not one man of us."

All these things may be said to have been committed in barbarous times. But, even admitting that to be the fact, still it did not prove that it was anti-christian to fight—to carry on wars, for these wars, in which Moses and other great and good men were engaged, were countenanced by Providence.

In the next chapter (the 32d of Book of Numbers,) there was to be found a remarkable and strong contrast between the conduct of the Reubenites and Gadites, and that of the Quakers of Pennsylvania. He would read a portion of the chapter:

"Now the children of Reuben and the children of Gad had a very great multitude of cattle: and when they saw the land of Jazer and the land of Gilead, that, behold, the place *was* a place for cattle:

"2. The children of Gad, and the children of Reuben came and spake unto Moses, and to Eleazer the priest, and unto the princes of the congregation, saying

"3. Ataroth, and Dibon, and Jazer, and Nimrah, and Heshbon, and Elealeh, and Shebam, and Nebo, and Beon,

"4. *Even* the country which the Lord smote before the congregation of Israel, *is* a land for cattle, and thy servants have cattle."

It appeared that the Gadites and Reubenites did not want to go over to Jordan, and they addressed this language to Moses:

"5. Wherefore, said they, if we have found grace in thy sight, let this land be given unto thy servants for a possession, and bring us not over Jordan.

"6. And Moses said unto the children of Gad, and to the children of Reuben, Shall your brethren go to war, and shall ye sit here?"

Now, this language of this last verse would apply well to the petitioners. This is what they want to do: they want others to fight the battles of the country, while they remain at their own firesides. He would put it to the Quakers to say candidly and honestly whether it would be fair that we should go and fight the enemies of our country, while they staid at home.

Let gentlemen examine the Scriptures for themselves, and they would see whether or not he had correctly read the facts he had cited in proof of the position he had assumed

It would be found that the Gadites and Reubenites did go over to Jordan, all armed and ready for battle, according to the desire of Moses, he having promised them that the possession of their inheritance on this side of Jordan should be theirs. He (Mr. Cummin) had never heard of a man being excused from going to battle, on the score of conscience. There is not, nor can there be any excuse given, except in some few instances. In the 20th chapter of Deuteronomy two or three instances are recorded, where excuses may be granted—the first of which is to be found in the 5th verse in these words:

"And the officers shall speak unto the people, saying, What man *is there* that hath built a new house, and hath not dedicated it? let him go

and return to his house, lest he die in the battle, and another man dedicate it."

The second is in the sixth verse:

"And what man *is he* that hath planted a vineyard, and hath not *yet* eaten of it? let him *also* go and return unto his house, lest he die in the battle, and another man eat of it."

The next excuse is that he is betrothed, or has married a wife; and he was excused for a year that he might stay at home and nourish her. This was a glorious act, but the excuse was good only for one year. These are acts which are laid down for our information, as all Scripture is given for our instruction and edification, and so forth.

But, Mr. President, there is yet another reason, which probably has not been thought of. Cowardice has been brought in. Of this we have sufficient evidence; for we find by reference to the sixth and seventh chapters of Judges, that Israel was over-run by the Midianites; and the Amalekites, and another nation. They dare not thrash their grain but at night. And Gideon is called upon by the angel of light, who said unto him, "The Lord is with thee, thou mighty man of valour." And what was the answer of Gideon? He inquires how this can be when the Midianites have taken all our possessions? "If the Lord be with us," he asks, "why is all this befallen us?" The angel then tells him what to do—to go and cut down a grove. He did not do it during the day, but he did it by night; and, for doing this, a hue and cry is raised up against him. But he goes on. He is divinely directed, as I suppose that every man of common reading and common sense will say that the Supreme Ruler of the Universe—the God of Hosts—govern and directs the destinies of all the armies of the world. Gideon, however, was faithless for some time, and although the angel of the Lord had appeared to him, still he seemed at first to doubt the message of the Most High God. In this spirit, Gideon was anxious to have proof whether he should conquer or not. And he said unto God,

"If thou wilt save Israel by my hand, as thou hast said,

"Behold, I will put a fleece of wool in the floor; and if the dew be on the fleece only, and it be dry upon all the earth *besides*, then shall I know that thou wilt save Israel by my hand, as thou hast said."

And the proof was given, for the chapter goes on to say,

"And it was so; for he rose up early on the morrow, and thrust the fleece together, and wringed the dew out of the fleece, a bowl-full of water."

Still, however, the faith of Gideon was not firm. He asks for yet another proof that he shall be victorious in the battle.

"And Gideon said unto God, Let not thine anger be hot against me, and I will speak but this once. Let me prove, I pray thee, but this once with the fleece; let it now be dry only upon the fleece, and upon all the ground let there be dew."

And this proof also was given:

"And God did so that night; for it was dry upon the fleece only, and there was dew on all the ground."

After all this, Gideon proceeded to make preparations for the battle, and he collected soldiers to the number of thirty-two thousand men. They assembled and prepared themselves to go out to battle with the Midianites. And what do we find was the direction then given? I presume there were none such as these memorialists in that company at that time. Gideon was directed to call upon these thirty-two thousand men, in order that every one that was afraid—any one that was faint-hearted—any one that would not fight for his country—might return and go away. Their services were not desired. Mr. President, you understand this as well as I do; I know that these things are perfectly familiar to you. I allude to them at this time, merely to shew that in all ages of the world, there have been men who would turn their back upon their country in her hour of tribulation and of need, who would not fight her battles, nor take up arms to defend her against a destroying enemy. Well, sir, what do we find in this instance?

The mandate went forth.

"And the Lord said unto Gideon, The people that are with thee are too many for me to give the Midianites into their hands, lest Israel vaunt themselves against me, saying, mine own hand hath saved me.

Now, therefore go to proclaim in the ears of the people saying, whoever is fearful and afraid, let him return and depart early from Mount Gilead."

And what was the consequence of this proclamation? We find that of the thirty-two thousand men collected together twenty-two thousand turned cowards, like some men whom we have among us in these days, and that they were directed to go home.

They appeared, in the first instance, to be willing to go to battle, but their faint-heartedness overcame them, and the very instant that an opportunity is presented to them, they abandon their companions in arms and leave them to their fate. But all this was the secret movement of Him who moves, and governs, and controls the wills of men. Thus out of the thirty-two thousand men originally assembled to give battle to the Midianites, there remained only ten thousand. But the Lord complains that even this is too strong a force, and that if Gideon goes into the field with so great a number as ten thousand men, they will still be apt to claim the victory for themselves. So Gideon is derected to prove the remaining men after this manner;

"And the Lord said unto Gideon, the people are yet too many; bring them down unto the water, and I will try them for thee there; and it shall be that of whom I say unto thee, this shall go with thee, the same shall go with thee; and of whom I say unto thee, this shall not go with thee, the same shall not go."

"So he brought down the people unto the water; and the Lord said unto Gideon, every one that lappeth of the water with his tongue as a dog lappeth, him shalt thou set by himself; likewise every man that boweth down on his knees to drink."

This test was applied, and it resulted in diminishing the ranks of the army from ten thousand to three hundred men;—

"And the number of them that lapped, putting their hand to their mouth

were three hundred men; but all the rest of the people bowed down upon their knees to drink water."

So that of the ten thousand men, nine thousand seven hundred were discharged, leaving only three hundred men to face the whole host of the Midianites. But they were strong in the power of that Almighty hand which had directed their path through the red sea, and had guided them through the dangers and horrors of the wilderness—and they went forth fearlessly to battle. The army of Gideon then, as I have said, was reduced to the small remnant of three hundred men, and I hope it is known to every man within the sound of my voice, what means were used to enable him to meet and to conquer the powerful enemy which he had to encounter. Gideon—the leader of that little band of patriot soldiers—knew nothing of war or its appliances; but he took his direction from that Almighty Being that never erred, and that cannot err. He was directed to go on with his three hundred men, and he did so. He went to the camp of the wonderful multitude which composed his enemies—he went by divine direction—and they were all slain. They turned upon each other, and slew themselves "throughout all the host."

Yes, Mr. President, such is the history of that remarkable event. What a cruelty was that, these memorialists would exclaim! What a cruelty that the Lord should have allowed so many men "to murder each other"—to use the language of these memorialists! It is astonishing to think of the indulgence that people seek, when they ask others to put themselves under their feet. Such a thing is not known in any other country but that in which we live. These are evidences and facts.

When this question was last under discussion, I did not say a word in reference to those matters which I have touched upon now; and if I were willing, as I am not, to take up the time of this convention—short as the period of its continuance must now be—I could give abundant proofs of the position I assume; for the whole scriptures are full of them.

But, sir, these memorialists come here and tell us that the Prince of Peace is opposed to all war. I will ask, where do they derive their authority for such a statement? Where can they point to any assertion which will justify such a conclusion? When he sojourned among men upon earth, where do we ever find that he said a word against the soldier? Where do we find that he said a word against the man who fought the battles of his country? Not a word of such a character is to be found. On the contrary, he did much for the soldier.

But, Mr. President, this is not all. These memorialists say that the Saviour came into the world to give peace upon earth. And what is the account which he gave of his own mission? He says that he came to give the sword and not peace. And there has been more blood shed since that day on the score of religion, and for the sake of religious creeds and tenets, than there ever was for kingdoms, and power and property. According to the prophecy then made, I say, there has been more blood shed for the sake of religion, than for the claims of monarchs. Should any portion of the people of this or any other country, ask for such privileges as are here laid claim to, without at least bringing forward some good satisfactory reason why they should be granted to them? I think not. To my mind it is absurd to ask such things of men elected, as we

have been, to form a constitution for the government of the whole people of Pennsylvania, and not of a part of them.

I have thus, Mr. President, gone over these few points; and they are but few in comparison with those which, if your time would permit, I should take occasion to advert. I have shown you what a mighty work Gideon accomplished with a small band of three hundred men, contending against the untold thousands in the ranks of the Midianites. But God was with him—God was his shield and his defence—and He is as much so in the days in which it is our lot to live, as He was then. He goes before the hosts into battle, and he gives the victory to whom He will. Look at an instance in our own history. General Jackson encountered three thousand British troops, and lost only seven men.

The name of General Washington is adored wherever it has been breathed, and yet according to the creed of these memorialists, he was nothing less than an infernal being. It has been said that Jesus Christ never fought any battles. The gentlemen who make this assertion are mistaken, because his apostles carried a sword, and he gave them direc tions that he who had no sword should sell his coat and buy one. They had swords and they used them. This is a matter of Scripture history. When He was himself a prisoner among those whom he could have cut down in the twinkling of an eye, what do we read? Shall we, says one of the Apostles, smite with the sword? Christ gave no answer. Silence gave consent, and one of the Apostles raised his sword and cut off the ear of the High Priest's servant. What a civil act that would be here in this hall! Jesus Christ, on seeing this, not only directed his Apostle to put up the sword, and healed the ear of the servant, but he also told them that his kingdom was not of this world; that his kingdom was a spiritual kingdom. And this, it appears, is the kingdom to which these memo rialists lay claim; but there is no such kingdom upon earth. They are not fit to pray to their Heavenly Father, as He said, who could send twelve legions of angels to protect them. How shall the Scriptures be fulfilled? The Saviour came into the world to be offered up as a sacrifice to the sins of men, and he was set apart to undergo this matchless suffering. But I am at a loss to see by what arguments, or what course of reasoning, these memorialists affect to lay claim to this spiritual kingdom.

The gentleman from Chester, (Mr. Bell) strives to steal a march upon us, as he thinks this matter is about to go off so smoothly. But, as he is a legal character, I will beg leave to turn his attention to a few remarks which I am now about to make.

Here, then, we have a set of men praying to be exempted, not only from the performance of military duty, but also from the payment of any equivalent for their personal service. This is the claim which is here set up. Now, I will take liberty to ask the gentlemen at the bar—the law yers of this body—and especially the gentleman from Chester, who has manifested such zeal in behalf of these memorialists—to suppose for a moment, that they had a claim for a debt against any one of these memorialists. Would they suffer him to come as a witness in his own behalf, and himself to recover the money? Would they suffer him to sit in a jury box, and to give a verdict in his own favor? Moreover, would they suffer him to be the judge of his own case? Well, you say that this is not a debt—that the money raised in lieu of personal service in the militia,

is not a debt. I deny it. I take the directly contrary ground, and I say that it is as solemn a debt as ever could be due, and that it ought to be paid the first in the land.

Will any of the lawyers of this body say, that they would suffer these petitioners to come into court, and not only to sit in the jury box, but to be the judges of their own case, and to clear themselves? And yet, is not this precisely the part which they are acting at the present time What chance have we to form such a constitution as will promote the interests, and secure the rights of the people—what chance, I say, have we to form a fair and honest constitution, while those that are opposed to every measure that is calculated to promote those interests, and to secure those rights, are to be the whole and sole judges of what is to be done—because, the vote of one man may carry a question, and we all know that there are in this body, more than twelve members of the society of friends. What chance, I ask, have we in such a case? All I hope is, that the people will not be so humble as to put themselves under the feet of any set of men—however grave or rich they may be—in opposition to all the rules of law and justice.

They have acknowledged themselves to be rebels, not only in this country, but in England. If they are men, such a people as those of whom our Saviour spoke, who when you smite them on the one cheek, would turn to you the other, we might think there was something more substantial, something more reasonable in the claim which they here set up. No, sir—nothing of the kind. In refusing to pay these taxes, they refuse to pay the honest tribute and custom that are due, and which they in common with their fellow-men, are bound to pay. They direct you to do honor to them and their principles. They walk through these halls with their hats on. These are the men who undertake to direct you how you are to act, and what sort of a constitution you are to form for the government of the people of this great commonwealth. I do not speak for myself; I have no personal end to obtain, and no personal feeling to gratify. I speak in behalf of the mass of the people of this commonwealth. I speak for a principle which should regulate the conduct, and animate the heart of every freeman—and by which every man in the land should be placed on an equality. Will it not be admitted even by the gentleman from Chester himself, that we should not accept of such testimony as is offered here? Will it not be admitted that no debtor should be suffered to go into a jury box, or to be a judge upon the bench, so that he may be enabled to give judgment in his own favor? I will thank the gentlemen to give their views on this subject. I invite them to do so. I invite the gentleman from Chester to give his views of the case I have presented, because, I have no desire to say all on one side of the question, and close my ears to what may be said on the other.

Mr. CUMMIN, here gave way to

Mr. READ, who moved that the convention do now adjourn.

Which motion was rejected.

Mr. CUMMIN resumed. I am aware, Mr. President, that it is growing late in the evening, and I will endeavor to tax the patience of the convention as little longer as possible. There are, however, a few more points

on which I am desirous to say something, before I take leave of the subject.

I will turn your attention for a moment, to the memorial presented by the society of friends to this body, in order that we may see how their professions will compare with their practice.

In page three of the printed memorial, we find the following sentiments expressed:

"In the first place we would observe, that the first minister in the society, in the early periods of his ministry, distinctly and unequivocally professed a belief, that the practice of war was inconsistent with the principles and tenor of the christian religion. About the twenty-seventh year of his age, and third of his ministry, he was strenuously urged to accept a commission in the parliamentary army; but he rejected the offer as inconsistent with his religious principles, and suffered nearly six months' imprisonment, in a filthy jail, on account of his refusal. From that time to the present, the society of friends have always believed that wars and fightings are inconsistent with the nature of the Messiah's reign. Amidst the plots and struggles for power, by which the history of the nations where they reside has been marked, they have still professed and maintained the same doctrine. They have submitted peaceably to the governments which have been placed over them: but have taken no part in setting them up or pulling them down, by military force. When subjected to fines or imprisonment, on account of their religious principles, they have patiently endured whatever has been imposed upon them; but have always refused to contribute to the prosecution of war, whatever its ostensible object may have been. And certainly the experience of an hundred and eighty years, must be admitted as amply sufficient to establish the sincerity of their belief, whatever may be thought of the correctness of their doctrine."

Supposing that the principle were generally adopted, which the Quakers contend for, viz: that no man ought to be compelled to fight, who entertains conscientious scruples against taking up arms against his fellow man, how he (Mr. C.) would ask, were men to prevent the enemies of their country, from taking possession of it and every thing in it, if disposed to do so? Never was such a doctrine ever before heard of. It never was thought of in Europe, or any other civilized portion of the world. Let that doctrine be carried out to its fullest extent, by other denominations of christians in the United States, as well as the Quakers, and we should become, at no remote period, the subjects of some foreign king or potentate of Europe. He, Mr. C., would read the following paragraph from the memorial of these Quaker petitioners, by way of showing what were some of their sentiments on this important subject:

"We consider the holding of a convention for the purpose of deliberating upon a plan of government, affecting the civil and religioua rights of the community, a very important measure, and we feel it right to represent, what as a *religious society*, we have always believed and inculcated the doctrine that all *wars* and *fightings*, were a violation of the peaceable principles taught by the *holy promulgator* of the christian religion."

Mr. C. would ask, if the position they took was a correct and a true one? No; there was no truth in it. Their argument was as far from the

truth as light is from darkness; for, it was well known, as he had before remarked, that the best men that ever trod the earth, were the noblest and bravest heroes. The petitioners went on to say that they asked relief from the oppression of military law; and they claimed to receive it untrammelled by any substitute as an equivalent therefor. Now, he would ask the members of this convention, what would be our situation, if all were to refuse to defend their country?

Mr. C. was proceeding to show that the conduct of the Quakers was highly exceptionable, during the French and Canadian war in 1754–5, inasmuch as they endeavored to dissuade the German population from taking up arms against the Indians, allies of the French—when

A motion was made by Mr. PORTER, of Northampton, to adjourn.

Which was agreed to.

So the convention adjourned accordingly.

FRIDAY, JANUARY 26, 1838.

Mr. MEREDITH presented a memorial from citizens of Philadelphia, praying that a provision may be inserted in the constitution which shall make it the duty of the legislature to bestow annually from unappropriated funds, the sum of twenty thousand dollars, for the purpose of colonizing, at some point on the coast of Africa, the negroes of this state.

And, on motion of Mr. M.

The said memorial was referred to the committee on the ninth article of the constitution.

Mr. CHANDLER, of Philadelphia, presented a memorial from citizens of Pennsylvania, praying that the trial by jury shall be as heretofore, and in questions affecting life and liberty shall be extended to every human being, and that the right thereof shall remain inviolate.

[Mr. C. explained that this memorial did not not contain the residence of the signers, but that it came to him in a letter post-marked "Pittsburg."]

And, on motion of Mr. C.

The said memorial was laid on the table.

Mr. COPE, from the committee of accounts, reported the following resolutions, which were read, viz:

Resolved, That the President draw his warrant on the State Treasurer, in favor of Samuel Shoch, for the sum of one thousand dollars, to be accounted for in the settlement of his accounts.

Resolved, That the President draw his warrant on the State Treasurer, in favor of Emanuel Guyer, printer of the German Debates, for the sum of three thousand dollars, on account of said printing, to be by him accounted for in the settlement of his accounts.

And, on motion of Mr. COPE,

The said resolutions were severally read the second time, and adopted.

A motion was made by Mr. INGERSOLL,

That the convention proceed at this time to the consideration of the resolution offered by him on the 25th instant, in the words following, viz:

Resolved, That the journal of the seventh of June last, be corrected by omitting the name of C. J. Ingersoll, inserted by mistake as one of those calling for the previous question.

Which motion was agreed to.

And the said resolution being under consideration;

Mr. DARLINGTON said, that he could not vote for the adoption of this resolution, unless he received some information about it. He had a perfect recollection that the gentleman from the county of Philadelphia, who had offered this resolution did, on one occasion, stand up in support of the call for the previous question, And there were several gentlemen about him (Mr. D.) at the time, who had also a distinct recollection of the fact. I wish therefore, to know whether this resolution has reference to the first or second occasion on which the gentleman from the county is represented as having stood up.

Mr. INGERSOLL said, that granting all which the gentleman from Chester county, (Mr. Darlington) had said to be true, he (Mr. I.) might answer him simply by asking a question. What has that to do with the question before the convention? It is, however, the first time to which the resolution has reference, and it is obviously a mistake on the journal. The question was on a motion made by Mr. Stevens to postpone to a day certain, the consideration of a resolution which I had offered some time previous, and which was called up for consideration on Wendesday the seventh of June, by the gentleman from Allegheny county, (Mr. Denny.) The resolution provided that the convention would adjourn on the 24th of June, to meet again on the 16th of the ensuing October, and for the appointment of a special committee to publish such amendments of the constitution, as might have been agreed upon by the convention, at the time of such adjournment.

The motion of Mr. Stevens to postpone to a day certain, was followed by a motion of Mr. Woodward, to postpone the consideration of the resolution indefinitely. The previous question was then called. My name appears on the journal as one of the delegates who stood up to second the call; while, on the very next page, my name is recorded with the names of thirteen other gentlemen, against taking the main question. And on the following page, my name is again recorded in the negative on the the main question itself, which main question was on the motion of Mr. Woodward, for indefinite postponement. I say, therefore, that it is obviously a mistake of the secretary. I complained of it at the time, and desired that it should be corrected at the time. In page 162, of the jour-

nal of the committee of the whole, I am again journalized as having stood up for the previous question. I state upon my veracity that I did not stand up in the first instance referred to, and I state upon my veracity that I complained of it at the time. Under such circumstances as these, I am at a loss to know why the gentleman from Chester, should raise any difficulty about a matter from which no possible injury or inconvenience can result to others, while it does justice to me.

Mr. DARLINGTON. I am not raising any difficulty. I merely wished to know whether the gentleman referred to the first or second time in which he is represented on the journal as having stood up for the previous question. I now understand that his remarks have reference to both.

Mr. INGERSOLL. Then you misunderstood me.

Mr. DARLINGTON. Then I shall have no objection to the adoption of the resolution.

Mr. HIESTER said, he regretted that so much time should be consumed. The matter at the best, said Mr. H. is a small one. The gentleman from the county of Philadelphia, (Mr. Ingersoll) has in fact, already obtained his object, because his resolution was upon the journal. Therefore, so long as the gentleman's word is good for contradiction, the statement that he stood up for the previous question on the occasion alluded to, stands contradicted; and it was immaterial whether it was adopted or not. I hope there will be no further discussion.

Mr. CHAMBERS said. The gentleman from the county of Philadelphia, (Mr.Ingersoll) complains of a mistake which appears on the journal, his name having been recorded as voting in support of the call for the previous question, when he did not vote. And he refers to what must be regarded as very strong evidence; that is to say, that when the yeas and nays were taken upon the question of putting the main question, his name is found recorded in the negative. The error then, is with the officers of the convention in journalizing; and it is due to those who were present to say, that the journal of the day on which the mistake occurred, was made up by an assistant secretary, now absent. It was not the error of the officers now present.

Mr. PORTER, of Northampton, said. In the instance alluded to by the gentleman from the county of Philadeldhia, (Mr. Ingersoll) I called for the previous question, and I have a distinct recollection that that gentleman hearing his name read as one of those who had stood up in favor of it—said, "do not record my name, I do not vote for the previous question."

And the question was then taken and decided in the affirmative without a devision.

So the resolution was adopted.

The convention resumed the second reading of the report of the committee to whom was referred the sixth article of the constitution, as reported by the committee of the whole.

The question being on the motion of Mr. BELL,

To amend the second section thereof as amended, by striking there-

from all after the word "but," in the fourth line, and inserting in lieu thereof the words "may be required by law to pay an equivalent therefor."

Mr. PORTER, of Northampton, rose and said;

Mr. President; I will not occupy the attention of the convention for any considerable length of time.

The proposition of the gentleman from Chester, (Mr. Bell) is not a proposition to exempt persons who have conscientious scruples against bearing arms, from paying an equivalent for personal service; but it is a proposition to submit the subject to the legislature, in order that they may act upon it in such manner as they, in their wisdom, may think proper. This proposition involves two questions. First, can the legislature be trusted? And, secondly, is not this such a matter of detail as ought properly to belong to the legislature, rather than to the fundamental law of the land?

My venerable friend from Juniata, (Mr. Cummin) thinks that this matter is to be settled by the Scriptures of the Old Testament, and he believes that the proposition now before us involves the lawfulness or unlawfulness of all wars. For my own part, I cannot conceive with what propriety such topics can be brought into this discussion. They are altogether collateral, and might be an argument addressed to the legislature, if the question were before that body for decision, but they can have no reference to the subject-matter now before this body. I believe that the question which we have to settle, is simply whether it would be proper or prudent to vest in the legislature the power contemplated in the amendment of the gentleman from Chester. I may here be permitted to say that, in relation to another class of our citizens, the legislature has had this power granted, or that, at all events, the legislature has exercised the power upon the supposition that it had been granted. It is known to all of you, that persons working upon the canals, are exempt from the performance of military duty, or from the payment of any equivalent. And why is this? Because it is supposed that the service in which they are engaged in behalf of the commonwealth, is an equivalent for the performance of military duty.

Under the regulations adopted by the government of the United States, in relation to the militia, we know that all persons engaged in the transportation of the mail—and in ferries upon mail routes;—and that all officers, executive, legislative and judicial in the United States government, are exempt, because it is supposed that the other duties which they perform to the government or to the community, are equivolent to their performance. As to some persons, therefore, we do trust this matter to the legislature, and why, let me ask, may it not safely be committed to them so far as regards that class of our citizens who entertain conscientious scruples?

And here I must also be permitted to remark that I have no conscientious scruples in relation to bearing arms. I have been a military man; I have held every military rank from a corporal to a colonel, and I have never been affected in any manner by those conscientious scruples which, I know, honestly exist in the minds of a very respectable portion of the community. I believe that wars—defensive wars—are wars in support

of the rights of man, and that, if not justifiable or proper, that they are, at all events, excusable.

But while I declare these to be my sentiments, I believe that men may honestly differ from me in opinion. I have a great respect for the right of conscience. I believe that this matter of conscience, as the gentleman from Pittsburg (Mr. Forward) has eloquently said, is a matter between a man and his maker, and about which one man cannot judge for another. And I dislike that spirit of intolerance, which would deny to a man the right of exercising a conscientious belief, because we may happen to differ from him in opinion.

We all know—and every man who has one feeling of sympathy in his heart for the suffering and the sorrow of his fellow beings—cannot but deplore the wars and the conflicts with which this earth has been cursed, not for the sake of religion, but for the sake of one portion of mankind endeavoring to change the consciences, and to blend the minds of their fellow-men.

One set of men who entertain one belief, think that they have a right to tyrranize over another set of men who may hold a different belief. It is true that such an idea is repudiated at this day, and in this country at least, where every man is allowed to sit down in peace under "his own vine and his own fig tree," and to worship the Almighty God according to the dictates of his own understanding.

Any provision, therefore, in the fundamental law of the land, which goes to deprive a man of this right, is at war with the principles upon which our government was founded; and if the bearing and effect, although not the language itself, of any provision which we may place in the constitution, should be such as to come in conflict with the conscientious belief, or the religious impressions entertained by any portion of the community, it is also a violation of the principles on which our government was founded.

But, in reference to this obligation to bear arms, I might ask whether, independent of their conscientious scruples, these persons have not at all events a plausible reason to assign, why they should be excused. I have spoken of other portions of our citizens being excused from the performance of military duty, on the ground of a supposed equivalent to the commonwealth. The society of friends embraces the greater portion of that part of our citizens who entertain conscientious scruples against bearing arms; and though there are other sects in the state of Pennsylvania who accord with them in this view, still they are but few in point of numbers. As to the society of friends, one or two illustrations may not here be out of place.

We all know—all of us at least who have resided in a community where they are to be found—that it is one of the principles of the society of friends, to maintain their own poor, and I ask my friend from Juniata (Mr. Cummin) to point to a single instance in this commonwealth, if he can do so, in which a member of that society has been maintained under the poor law of the commonwealth? The society of friends, we are also aware, educate their own children in their own schools; and yet, I will ask the gentleman from Juniata, do not the members of that society pay their portion of the taxes imposed for the support of a general system of educa-

tion for the poor throughout the state? I speak of that which they are bound to render under the tax law of the state. And, independent of all this, might I not point to the proud monuments of charity with which this commonwealth is filled by their influence? What noble enterprise is there for the advancement of science, for the proud law of charity, as for the development of the resources of your state, where involuntary contributions have been asked, in which the society of friends have not at all times been found among the foremost of its supporters?

I have not a relative upon earth belonging to that society, and I never had. I have, however, lived among them at times, and I believe that more worthy, peace-loving, honest and industrious members of the community than they, do not exist. I believe, mainly, that they carry out their principles in their lives; and I believe that if mankind were composed of the materials of which they ought to be composed, you would find the tenets of that society in relation to peace and good will, prevailing over the surface of the earth; and the only reason why their sentiments are not adopted throughout the world, is on account of the evil passions which pervade the human heart.

The gentleman from Juniata (Mr. Cummin) uncharitably, as it seems to me—and I desire to be forgiven by him if I judge uncharitably—but, I say, he has uncharitably, in my opinion, charged the society of friends with casting imputations upon those who do not entertain the same belief with themselves. If I did not misunderstand the purport of his remarks, he said that the effect of the memorial which they had presented here, was to charge all other sects in the community with being infidels; for that he knew but two parties in religion—that is to say, christian and anti-christian—and that, inasmuch as the society of friends bear their testimony that all wars are anti-christian, therefore, they charged all the rest of the community who did not entertain such sentiments, with being infidels. I shall be glad to know if I correctly understood the gentleman to assume this position.

Mr. CUMMIN rose in explanation. I have never made, said Mr. C., such a statement as is attributed to me by the gentleman from Northampton, (Mr. Porter.) What I said was this:—that the society of friends, in their memorial presented to this body, allege that all wars and fightings are anti-christian. I then made use of their own language, and I said that all those who did fight the battles of their country, in all ages of the world, were set down by this memorial as anti-christian—and that I said, was to be infidel. And from this conclusion, I said there was no escape—that is to say, that what is not christian, is infidel. It is not my declaration, but it is the declaration of the memorialists, that every member of this body who voted for the provision in the constitution, requiring them to pay an equivalent for personal service, would make themselves infidels.

Mr. PORTER resumed. The gentleman from Juniata, according to his own explanation, says exactly that which I represented him to have said. He acknowledges that what I said was correct. I said, that the delegate had charged the society of friends, with imputing infidelity to all those sects who did not believe with them—that this was the effect of their memorial, and that such would be the effect of countenancing that memorial by the vote of this body.

Now, Mr. President, I deny this construction of the memorial. I regard it as an uncharitable perversion of the spirit and the meaning of that document. They have said that the members of that society bear testimony, that they have at all times considered wars as anti-christian; but they have denied to no other portion of the community, the right to exercise their own judgments.

I, for one, do not agree with them in the position they assume; but I nevertheless respect what I know to be their honest convictions on the subject, and I think that my friend from Juniata has, at all events, erred quite as much as the other side. He undertakes to prove from the wars of Moses, that all wars are lawful. I confess this is a course of argument in which I stand at fearful odds, as compared with my venerable friend, who is so well acquainted with Scripture history; if the ground of dispute were Coke upon Littleton or Blackstone, I might do better. The convention, therefore, should make all proper allowance for the unequal ground upon which I and my friend stand in this contest.

I will, however, venture to put one or two questions to him: first, presuming that, according to my reading of the New Testament, the Saviour of mankind came into the world to introduce a new dispensation, and to put an end to the old one. Be this as it may, I will ask the gentleman from Juniata, whether he finds no testimony in the Old Testament against wars and bloodshed, and whether there are not some expressions in reference to war and blood like this: "that men who have engaged in so many wars were not fit to build a house to the Lord?" And whether this was not said in relation to David? Was not he declared to be too much a man of blood to build a house unto the Lord?

But the gentleman quotes the instance of Gideon, and tells us that there were only three hundred men taken from the people of Israel to fight the Midianites; and he thus, at least furnishes us with some argument that, in those days, men were excused either with or without an equivalent. What equivalent did the twenty-two thousand men who were with Gideon in the first instance, but who returned before the battle, pay for their personal service? They were either conscientionsly or physically scrupulous, and they were excused.

In the case of the persons who built a house, or planted a vineyard, there was an excuse, because they had given an equivalent in the improvement of the land, or in some other way. Probably, the gentleman may think that a man who married a young wife, and was excused on that ground, paid no equivalent; yet it is probable he did so in a way in which, I am sorry to say, my friend from Juniata has never followed his example.

But the gentleman has produced as authority from the New Testament, one instance in which our Saviour told his attendants to bring a sword. If the gentleman had examined the argument closely, I think he would find that it did not apply to wars, but to the injuries which the passions of men would inflict by professing to have in view the kingdom of God. The object, however, of our Saviour's mission was sufficiently stated, when he said "that he came to give peace upon earth and good will to man."

But I apprehend, Mr. President, that all this discussion, so far as it relates to the settlement of the question before us, is out of place; and I will leave it with one remark, which is this;—that, upon sound principles

of morality and religion, we must all admit that if all the inhabitants of the world were really the followers of the meek and lowly Redeemer, all wars and fightings would cease, because wars and fightings grow out of the evil passions of our nature.

The gentleman from Juniata, in my judgment, unjustly has charged this respectable society with being rebels against the laws of the land. What is there in their conduct to show any thing like rebellion? Their principle has been that of non-resistance; and they have chosen rather to submit to injustice than to violate that principle by any act of outrage or violence? Does the gentleman call this rebellion? And if so, where does he borrow his definition of rebellion? They have never charged Washington, or any other man who has fought the battles of his country, with being murderers. They have expressed their own sentiments, and it is the gentleman from Juniata who has made the charge against those who differ from the memorialists in opinion, and not the memorialists themselves.

I submit then, Mr. President, that the proposition now before us, is not to excuse this class of our citizens from paying an equivalent for personal service, but that it is a proposition to leave the matter open to the action of the legislature; to give to the legislature the power to say, that if these persons do present a fair claim to be exempted from that which they believe to be an onerous penalty, that they shall be heard in their own behalf, and that there shall not be a constitutional provision made which shall stand between them and what they believe to be due to them.

Believing, then, that this is a fit matter for legislative action, believing that the legislature will act honestly in the premises, and believing that no injury can result to the commonwealth, I shall vote for the adoption of the amendment of the gentleman from Chester. My opinion has always been that the rights of conscience are to be respected, and that whenever the conscientious feelings of any portion of our citizens can be gratified without interfering with the righis of the community, we ought to gratify them.

Mr. CHANDLER, of Philadelphia, rose and said:—

I do not rise, Mr. President, with a view to reply to the argument of the gentleman from Juniata, (Mr. Cummin;) because I had to leave him in the neighborhood of Shadrach, Meshack and Abednego, and as he went far beyond them, I shall not attempt to follow him. I know how very difficult a task it would be.

The amendment of the gentleman from Chester county, (Mr. Bell) appears to me to be such an one as this convention may adopt with entire safety, because it proposes nothing that may not be effected by the legislature, without infringing upon the rights of any other portion of our citizens. There is nothing obligatory in its character. It releases from personal service or from the payment of an eiquivalent, such of our citizens as entertain conscientious scruples against bearing arms; and in times of rebellion or war—a time, the arrival of which I do not anticipate —the legislature will be empowered to require from them an equivalent for personal service.

This question, it will be recollected, was amply discussed in committee of the whole at Harrisburg, and I had hoped that there would have

been no difficulty, in incorporating into the report of the committee of the whole, a recommendation to adopt at all events as strong a provision as that proposed by the gentleman from Chester, (Mr. Bell;) but it subsequently turned out that a considerable portion of the members ascertained that the consciences of their constituents extended only to the scruples entertained against bearing arms, and not to the scruples against the payment of an equivolent. The old provison of the constitution, was all, therefore, they were willing to go for.

It appears to me to be the duty of this body to go for the rights of conscience so far as we are able to go without doing any thing in opposition to the rights and privileges of other classes of our citizens. There is no such thing in our state as an involuntary muster of soldiers; it was a remnant of old things which has been shaken off by the new. We have about us an efficient voluntary force, requiring nothing but that legislative protection which they deserve, and which, if this measure is adopted, I believe they will receive. I believe that this provision, while it tends to the relief of a certain portion of our citizens will, at the same time, go to protect and foster the voluntary militia of the state.

The gentleman from Northampton county, (Mr. Porter) has spoken of our people sitting down under their own vine and their own fig-tree; but he was not able to carry out that quotation and to say, "having none to molest and to make them afraid;" because, in a few weeks after a parade has been ordered, it is well known that persons have gone into the houses of a portion of our citizens, carrying off their property and insulting their families, under the pretext of fines due for their non-performance of military duty, which duty they regard as a violation of their rights of conscience.

The society of friends maintain all their own poor and they contribute to the maintenance of the poor of other classes. They exhibit in their characters and lives, the examples of pure morality and virtue; they are the friends and patrons of science, and they ask at our hands only that they may be allowed to enjoy that blessing which they came here to enjoy, and for the enjoyment of which their fathers first settled this country; that blessing which we took from them, in asking them to adopt our manners and our customs instead of their own. Whenever we assemble to hear a lecture—to promote any charitable or scientific object—or to encourage the cause of morality and virtue, there at all times is this class of our citizens to be found among us. And shall we extend to them no consideration? What do they ask from us? They ask of us only a simple boon; they ask of us only that they may not be compelled to contribute to the demoralization of the community by doing that which, in the best performance of it, they believe to be contrary to their duty.

It has been said, that they refuse to fight for the dearest rights of freemen; that they live in the enjoyment of all the good in land, and yet that they refuse to protect it; that they will give up their own land to rapine and to plunder, and ask us to defend it for them. Sir, I concur in the opinion that every citizen—be he a Quaker, a Catholic, a Menonist or to whatever other sect or denomination he may belong, is bound to defend his dearest rights. But the question presents itself, what are his dearest rights? Do they consist of his palace or his house? Do they consist of those treasures

which take to themselves wings and fly away? Do they consist of those possessions which the "moth eats, and the rust corrupts, and where thieves break through and steal?" No, sir, in my opinion such is not the case. The history of this country at least, if of no other, would show a very different state of things. Who peopled Maryland? Who but the Catholics flying away from persecution, that they might enjoy their dearest rights? Who peopled Pennsylvania? who but the Quakers, flying away from persecution to enjoy their dearest rights? What induced the pilgrim fathers who landed on the ice-bound rock of Plymouth, to leave their homes for that inhospitable shore, but that they might enjoy the dearest rights of men and of freemen—liberty of conscience and freedom from persecution? If then the conscience of a man refuses to allow him to take up arms and to shed blood, why should we deny him the exercise of that right, and compel him either to take up arms or to pay an equivalent for personal service?

But, Mr. President, I will not trespass further on the time of the convention, especially as I know that my respected colleague who sits near me, (Mr. Biddle) and who will be able to do more justice to the subject than I can hope to do, is desirous of making some additional remarks in support of the amendment of the gentleman from Chester.

Mr. CRUM, of Huntingdon, rose and demanded the enforcement of the following new rule, which was adopted yesterday;—

"That when any thirty delegates rise in their places and move the question on any pending amendment, it shall be the duty of the presiding officer to take the vote of the body on sustaining such call; and if such call shall be sustained by a majority, the question shall be taken on such amendment without further debate."

Mr. MEREDITH inquired whether the names of the thirty delegates must not be taken down?

The CHAIR said, nothing of the kind was required by the rule.

And the question having been taken,

Shall the question on the said amendment be now put?

It was determined in the affirmative.

And on the question,

Will the convention agree to the said amendment?

The yeas and nays were required by Mr. WOODWARD and Mr. DARLINGTON, and were as follow, viz:—

YEAS—Messrs. Agnew, Ayres, Baldwin, Barnitz, Bell, Biddle, Brown, of Lancaster, Carey, Chambers, Chandler of Philadelphia, Clapp, Cleavinger, Cochran, Cope, Cox, Cunningham, Darlington, Denny, Dickey, Dunlop, Earle, Farrelly, Forward, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Ingersoll, Jenks, Konigmacher, Long, Maclay, Martin, M'Sherry, Meredith, Merrill, Merkel, Payne, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Regiart, Royer, Russell, Scott, Serrill, Snively, Thomas, Todd, Young, Sergeant, *President*—52.

NAYS—Messrs. Banks, Barndollar, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dickerson, Dil-

linger, Donagan, Donnell, Fleming Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hayhurst, Helffenstein, Hiester, High, Houpt, Hyde, Keim, Kennedy, Krebs, Lyons, Magee, Mann, M'Cahen, Miller, Montgomery, Overfield, Pollock, Read, Ritter, Rogers, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith of Columbia, Smyth, of Centre, Sterigere, Stickel, Sturdevant, Taggart, Weaver, Weidman, White, Woodward—65.

So the amendment was rejected.

A motion was made by Mr M'CAHEN,

To amend the said section by striking therefrom the following words, viz :—

"Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivolent for personal service."

Mr. M'CAHEN said, he had reason to believe that the proposition which he now offered, would meet with the general approbation of members on both sides of the house. It is conceded, said Mr. M'C., that the conscientious scruple against bearing arms is not among the natural rights of man. This point having been conceded, it appears to me that there can be little or no difficulty in coming to a right conclusion. If my amendment is adopted, the legislature may then make a law which will probably excuse this class of citizens from the performance of military duty, if they consented to pay an equivalent for personal service ; and the legislature will also be enabled, if they should deem it expedient, to abolish military trainings, and thus exonerate them from the taxes which they now pay, for non-compliance with the requisitions of the law. I prefer to strike out from the constitution those words which assert as a principle "that those who conscientiously scruple to bear arms, shall not be compelled to do so." I think it is not proper to assert such a principle in the fundamental law of the land. I do not admit, as a matter of right, that conscience has any thing to do with the matter, nor can I see the force of the arguments, by which it is attempted to make good that position. No man should have conscientious scruples against defending his country ; no man should have conscientious scruples against defending the laws and the institutions of the country under which he lives, and by which he is himself protected in his property, his liberty and his life.

I am not disposed, Mr. President, to consume unnecessarily any portion of the time of this body ; but I wish to say a word or two in reply to a few of the remarks which have been made on this subject.

The gentleman from the city of Philadelphia, (Mr. Chandler) tells us it is agreed on all sides that every man should defend his dearest rights ; but, it seems, that the gentleman does not regard property or bank stock as one of those rights. I will venture to assert, that my friend on the left would say not only that he would defend his dearest rights—as the gentleman from the city of Philadelphia interprets them, but that he would defend his bank stock too. And although, in this section of country, the society of friends are held up as a peace-loving community, and as a perfect model of every thing that mortal men should be, I must still dissent from the opinion that they are better than the other portions of our fellow-citizens.

Mr. M'Cahen said he dissented from the opinion which seemed to be entertained by some gentlemen, that they were any better than other por-

tions of the community. He respected the Quakers, and admired their peaceful doctrines, although he had not always known their practices and conduct to be of the same estimable character.

He knew that the Quakers, as a class, were as warm politicians as were to be found among the community, and that they were as little inclined to part with any of their political privileges, and would at all times, defend their rights when they conceived them to be encroached upon. He recollected that once when it was apprehended there would be a riot, growing out of certain abolition movements, that many of the members of the society of friends expressed their wonder why the militia were not called out. Now, inasmuch as it was impossible, in his opinion, at least, that in a country like ours, we could do without the means of voluntary defence and protection, he could not recognize the principle of excusing a man from military duty, merely on account of his religious persuasion, or conscientious scruples.

He maintained that every man was bound to defend life, liberty, and property, and to contribute to the common defence of the country. He knew it was a matter of pride with the Quakers, that they took care of their own poor, and educated the children of their own denomination. He accorded to them all the credit and praiseworthiness which such benevolent acts inspired But while he did this, he could not forget that there was a principle to be observed with regard to the present question, which applied to the whole community. He never could give his assent to the adoption of any principle, the effect of which was to sanction the exemption of any particular class of citizens from the duty of defending their country. He would vote for the amendment, because he thought the matter had better be left to the discretion of the legislature, and then these people would perhaps fare better than under the provision in the present constitution.

Mr. SAEGER, of Crawford, moved the previous question; which was sustained.

And on the question,

Shall the main question be now put?

I was determined in the affirmative.

And on the question,

Will the convention agree to the report of the committee of the whole, so far as relates to the second section?

The yeas and nays were required by Mr. FULLER and Mr. REIGART, and are as follow, viz:

YEAS—Messrs. Agnew, Ayres. Baldwin, Barndollar, Barnitz, Bell, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Cochran, Cox, Crain, Crum, Cunningham, Darlington, Denny, Donnell, Dunlop, Earle, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hays, Henderson, of Allegheny. Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Kennedy, Konigmacher, Krebs, Long, Lyons, Maclay, Magee, Mann, M'Sherry, Meredith, Merrill, Merkel, Miller, Montgomery, Overfield, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Read, Riter, Ritter, Rogers, Russel, Saeger, Scheetz, Scott, Sellers,

Seltzer, Serrill, Shellito, Smyth, of Centre, Snively, Sterigere, Stickel, Taggart, Thomas, Todd, Weaver, Young, Sergeant, *President*—92.

NAYS—Messrs. Banks, Bedford, Clarke, of Indiana, Cope, Crawford, Cummin, Curll, Darrah, Dickerson, Dillinger, Donagan, Hayhurst, Helffenstein, Keim, M'Cahen, Royer, Smith, of Columbia, Sturdevant, Weidman, White, Woodward—21.

So the question was determined in the affirmative.

And the section, as amended, was agreed to.

The convention then proceeded to the consideration of the third section of the sixth article of the constitution, as reported by the committee of the whole, which is in words following:

"SECTION 3. Prothonotaries and clerks of the several courts, (except the prothonotaries of the supreme court, who shall be appointed by the court for the term of three years, if they so long behave themselves well) recorders of deeds and registers of wills, shall, at the times and places of election of representatives, be elected by the citizens of each county, or the districts over which the jurisdiction of said court extends, and shall be commissioned by the governor. They shall hold their offices for three years, if they so long behave themselves well, and until their successors shall be duly qualified. The legislature shall provide by law the number of persons in each county who shall hold said offices, and how many and which of said offices shall be held by one person. Vacancies in any one of the said offices shall be filled by an appointment to be made by the governor, to continue until the next general election, and until a successor shall be elected and qualified as aforesaid."

Mr. MANN, of Montgomery, moved to amend the said section in the ninth line by inserting after the word "governor," the words "but no person shall be eligible to either of the said offices in counties where the population is German, unless he understands the English and German languages."

Mr. M. asked for the yeas and nays.

Mr. CURLL, of Armstrong, hoped the amendment would not be agreed to. The gentleman from Montgomery, surely must see the gross impropriety of an amendment of this character. It entirely disqualifies the English scholar for office. He trusted the delegate would withdraw his amendment.

Mr. SHELLITO, of Crawford, regarded the amendment as most unfair and partial in its terms, and most certainly would be so in its operations, for there were counties in which scarcely any German at all was spoken, and he had no idea of compelling the people to elect a German, and none but a German, whether he was their choice or not.

If the gentleman from Montgomery had confined the operation of it to counties where the population was almost all German, it might have been well enough.

Mr. MANN, modified his amendment, by inserting after "where," the words "a considerable portion of."

Mr. PORTER, of Northampton, wanted to know by what rule of arithmetic it was to be ascertained what was "a considerable portion" in amount. For his own part, he lived in a county where German was not

much spoken. But if it was necessary,—as would be the case under this amendment—that the people should have a man who understood the German, why, they would take care to get one. He thought that the introduction of such loose phraseology as "a considerable portion," &c. into the new provisions of the constitution would lead to great confusion.

Mr. BROWN, of Philadelphia county, said—the sheriff of a county, it is presumed, understands all languages. The sheriff of the county of Philadelphia, understands many languages, living as well as dead.

Mr. MANN said, that he had seen difficulty in counties where the recorder and other officers did not understand the German language—persons having come there on business respecting wills or deeds, and perhaps not being able to speak any other language than German, it has been found necessary to send for an interpreter. In his opinion, it was indispensably necessary that the officers to whom reference had been made, should understand both English and German.

Mr. HIESTER, of Lancaster, observed that if these officers were to be appointed by the governor, or by the governor and senate, there might be some propriety in adopting the amendment. He fully concurred in the argument of the gentleman from Crawford, (Mr. Shellito.) He hoped the gentleman from Montgomery would withdraw his amendment.

Mr. SHELLITO said, that in his county, a number of Frenchmen had taken up their residence, and they could not speak German. We might as well say that a French interpreter shall be appointed.

Mr. MANN, could not withdraw his amendment, as a large number of his constituents had sent petitions to this body, praying the adoption of an amendment of a like character to the one he had proposed.

The question was taken on agreeing so to amend the section.

The yeas and nays were required by Mr. MANN and Mr. SELLERS, and are as follow, viz:

YEAS—Messrs. Dillinger, Donagan, Fry, Ingersoll, Keim, Krebs, Mann, Merrill, Nevin, Payne, Riter, Scheetz, Sellers, Seltzer, Sterigere—15.

NAYS—Messrs. Agnew, Ayres, Banks, Barndollar, Barnitz, Bedford, Bell, Biddle, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Coates, Cochran, Cope, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Darlington, Darrah, Denny, Dickey, Dickerson, Donnell, Doran, Dunlop, Farrelly, Fleming, Forward, Foulkrod, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Hyde, Jenks, Kennedy, Long, Lyons, Maclay, Magee, Martin, M'Cahen, M'Sherry, Meredith, Merkel, Miller, Montgomery, Overfield, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Read, Riter, Royer, Russell, Saeger, Scott, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Thomas, Todd, Weidman, White, Woodward, Young, Sergeant, *President*—99.

So the question was determined in the negative.

Mr. STERIGERE, of Montgomery, moved to amend the said section by striking therefrom the words "who shall be appointed by the court for the term of three years, if they so long behave themselves well," where they occur in the second and third lines; and by adding to the end of

said section the words as follow, viz: "The prothonotaries of the supreme court, in the several districts, shall be appointed by the court for the term of three years, and may be removed by the court for misbehaviour in office."

Mr. DICKEY said, he did not think it was necessary to make any alteration. There was no ambiguity in the sentence, and its phraseology need not therefore be changed.

A division of the question was called for by Mr. EARLE.

The first division to end with striking out the words as follow, viz:

"Who shall be appointed by the court for the term of three years, if they shall so long behave themselves well."

And the question having been taken,

Will the convention agree to the first division of the said amendment?

It was determined in the negative.

So the first division was rejected.

And the second division of the said amendment was then withdrawn by Mr. STERIGERE.

A motion was made by Mr. PORTER, of Northampton,

To amend the said section by adding to the end thereof the words as follow, viz: "But no person shall be eligible to the office of prothonotary, clerk of any court, register of wills or recorder of deeds, until he shall have been examined by the judges of the court of common pleas of the proper county, or by a board of examiners to be appointed by such court for the purpose, and declared in writing, by a majority of the persons so examining him, to be well qualified to discharge the duties of the office."

Mr. MANN suggested to Mr. P. to modify his amendment, so as to require that when a considerable portion of the inhabitants of any county should speak the German language, a knowledge of that language should be requisite to all or a portion of said officers.

Mr. PORTER said, that he had offered this amendment because he thought that a particular qualification was requisite, in order that the offices here designated, might be filled at all times with competent persons.

I think, also, (said Mr. P,) that the object of my friend from Montgomery county, will be obtained without the introduction of such a modification as he proposes, because, if it is necessary in any of the counties of the state, that these officers should understand the German language, that qualification would of course be required to be possessed by those who might set themselves up as candidates for office. The one main object which my amendment is intended to secure, is, that we shall have competent officers. I do not mean to cast any reflection upon the people, because in ordinary cases of elections of this kind, there is no particular qualification needed. But in the instance of the recorders of deeds or registers of wills, &c., it is important we should have competent men. It will be a vast saving to the people that competent men should be procured. In the state of Ohio, the clerks of the inferior courts are appointed by the judges respectively, but the appointment is not good until the clerks have been examined by the supreme court of that state, and are ascertained to be properly qualified.

The consequence of this is, that the records are excellently well kept there. Some efficient provision in relation to these offices is more especially necessary now-a-days, when every man considers that he is fit for office, when all he thinks about is his fee, and when he cares but little as to the manner in which he may leave the records. I do not believe that you can go as far back as ten or fifteen years, and get a perfect record of any of our courts. Men have been appointed clerks of court, who could not make out a common writ or subpœna.

Surely this is a state of things which ought not to be allowed any longer to exist. A man may be personally popular as a patriot, or as a public spirited man; and although he may be wholly incompetent to discharge the duties of such offices as these, still the people may be induced to elect him. This should not be so; and I would guard against the recurrence of this evil in future, by adopting such a constitutional provision as will effectually guard these offices from being filled with incompetent men. I hope gentlemen will do me the favor to record their votes on this proposition.

Mr. REIGART, of Lancaster, said that he did not think the gentleman from Northampton, (Mr. Porter) would effect the object he had in view, even if the proposed amendment should be adopted. We all know (said Mr. R.) what is the course of these examinations; and I, for one, am opposed to them.

But what does the amendment propose? It proposes to erect our courts of justice into censors upon the rights of the people. This is in effect the proposition—neither more nor less. If we adopt the amendment, we shall, it is true, still give to the people the right to elect these officers, but we are giving it to them subject to the supervision of the courts of justice; and a man who may deserve to fill the office cannot do so, unless a court of justice shall be graciously pleased to say that he may hold it.

Let us test this principle, for if it is good in one case, it is good in all. Suppose that the courts of justice were to tell the people whom they were to elect as representatives, as senators, as sheriffs, as auditors, coroners, &c. The principle is just the same. Some of these offices are judicial. The sheriff is a ministerial office, and the coroner sometimes exercises judicial functions. How would it work? Sir, it is radically wrong in principle, and if it were not so, I repeat it would fail to accomplish the object which the gentleman from Northampton is desirous to effect. Let the whole matter be left to the people. This is the only true and proper course. They are the best judges of their own rights; they are the best judges of their own interests. We have not yet seen the people elect from their particular counties men to represent them in the legislature, who have disgraced them; and even if it had happened that such a choice had occasionally been made, the people hold the corrective in their own hands, and can apply it whenever it may be necessary for them to do so. I am entirely opposed to the amendment, and I cannot conceive it possible that it should meet with any countenance from the members of this body. I hope that it will be promptly rejected.

Mr. PORTER, of Northampton, said that he was willing to modify his amendment, so as to meet the views of his friend from Montgomery, (Mr.

Mann,) and the amendment was accordingly modified to read as follows:—

"But no person shall be eligible to the office of prothonotary, clerk of any court, register of wills, or recorder of deeds, until he shall have been examined by the judges of the court of common pleas of the proper county, or by a board of examiners to be appointed by such court for the purpose, and declared in writing by a majority of the persons so examining him, to be well qualified to discharge the duties of the office; and where a considerable portion of any county shall be inhabited by citizens speaking the German language, a knowledge of that language may be required as a requisite for a portion or all, of the said officers."

Mr. BELL, of Chester, said that in addition to the strong objections which had been urged against the adoption of this amendment, by the gentleman from Lancaster, (Mr. Reigert) he (Mr. B.) had a suggestion to make which he thought would be conclusive. In addition (said Mr. B.) to the officers already elected by the people at the regular elections, we purpose to vest in them the power to elect the prothonotaries, clerks of courts, &c., whose appointments under the constitution of 1790 were in the hands of the governor. So that the power of the people is to be largely extended. No man who knows any thing of parties, or of the mode in which political contests are carried on, can hesitate to believe that in the cases of sheriffs and coroners, and other officers elected by the people, the people will elect the friends of their own party. So it will be with the prothonotaries and other officers mentioned in this section. We know that they will be nominated by party, and that they will either be elected or defeated by party. We know that this will be the certain and inevitable result.

Now, let me ask, what is the complaint which has been urged upon this floor against the present judicial system of the state of Pennsylvania. It is that the judges attempt to set themselves up as political characters, that they disrobe themselves of the ermine, and that they enter into the arena of petty party politics. What then is to be the effect of the amendment of the gentleman from Northampton? Not only a temptation to them to mingle with party, but actually compelling them to do so. Here are half a dozen men presenting themselves before the court of common pleas, or before a board of examiners, to be appointed by the court for the purpose, which is the same thing—as candidates for these offices. Certain of them are accepted, and, it may be, certain of them are rejected. And thus the judges of the court, instead of enjoying the confidence of the whole community, so that they may be enabled to administer justice as it ought to be administered, are, if this proposition should succeed, brought in direct conflict with the worst passions which vitiate and degrade the human character. I do not donbt that serious evil will result if this provision is inserted in the constitution; and for these reasons—supplementary they are rather to those given by the gentleman from Lancaster—I shall reluctantly vote against the amendment.

Mr. CURLL, of Armstrong, said that he knew the gentleman from Northampton, (Mr. Porter) to be a full-blooded lawyer, and that the course of that gentleman on the present occasion manifested how solicitous he was to commit the people of Pennsylvania and all their rights and interests to the holy care and keeping of the lawyers. Look at this proposition,

said Mr. C.—what is it? The gentleman from Northampton is not willing to leave to the people the privilege to select their own officers, without subjecting these officers to the examination of a court of justice, or of a board of examiners appointed by the court for that purpose. Why has he introduced such a proposition? It is scarcely possible that he should entertain the remotest idea that it will be adopted, or that it will meet with any countenance here; and surely this is not the time to introduce propositions merely to excite mirth. We have too much business to transact, and too little time left for its transaction, to admit of any trifling. I hope that the amendment will meet with the fate which it justly merits, and that it will be forthwith voted down.

Mr. PORTER, of Northampton, rose and said—I am sorry, Mr. President, that it is not in my power to please the gentleman from Armstrong, (Mr. Curll.) I have no idea that either lawyers or justices of the peace should rule the roast in the state of Pennsylvania.

Sir, in the course of conduct which I mark out for myself here and elsewhere, I am careful never to impugn the motives of others, nor will I suffer others wantonly to impugn mine. I believe that a member of this body may offer a proposition, or submit an opinion, even though neither one nor the other should meet with approbation or favor, without laying himself open to an imputation on his motives; and, in the course of my experience in life, I have found that a man who is eternally questioning the motives of others, is generally a very small pattern himself.

I will take leave here to introduce a very brief anecdote, which I think is not inapplicable to the occasion. I hope some gentlemen who hear me, may profit by it; if they do not, it will be because they are prevented by their self-sufficiency from doing so.

"Apelles, the painter, finished a beautiful full-length portrait, and exposed it in the market place to be criticised upon. It so happened that a maker of sandals—commonly called a cobbler—passed by that way, and, looking at the picture, found fault with the construction of the sandal. Apelles, struck at once with the correctness of the criticism, thanked the cobbler, told him that he was right, and that the sandal should be altered. The cobbler was so much pleased with the success of his first criticism, that he began to find fault with other parts of the performance, of which he was entirely ignorant. Whereupon, Apelles turned round to him, and indignantly exclaimed, "Cobbler, stick to your last."

That's all.

Mr. FULLER said, he had merely a single remark to offer. It was entirely too late to bring in such a project. It would not be approved by any democratic county in the state of Pennsylvania, and least of all by the democratic county of Northampton. It was too late in the day to think of establishing such a board of inquisitors as was here proposed.

And the question on the adoption of the said amendment was then taken.

And on the question,

Will the convention agree so to amend the said section?

The yeas and nays were required by Mr. PORTER, of Northampton, and Mr. REIGART, and are as follows, viz:

YEAS—Messrs. Brown, of Lancaster, Forward, Meredith, Porter, of Northampton—4.

NAYS—Messrs. Agnew, Ayres, Baldwin, Banks, Barndollar, Barnitz, Bedford, Bell, Biddle, Bigelow, Brown, of Northampton, Brown, of Philadelphia, Chambers, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Coates, Cochran, Cope, Cox, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Darlington, Darrah, Denny, Dickey, Dickenson, Dillinger, Donagan, Doran, Donnell, Dunlop, Farrelly, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore Harris, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Houpt, Hyde, Ingersoll, Jenks, Keim, Kennedy, Konigmacher, Krebs, Long, Lyons, Maclay, Magee, Mann, Martin, M'Cahen, M'Sherry, Merkel, Miller, Montgomery, Nevin, Overfield, Payne, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Read, Riter, Ritter, Rogers, Royer, Russell, Saeger, Scheetz, Scott, Sellers, Seltzer, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Thomas, Todd, Weaver, Weidman, White, Woodward, Young, Sergeant, *President*—111.

So the amendment was rejected.

A motion was made by Mr. EARLE,

To amend the said section by striking therefrom the words "by the court," where they occur in the third line, and inserting in lieu thereof, the words "by the governor, by and with the advice and consent of the senate."

Mr. EARLE said, that the object which he had in view was to destroy altogether, so far as it was in his power to do so, judicial patronage. I believe, (said Mr. E.) that our experience has shown it to be a great evil. It has been said that the constant complaints against the judiciary of this commonwealth, have arisen not from the tenure of the judicial office, but from the possession of patronage. I believe that it cannot be vested in the judiciary, without giving rise to great public dissatisfaction, or without producing partisanship and favoritism in the judges. I am not able to discover any good reason why this appointing power may not be left where it has been heretofore, with a supervisory power on the part of the senate. If the principle were good that judges might appoint those officers, I would not object to it. If the principle is bad, as I believe it to be, I shall be glad to see a provision inserted in the constitution, prohibiting judges from exercising any patronage whatsoever—be it of what kind it may—and whether it has reference to prison inspectors, or any other officers.

And the question on the said amendment was then taken, and decided in the negative, without a division.

So the amendment was rejected,

And the question then recurred on agreeing to the said section as reported by the committee of the whole?

And on the question,

Will the convention agree thereto?

The yeas and nays were required by Mr. REIGART and Mr. DARRAH, and are as follow, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Banks, Barndollar, Barnitz, Bedford, Bell, Biddle, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown of

Philadelphia, Carey, Chambers, Chandler of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Cochran, Cox, Crain, Crawford, Crum, Cummin, Curll, Darlington, Darrah, Denny, Dickey, Dickerson, Dillinger, Donagan, Donnell, Doran, Dunlop, Earle, Farrelly, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Houpt, Hyde, Ingersoll, Jenks, Keim, Kennedy, Konigmacher, Krebs, Long, Lyons, Maclay, Magee, Mann, Martin, M'Cahen, M'Sherry, Merrill, Merkel, Miller, Montgomery, Nevin, Overfield, Payne, Pollock, Porter, of Lancaster, Purviance, Reigart, Read, Riter, Ritter, Rogers, Royer, Saeger, Scheetz, Scott, Sellers, Seltzer, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Thomas, Todd, Weaver, Weidman, White, Woodward, Young—112.

Nays—Messrs. Coates, Hopkinson, Meredith, Pennypacker, Porter, of Northampton, Russell, Sergeant, *President*—7.

So the section as reported by the committee of the whole, was agreed to.

And, the question having been taken,

The said section as amended was agreed to.

The fourth section, which is in the words following, viz:

"Sect. 4. All commissions shall be in the name and by the authority of the commonwealth of Pennsylvania, and be sealed with the state seal, and signed by the governor."

It was considered, and no amendment was offered thereto.

The report of the committee of the whole, so far as relates to the fifth section, being under consideration, in the words following, viz:

"Sect. 5. A state treasurer shall be elected annually, by joint vote of both branches of the legislature."

A motion was made by Mr. Ingersoll,

To amend the same by adding after the words "state treasurer," the words "and attorney general."

Mr. Ingersoll said he would state in a very few words the object of his amendment. It may not have escaped your recollection, (said Mr. I.) that I offered a proposition in committee of the whole, at Harrisburg, which, however, met with only a slender support, to give to the people the annual election of auditor general and attorney general.

A section at that time had been adopted by an almost unanimous vote, stripping the governor of much of his patronage; and so far as it has been possible to ascertain the sense of this body and of our constituents generally, there is no subject upon which there is greater unanimity of sentiment prevailing in Pennsylvania. If I am not mistaken, there is still left the appointment of the attorney general.

After some conversation with several gentlemen near him, Mr. I. said that he believed his motion was predicated on a mistake, and that this appointment was already provided for. He would therefore withdraw his proposition to amend.

So the amendment was withdrawn.

And, the question having been taken,

The report of the committee of the whole, so far as relates to the fifth section, was agreed to.

And, the question having been taken,

The section as amended was agreed to.

The report of the committee of the whole on the sixth article, so far as relates to the fifth section, which is in the following words, was considered and agreed to:

SECTION 5. A state treasurer shall be elected annually, by joint vote of both branches of the legislature.

The sixth section of the said report being under consideration, in the words following, viz:

"SECTION 6. Justices of the peace and aldermen shall be elected in the several wards, boroughs, and townships, at the time of the election of constables, by the qualified voters thereof, and shall be commissioned by the governor for a term of five years."

Mr. DORAN, of Philadelphia county, moved to amend the said section by adding to the end thereof the words as follow, viz: "The aldermen and justices of the peace in the city of Philadelphia, and the incorporated districts of the county of Philadelphia, the number of whom may be limited by the legislature, shall, at stated times, receive for their services, an adequate compensation to be fixed by law, and to be paid out of the county funds, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit under this commonwealth, and the fees and perquisites shall be paid into the county treasury."

[The above amendment reads, as modified, at the suggestion of the delegates whose names appear in the debate.]

Mr. BROWN, of Philadelphia county, would suggest to his colleague the propriety of including the Liberties also in his amendment.

Mr. DORAN, acquiesced, and modified his amendment accordingly.

He said it was unnecessary that he should say any thing in favor of the principle as it had been argued at Harrisburg, when the proposition was offered by a gentleman from the city of Philadelphia; but he would take the occasion to say, that there was not a more important question to be settled than that part of the judiciary which related to the city and county of Philadelphia. As had been remarked yesterday, the judiciary affects the whole community—every one was interested in it, and unless some better arrangement was made in regard to it, it was in vain to find fault. He would not undertake to blame the magistrates and officers here, nor would he say that they were worse than other men. But, he would say, that the system itself, in both city and county, had met the disapprobation of the public at large—the principal defect in it being, that the justiciary are dependant upon the inferior magistracy as respected their fees, which was a very uncertain kind of compensation. His opinion was that they should be allowed an adequate and fixed compensation, so as to enable them to support their families. The amendment he had offered differed from that which had been proposed at Harrisburg, by a gentleman

from Philadelphia, in this respect—that its operation was confined to the city and county of Philadelphia only, instead of being extended to the whole commonwealth of Pennsylvania. If the country members were satisfied with this arrangement, he hoped they would vote for his amendment. With regard to the justices of the peace, gentlemen would perceive, on reading his amendment, that he had also introduced a new principle, which was, that in future, they should be paid out of the county treasury. The fees were to be paid into the treasury, and afterwards the salaries were to be paid out.

Mr. MERRILL, of Union, said it would be recollected that when, on a former occasion, this subject was under discussion, a great deal of harsh language had been indulged in with regard to the justices of the peace; and he thought, too, that many of the stetements partook of rather a hyperbolical character. And, in consequence, he had been induced to look more rigidly into the matter, and the result of his investigation had been to supply him with a few additional facts. He had been at the trouble of obtaining returns from six magistrates of six different counties, viz: the counties of Philadelphia, Centre, Union, Lycoming, Northumberland, and Lancaster. He had obtained from each magistrate a return of six hundred suits from his docket, making three thousand six hundred suits in all. Out of these three thousand six hundred decisions, there had been only forty-three appeals; of which twenty-four were affirmed, three only reversed, and the remainder are yet undisposed of.

The amount of money involved in these suits, was sixty thousand six hundred and eighty-two dollars. It was composed partly of the following sums:—Lycoming, ten thousand two hundred and eighty four dollars; Lancaster, ten thousand two hundred and eighty-two; Philadelphia was more than sixteen thousand; Union, seven thousand four hundred and forty-one; Northumberland, seven thousand eight hundred; and Centre estimated at eight thousand five hundred and eight.

With regard to the time, the six hundred Philadelphia suits extended over ten months; Union fifteen months; Lycoming sixteen months, and Lancaster seventeen months. But in all they averaged about twelve months. The business went on surprisingly alike in each county. But what he had obtained all this information for, was, in order to bring to the notice of the convention the vast amount of money involved in each of those counties, in cases depending before the justices. He would ask if there was any other mode of improving the system than by getting more efficient and able officers? He knew there were some instances of men in office who were incompetent and unqualified for the proper discharge of the duties of it. Now, he would ask whether the facts which he (Mr. M.) had laid before the convention, were such as to authorize the strong and harsh language that had been used, at Harrisburg, in reference to the justices of the peace? He thought not. But, it had been said, that those who had to go before the justices of the peace were poor men. True, they are. But, if a poor man wanted to appeal, he could do so; and he (Mr. M.) did not believe there ever was a case in which he could not get special bail.

Does not this shew clearly and conclusively that the business of the justices of the peace has been done in a manner highly creditable to them as a body of men? It may be that this is not the true average all over the

state. It may be that the returns of another set of justices might shew a result different from this. But I will ask gentlemen to tax their memories for a moment with a reference to the doquets of their own counties. In the county which I represent, it will be sufficient to say, that there is not, during a whole year, one appeal from the decision of each justice of the peace; that is to say, there are not as many appeals in each year as there are justices of the peace. Surely, this is a state of things highly complimentary to the men by whom these offices are filled. I have before me the returns of cases brought before Alderman Wilson, of the city of Philadelphia, which show the following results:—

In the space of ten months, the number of suits brought before him for trial, were six hundred;—the appeals were sixteen—of which eight were affirmed, and the rest of which were untried; and all this, I repeat, in the period of ten months. I am not able to get at the exact amount of these appeals, or at the merits of each case; but I bring these strong facts to the notice of the convention, for the purpose of disabusing a considerable class of our citizens from the hard language which has been used towards them in the course of debate here. I believe that we shall never see the day when we shall procure better officers than those which we have heretofore had in the capacity of justices of the peace. I believe that, so far as justices of the peace are concerned, there never have existed any evils which required constitutional interference with one single exception, that is to say—the number. The governor going out, and the governor coming in, appointed these officers, so that we have a greater number than is required by the wants and interests of the people; but still, as a set of men, I believe that they have been among the most respectable in the community. I might refer to men—I might refer to facts. In the section of country in which I reside, a large portion of the justices consist of the most respectable men—old revolutionary officers—gentlemen of character and intelligence, and not deserving of the censure and reproach which have been so liberally and indiscriminately cast upon them here. I shall not make any effort to resist the mode prescribed in this section, in reference to the manner in which these offices shall be filled. I am of opinion that the people will become dissatisfied with it, and that before any great length of time has elapsed, they will demand a change. Still, however, as the prevailing sentiment of the present time is in its favor, I shall not resist it. There are, nevertheless, some objections to the section in its present form, and it seems to me that some amendment ought to be made. If the whole body of the justices of the peace are to be thrown into the political arena at one election, it will lead to greater excitement, difficulty, party organization, and party manœuvering, that the election of the governor, or any other election in the state of Pennsylvania. There ought to be some means devised to prevent such results, and to allow a full expression of the wishas of the people on this subject, unmixed with questions or considerations of any other kind.

Mr. Fleming, of Lycoming, said he had a few words, and only a few words, to say in reply to the observations of the gentleman from Union, (Mr. Merrill.) Having some knowledge, said Mr. F., of the source from which the delegate has procured the statements which he has read to the convention, I can say with entire certainty that, so far as the justices of the peace of the counties of Lycoming and Union are concerned, there

are probably no better officers of that class to be found in the state of Pennsylvania. But when the gentleman selects the very best officers in the commonwealth, and expects that the action of this body should be governed by such facts or data, I think that he entirely mistakes the question It is not of such men as those to whom he has alluded, that the people make any complaints. Those complaints have reference to an entirely different class; and if heretofore, in the heat of debate, harsh expressions have been made use of, those expressions have never been intended to apply to men who discharged the duties of their office in an upright, an honest, and a faithful manner. Of such men, nothing has been said of a harsh and disrespectful character. The very fact of the vast amount of business transacted by them, as shown by the gentleman from Union, is a proof that these men are amply qualified for the performance of their duties. But that class of justices which has been referred to as a stain and disgrace upon the character of the state, are those who seek to foment the two penny quarrels of their neighbors, and who make it their occupation to get business before them under five dollars and thirty-three cents, when the poor man can have no possible means of relief. I am sure that if the convention had returns from *six such justices*, the results would be very different from the returns submitted by the delegate from Union. This is the gross oppression and grievance of which, according to my view of the matter, the people desire to rid themselves. If, for the accomplishment of this object, any better plan can be devised than the one proposed in this section—that is to say, to give the election of these officers to the people themselves—I have only to say, that I will give it my cordial support. As yet, however, I have heard of none, and until I do so, I shall adhere to the election of justices of the peace in the manner provided for by the section as reported from the committee of the whole.

Mr. DORAN made a modification of his amendment (as appears above.)

Mr. CHANDLER, of Philadelphia, said that if this amendment was adopted, we should be likely to have a number of old worn-out partisans quartered upon us, to be compensated for party services, and for which the city of Philadelphia must pay. I am opposed, said Mr. C., to this plan of legislating for particular sections of the state. We, in Philadelphia, are well satisfied with our small judiciary as it is now organized. But, according to the proposition of the gentleman from the county, we shall have twenty or thirty officers saddled upon our city with large salaries. Some of them who live near places of the most active business, would have a heavy business; while others, who chose to live at a distant part, would have large salaries and nothing to do. I shall vote against the amendment.

Mr. MARTIN, of Philadelphia county said, I believe that this amendment, if it is fully examined and understood, will meet with the approbation of a large majority of the members of this body. There is great difficulty in the present state of things, in regard to the city and county of Philadelphia;—I mean in relation to the aldermen. Some remedy ought to be applied, and it appears to me that nothing will go further to remedy the evils complained of, than to place those officers upon an equality, and to let them be elected by the different wards, as will be the case if this amendment is adopted, and the legislature should act upon the

subject. The present state of things in the city and county is very unfavorable in regard to this distribution of office. Individuals holding the situation of aldermen, send out their constables, to bring before them offenders against the law. A person, for instance, is brought before an alderman, charged with having been intoxicated, and they are committed to prison under that charge, until they are released by due course of law. That due course of law amounts to nothing more nor less, than that they remain in prison until they pay the costs. An individual who is found intoxicated, or making a noise, is brought before the alderman of one of the incorporated districts, and will be committed to prison, unless he pays the cost of prosecution, which is about two dollars, or two and a half. If this is paid, there is an end of the matter. He is discharged and goes away, until the next time, when he goes through the same process again. If he cannot pay, as I have said, he is committed to prison until, by his friends or otherwise, he can raise the amount of the costs. This is a practice which is daily carried on to a great extent, and it is nothing more nor less than a kind of tax upon those unfortunate or unthinking creatures who may fall into the hands of these officers. The whole matter would be different, if the magistrates or aldermen were elected in the different wards, were confined to the different wards, and were to receive a fixed compensation for their services in those wards. I probably may alarm this convention when I say, that aldermen in the city and county of Philadelphia realize, by this sort of proceeding, five, ten, and fifteen thousand dollars per annum, in the discharge of their duty. I do not make any assertion, which I am not fully able to make good. I know of an individual who once filled the station of an alderman, and who, on a certain day, was sure to realize the sum of twenty dollars by means of the business which was thrown into his hands.

Where, he asked, were the aldermen, and where were they elected? Why, in one corner of the district of Southwark, and where they were making money. While, on the other hand, aldermen were to be found elsewhere, and doing business in their own wards, who did not make five hundred dollars a year. And, in the city, no alderman was making money, very far from it. The gentleman from the city who spoke last, (Mr. Chandler) made some objections to his friends being paid out of the county funds. Why, would there be any impropriety in that? How could the business be arranged in a fairer way, than that they should be paid out of the county funds, when the money is collected in the city? He (Mr. M.) could see none whatever. The city are in possession of an act of incorporation by which they obtain water from the county, and tax the inhabitants of the county fifty per cent. for the use of it. He had no desire to provoke any warmth of feeling, or excitement here; but, really he did think, that this opposition from the gentleman, came very unfairly, when the fact was considered, that he was a member of the common council. The gentleman, perhaps, was going to tell us that the city had expended a great deal of money before it was reimbursed for the trouble and expense at which it had been put to. But let him, (Mr. M.) tell that gentleman, that the county, by their arrangement with the city, will have paid the whole debt of the city. He trusted that he would hear no more relative to the funds of the county. He sincerely hoped that the amendment would be adopted, as he entertained no doubt that it would be found salutary and beneficial in its effects, and would cut

up the system, as he was going to designate it, of the petty larceny of committing persons to prison, in due course of law, as it was termed, until they paid the expenses, &c.

Mr. BIDDLE said, that the object the gentleman had in view, he approved. He believed that it was of importance to those engaged in the administration of justice, that they should not feel, in any manner, their own compensation to depend upon the amount of business done before them. And, if the principle had been the same, as that presented by his, (Mr. B's.) friend and colleague, he would have give it his support. But while he appreciated the motives which had actuated the delegate from the county, (Mr. Doran) in offering his amendment, he must, at the same time, declare that he could not give his consent to the insertion in the constitution of any thing which went to give an exclusive system to the city and county of Philadelphia. He did not wish that they should be separated from the rest of the state; nor did he desire to see one system of justice, one system of rules for the state at large, and another for the city and county of Philadelphia. He wanted to see every part of the state bound together as one in feeling, as they had in all things a common interest. Therefore, while he agreed in principle, as he had already observed, he could not support the amendment, because it contained an exclusive rule for the city and county of Philadelphia, suparating them from all the other parts of the state. His (Mr. B's.) colleague had stated an objection, which, however, he did not repeat, with a view to deter the gentleman from the county of Philadelphia from pressing his amendment, and that was, that the legislature could, without the assent of the county, increase the number of judges in the incorporated districts, whose salaries would be paid out of the county treasury. The county of Philadelphia would have no control over the matter. Neither was there any restriction, whatever, on the action of the legislature; they were at perfect liberty to say how many judges shall, or shall not, be elected in the incorporated districts. They performed duties as judicial magistrates, but they also performed many duties that were not at all judicial in character; and it was right and proper that they should receive fees, as, for instance, in the acknowledgment of deeds and other duties of that nature. And, while he admitted this, he confessed, at the same time, that he saw no good reason why they should not receive a fair compensation of their other duties of a different character. While on the floor, he would take the occasion to say, that the justices of the peace of the state at large, know very little of individual character. In the city of Philadelphia, they are entitled to the esteem of their fellow-citizens. He believed that they were as worthy a body of men as were in existence any where. He, himself, knew many worthy men among the justices of the peace. He, with pleasure, bore this testimony in their behalf. For the reasons, then, which he had already stated, he found himself compelled to vote against the amendment of the gentleman from Philadelphia county.

On motion of Mr. MARTIN,

The convention adjourned until half-past three o'clock.

FRIDAY AFTERNOON, JANUARY 26, 1838.

No quorum being present, a motion was made by Mr. KONIGMACHER, that there be a call of the convention;

Which motion was agreed to.

And after some time spent in the proceedings thereon, a quorum having been ascertained to be present;

The convention resumed the second reading of the report of the committee to whom was referred the sixth article of the constitution, as reported by the committee of the whole.

The pending question being on the adoption of the following modified amendment offered by Mr. DORAN, to the sixth section of the report of committee of the whole;

"The aldermen and justices of the peace in the city of Philadelphia, and the incorporated districts of the county of Philadelphia, the number of whom may be limited by the legislature, shall, at stated times, receive for their services an adequate compensation, to be fixed by law, and to be paid out of the county funds, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit under this commonwealth, and the fees and perquisites shall be paid into the county treasury."

Mr. DORAN, of Philadelphia county, rose and said: I did not intend, Mr. President, to have made any further remarks in support of the proposition which I have offered; but I feel it my duty to say a few words in advocacy of those principles to which I this morning declared myself to be attached.

I think it will not be denied by any gentlemen who is at all conversant with the facts, that the jurisdiction of the magistrates of Philadelphia is very extensive. They have an original criminal jurisdiction of a very extensive character; and, in addition to that, they have a civil jurisdiction under various acts of assembly. So that, by virtue of the power which they possess by the common law, and under the acts of assembly, they may be said to be the arbiters of the fortunes of the poorer classes of society. By a reference to the doquet of the court of common pleas for the period of one year past, it will be found that there have been appeals entered from the descisions of the magistrates for the city and county of Philadelphia, to the number of one thousand and fifty cases. It is manifest, therefore, that there have been one thousand and fifty judgments, in which the defendants have felt themselves so aggrieved as to appeal to a higher tribunal. But this is not all. We know that one-half, nay, that three-fourths of the judgments of the magistrates are not appealed from, in consequence of the politics of the parties engaged. I think this is a complete answer to

what has been said by the gentleman from Union, (Mr. Merrill) in relation to the few appeals which are taken, compared with the cases that are decided, and as to the apparent satisfaction which prevails in regard to the administration of justice by this class of officers. And I believe that if that gentleman had lived in the city of Philadelphia, and had attended the courts as a lawyer, he would have become perfectly convinced that there is a prevalent and an abiding dissatisfaction at the manner in which these magistrates perform the duties of their office. I do not intend to be personal. I said so this morning, and I now again disclaim any intention of the kind. I lay all the existing evils which are now complained of, to the change of a system, which, instead of giving to the aldermen and magistrates a fixed salary, leave them dependant upon the fees they may receive.

There are two acts of assembly which have borne hard upon certain classes of the community. The act of 1794 for the prevention of vice and immorality, especially that part of it which relates to cursing and swearing; and the act of 1700 in relation to finding sureties of the peace. Both these acts are appealed to, not for the purpose of enforcing obedience to the laws of the commonwealth, but for the purpose of gratifying malice against particular individuals.

Under the act of 1700, thousands of individuals are arrested and sent to prison. I have been told to-day, by one of my colleagues, of a fact which came witin his own knowledge, where a woman in the district of Moyamensing was detained in prison for the long period of four months, because she could not pay the sum of one dollar and fifty cents. And I might cite many instances of oppression and grievance, arising from the system of making a magistrate look to fees for his compensation, and not to a fixed salary. Where we have the power to remedy this matter, why should we not do so? Is it not our duty to do so?

What are the answers which have been made to my proposition? One gentleman says—and I am sorry that the objection was raised in such a quarter, for I had hoped, and I thought, that the city of Philadelphia would have gone with the county in this matter—one gentleman (Mr. Chandler) says, that if this system of fixed salaries is adopted, the lazy will be paid as well as the industrious. If this is any argument at all, might it not be urged with equal force to the manner in which the judiciary of the commonwealth is constituted? The argument, to my mind, is just as good in one case as it is in the other; and I am sure that the gentleman who urged the argument, never would assent that the judges of the courts should be paid by the amount of the fees. In this I can not be mistaken. The system, as it exists at present, has been found, over and over again, to be erroneous; and the only mode by which yon can expect to secure a just and perfect administration of justice is, to render certain the compensation of those to whom its administration is intrusted. It is a fact within the knowledge of all who hear me that, during the last war, owing to the compensation of the judges of the vice-admiralty court being dependant upon the condemnation of the vessels, it became a matter of course to give judgment against the vessel.

But another reason which has been urged against the adoption of the

amendment is, that this is a local affair which ought to be left to the legislature. If the proposition is good in itself, why leave it to the legislature? If the evil is complained of both by the people of the city and county of Philadelphia, and if a remedy is required, why should we leave it to the uncertain action of the legislature? Why should we render that uncertain, which may at once be rendered certain by the act of this body? Is it the part of wisdom to do so? Why should we not do that which public necessity demands, by inserting in the constitution a provision by which these ministers of the law, whose functions are of such great importance to certain classes of our fellow citizens, shall receive a salary commensurate with the services which they render, and by means of which, much suffering and oppression may be prevented?

It has been also said, that the city of Philadelphia will have to pay for the administration of justice in the county of Philadelphia. I can not see how this is to be so. The legislature, of course, will make the requisite provisions; they will regulate the number of magistrates in the city and county of Philadelphia according to the necessities of the citizens.

It is not to be imagined that the city of Philadelphia is to pay for the admistration of justice in the county of Philadelphia, or that the legislature will pass a law under which the expenses attendant on the judiciary of the county will fall upon the city. There is no ground for such an apprehension; and, so far, therefore, I do not regard the argument of the gentleman from the city of Philadelphia, (Mr. Chandler) as carrying any weight with it.

Mr. President, I will not detain the convention any longer. I will merely express the hope that a majority of the members of this body may be found favorable to this proposition.

Mr. Smyth, of Centre county, said that he did not deny that the justices of the peace were a very important branch of the community, both in the city of Philadelphia and in the different counties of the state. I do not rise, said Mr. S., with a view to say much on the question at this time; but as I shall be called upon to record my vote, I will briefly explain the reasons why I differ on this occasion from many of those members of this body, with whom I have heretofore been accustomed to act.

I, for one, can not give my consent to any constitutional provision which will bear upon one part of the state, and not upon another. This is one reason why I shall vote against the proposition of the gentleman from the county of Philadelphia; and, to my mind, it is a very strong reason. If, in adopting this amendment, we were legislating for the government and the welfare of all, and not of any particular parts of the state, I think it would be right and proper for us to create such a law as is here proposed; but I can not believe that we should engraft upon the constitution of Pennsylvania a provision which is to operate unequally, as this must do; which must affect, and is designed to affect, one portion of the state, without any reference to another. So far as we have yet progressed in our labours, I believe we have moved on with a strict and impartial reference to all parts of the state—with a desire to

promote the interests and the welfare of all alike, and not to dispense benefits to one section of country which we withhold from another. No later than to-day, a provision proposing to exempt a particular class of our citizens from all obligation on the score of military duty, was rejected; we refused to them the privilege of having a particular law for their own particular benefit, while other portions of our citizens were bound to fulfil these obligations. This, then, I repeat, is the great objection with me. If we act on this or any other matter, we ought to act for all.

But there is another objection which presents itself to my mind with considerable force. You make these persons salaried officers, you give them a certain salary, to be fixed by law; and while you may have some very efficient officers, you may, at the same time, have others who are entirely negligent of their business—and, all of them alike receiving a fixed compensation for their services. Thus, the man who attends to his business, and discharges his duty faithfully, receives no more compensation than the man who neglects his business, and does nothing. This should not be so—it is a decided objection to the proposition. If, however, any gentleman will prepare an amendment, in such a manner as that the legislature may, at a certain time, when such a measure shall be shewn to be requisite to the welfare of the people of the city and county of Philadelphia, or any other parts of the state, have the power to pass a law of the character here decribed, I shall not raise any objection to it.

But I have a word or two to say in relation to justices of the peace. When this matter was under discussion, in Harrisburg, I deprecated the course taken by many of the members of this convention. I do not think it is proper or becoming in those who represent the citizens of the commonwealth to deal with the justices of the peace so severely as they have done.

Men who hold these offices are like others; and there are, of course, some good and some bad to be found among them. So far as my knowledge goes, and with one exception only, I can bear testimony to their honesty, their integrity, and to the faithful manner in which they have discharged their duties.

I never have been a justice of the peace, nor have any of my relatives ever held that office. But I am sorry to hear such abuse as I have here listened to, against the characters of a set men, who, I thought, ought to be respected in the commonwealth. There may be some justices in the city and county who are not as good as they ought to be, but I suppose also that there are some honest men among them.

In conclusion, I repeat, that if the constitution can be so modified as to enable the legislature, at any time when it may be found necessary, to pass a law of this description to embrace the city and county of Philadelphia, and the other parts of the state, I shall have no objection. But I must record my vote against the exclusive privileges which is provided for in this amendment.

And the question on the adoption of the said amendment was then taken.

And on the question,

Will the convention agree thereto?

The yeas and nays were required by Mr. DORAN, and Mr. MARTIN, and are as follow, viz:

YEAS.—Messrs. Brown of Philadelphia, Cline, Cummin, Cunningham, Dillinger, Doran, Earle, Grenell, Helffenstein, Ingersoll, Martin, M'Cahen, M'Dowell, Meredith, Overfield, Porter, of Northampton, Riter, Russell, Smith, of Columbia, Weaver—20.

NAYS—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Barnitz, Bedford, Bell, Biddle, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Carey, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clarke, of Indiana, Cleavinger, Coates, Cochran, Cox, Crain, Crawford, Crum, Curll, Darlington, Darrah, Denny, Dickey, Dickerson, Donagan, Donnell, Dunlop, Farrelly, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Harris, Hayhurst, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Long, Maclay, Magee, Mann, M'Sherry, Merkel, Miller, Montgomery, Pollock, Porter, of Lancaster, Purviance, Reigart, Read, Ritter, Royer, Saeger, Scheetz, Scott, Sellers, Seltzer, Serrill, Shedito, Sill, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Thomas, Todd, Woodward, Young, Sergeant, *President*—94.

So the amendment was rejected.

A motion was made by Mr. CAREY, of Bucks,

To amend the said section by striking therefrom all after the words "section 6," and inserting in lieu thereof the following, viz: "The governor shall nominate, and by and with the advice and consent of the senate, appoint such number of justices of the peace and aldermen in the respective townships, wards and boroughs as shall be directed by law. They shall be commissioned for the term of five years, 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."

Mr. CLINE, of Bedford, said that he should vote in favor of this amendment; and that he should do so in opposition to the opinion he expressed when this subject was under discussion in committee of the whole at Harrisburg.

At that time, said Mr. C. I expressed a belief that my constituents were in favor of a provision, such as that reported from the committee of the whole; and that together with the fact that I did not myself regard it as a matter of any great importance whether the justices of the peace were appointed by the governor, or elected by the people, induced me to vote as I did. Since that time, however, I have had reason to entertain doubts as to the opinions of my own constituents, and I have therefore, come to the conclusion that the experiment will be attended with hazard. Indeed, I almost apprehend that, in its practical operation, the new system marked out by the report of the committee of the whole, will work worse than that which is in existence at the present time.

And, for those reasons, I shall give my vote in favor of the amendment of the gentleman from Bucks.

Mr. HIESTER, of Lancaster, said that this was a question upon which he also had changed his opinion since the subject was first brought under the notice of the convention.

It may not have escaped the recollection of the members of this body

said Mr. H., that so far back as the eleventh of May last, I offered a series of resolutions, one of which read as follows. It is from resolution No. 16, on the files:—

"That the justices of the peace, the number of whom shall be limited and apportioned by law, shall be elected by the qualified electors of their respective districts, and hold their offices tor the term of five years, and those now in commission shall continue for a term of five years and no longer, unless elected in manner aforesaid."

This was my view at that time. I thought it would be proper and conducive to the interests of the people that such a change should be made in the existing provision of the constitution in relation to this class of public officers. But on hearing the arguments which were advanced, to which listened with anxious attention—and on mature reflection, I have come to the conclusion that I am opposed to the election of justices of the peace. I voted so in committee of the whole, and it is my intention now to carry that vote out.

I am led to this conclusion not hastily, but, as I have said, upon mature reflection. and upon reasons which to my mind are strong and satisfactory. I fear that, if the justices of the peace are to be elected, we shall not have any thing like the respectability which we have at this time in the persons who fill those stations. Even now, under the existing provision of the constitution, by which the tenure of office of the justices is during good behaviour, there is difficulty in many parts of the country in procuring respectable men to accept of the office. I know this to be the case in the district in which I reside. We have one justice of the peace in the village in which I live, and which contains a population of about seven hundred people. He is a surveyor and conveyancer, and is often absent, and it would be extremely convenient to us to have another. This indeed, is felt to be necessary; and I myself, and other gentlemen in my neighbourhood have solicited half a dozen respectable men of the district to accept the office, but not an individual among them was found willing to do so.

What then is to be the effect of the adoption of such a provision as that reported from the committee of the whole? Is it to be supposed that a man who will not accept the office of justice of the peace during the certain tenure of good behaviour, will go to the polls, or will canvass for such a petty office when he can only hold it for the short period of five years, and when an individual may run against him who, probably, is far inferior to him in point of talent, of integrity, or morality? I do sincerely believe that of all the amendments that have been or may be made to the constitution of 1790, that of the committee of the whole, as it now stands, in relation to justices of the peace, will be the one which we shall have most occasion to regret. Persons who may be injured by the proceedings before the justices under the existing tenure of good behaviour, may be compelled, on account of their poverty, to let their wrongs pass with impunity. But if you limit their term of office for five years, there will be no difficulty in their re appointment; while, at the same time, if you chance to get a bad man, you can turn him out at the expiration of his term. This, I think, may be a salutary change—that is to say, to make the appointment a limited one. Of one thing, however, I feel certain;—that it will never answer any good purpose to give the appointment of these officers to the

people. On the contrary, I believe that difficulties are to be apprehended; and, entertaining this conviction, I shall regulate my vote accordingly.

Mr FARRELLY, of Crawford, said that this subject certainly was not without difficulty. There are considerations connected with it, said Mr. F. which embarrass it, and render its satisfactory adjustment no easy task. Up to this time, every scheme which has been offered for the appointment of the justices of the peace, has been attended with objections. The proposition for their appointment by the governor, to hold their office during good behaviour, is not, I believe, in favor with the people of the commonwealih. The mode which has been preferred in this body, and which received the approving vote of the committee of the whole, is that of electing them for a given term of years in the several wards, boroughs and townships.

The amendment now before us proposes to change the decision thus made by the committee of the whole, to vest the appointment of the justices of the peace in the governor, by and with the advice and consent of the senate with commissions to run for the term of five years. To this latter mode, there is one very strong objection; that is to say, it tends to increase the patronage of the governor, the reduction of which patronage, was one of the main objects for which this convention assembled. It cannot be denied that this would be a large increase of the patronage of the chief magistrate of the commonwealth, and this, I repeat, is a strong objection.

But, independent of this, there are some objections to the appointment of these officers by the governor, which are worthy of our consideration.

In the first place, then, how does the governor appoint them? How *has* he appointed them heretofore? How can he appoint them? No one supposes that he knows any thing of the qualifications of the persons who may be applicants for these offices; that he has any means of ascertaining whether they are, or are not, fit and proper persons to discharge the duty. No. The governor has to rely entirely upon the representations and recommendations which are made to him, and we know that they are not always to be depended upon. To whom will he look for information? Will he not look to a few individuals in the different county towns?

What, he asked, was it that an individual living in the country must first do in order to obtain the favor of the executive, and an appointment? Why he must go to the county seat, and get the favor of a few leading county officers, to recommend him to the notice of the executive. Yes! he must humble himself very often, before a few contemptible individuals, to obtain their approbation and favor; and having secured it, he pays a visit to, and places himself before the executive, in the hope and expectation of getting an appointment. And, it was only by a man's going through such machinery as this that would enable him to obtain requisite information, and perhaps, an appointment. The objections to the executive patronage were to his mind, very strong. It was true, there were objections to the magistrates; but they were not so strong as the objections to the present system, or the one proposed for adoption by the gentleman from Bucks, (Mr. Carey). One among the other objections was to the tenure of the office.

Mr. F. proceeded, for two or three minutes, in a tone of voice, entirely

inaudible at the reporters desk, and when heard, was adverting to the subject of a limited tenure, and contending that an officer appointed under that tenure would act more independently, and attend more faithfully to the practical discharge of the duties of his office. With regard to the election of magistrates fer short terms, we have the example of Ohio and New York before us, where the experiment had been successfully tried. He knew that in Ohio, particulary, the people were so much attached to the three years term that on no aocount would they agree to give it up. He had conversed with many persons living in the state of Ohio, and he had never heard but one opinion, and that was a decided preference for their system to ours. It had been stated, too, in this convention, that the only objection to the system was, that the term of three years was too short, and that five years, those delegates would have no objection to. But, on the other hand, it had been argued that a powerful and influential individual would control the elections and make the magistracy subservient to him, and to his purposes.

Mr. CAREY and Mr. KONIGMACHER, asked for the yeas and nays, which were ordered.

The question was then taken on the amendment, and it was decided in the negative—yeas 31—nays 88.

YEAS—Messrs. Baldwin, Bell, Biddle, Brown, of Lancaster, Carey, Cline, Cochran, Crum, Darlington, Hays, Hiester, Ingersoll, Jenks, Kennedy, Konigmacher, Long, M'Dowell, M'Sherry, Meredith, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Reigart Royer, Russell, Saeger, Scott, Serrill Sterigere, Thomas, Sergeant, *President*—31.

NAYS—Messrs. Agnew, Ayres, Banks, Barclay, Barndollar, Barnitz, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clarke, of Indiana, Cleavenger, Cox, Crain, Crawford, Cummin, Cunningham, Curll, Darrah, Denny, Dickey, Dickerson, Dillinger, Donagan, Donnell, Doran, Dunlop, Earle, Farrelly, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstien, Henderson, of Allegheny, Henderson, of Dauphin, High, Hopkinson, Houpt, Hyde, Keim, Kerr, Krebs, Maclay, Magee, Mann, Martin, M'Cahen, Merkel, Miller, Montgomery, Overfield, Payne, Pollock, Purviance, Read, Riter, Ritter, Rogers, Scheetz, Sellers, Selizer, Shellito, Sill, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Todd, Weaver, Weidman, Woodward, Young—88.

Mr. CHAMBERS, of Franklin, moved to amend the said section by inserting after the word "alderman," in the first line, the words as follow, viz: "in such number and convenient districts in each county as are or shall be directed by law," and by adding to the end thereof the words as follow, viz: "except those first chosen under this amendment, who shall be classed as by law 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."

Mr. C. said that his object in offering the amendment was to enjoin upon the legislature the propriety of passing such laws as would not unnecessarily increase the number of justices of the peace. The great dissatisfaction, as had been stated, which had arisen among the people was, in consequence of the too great mumber of justices of the peace. It was true that there were among the justices a great number of competent, faithful, and upright magistrates. But, nevertheless, in that great number, there were many who had been appointed because they were noisy and

political partisans, and now were troublesome officers in the community in which they live. Had their number been limited under the existing constitution by the legislature, there would not, in his opinion, have been that dissatisfaction which now exists. It had however, been made a question under the present constitution, whether the legislature had the power to limit their number. He thought it was the intention of those who framed the constitution, that the legislature should have the power of saying what number should be appointed, and also the districts in which they should reside. The constitutional provision, it is true, says:

"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," &c.

The provision only directs as to the districts, but says nothing as to the number of justices that shall be appointed. Now, he thought it was proper that there should be an opinion expressed by the convention, with respect to what should be their number. In the constitutional provision before the convention, in the shape of an amendment, there was no limitation stated, as to the number of justices of the peace and aldermen that should be elected. The constitution of 1790 says "a competent number;" and consequently, there was no limitation on the power of the executive. And, he was at liberty to appoint as many justices as he chose to appoint; the consequence of which has been, that great dissatisfaction and complaint has been made throughout the commonwealth. The legislature should have the power of limiting the number of justices to what they may think desirable and necessary. This attempt had already been made to confer that power upon the legislature, in a report from the committee on the judiciary. The committee proposed to limit the number of justices by adapting it to the number of taxable inhabitants in a district.

The adoption of such a principle, however, would be found unjust in practice, although in theory it might appear correct; for, one district might require three times the number of justices than another with the same population, on account of the business transactions of the neighborhood. We know that a borough requires a much greater proportion than the country, because it is much more convenient for the people of the country to do business in a borough, than going to a remote justice in the country. When this subject was in committee of the whole, various propositions were made in regard to the number of justices, and they were fully considered and discussed, but the committee found themselves unable to come to any satisfactory conclusion as to what should be the general rule. He believed, at the time all those propositions were before the convention, that they were not prepared to adopt any one of them. And, even now, the impression on his mind was the same, and therefore, he had submitted this amendment, believing that it would be better to leave the limitation to the legislature.

It will be perceived that this amendment is clear of any obscurity in relation to the power of the legislature to limit the number, for I have introduced the words "in such number and convenient districts in each county, as are or shall be directed by law." It is thus enjoined upon the legislature to direct what number there shall be, and also in what districts.

At the time this subject was before the committee of the whole at Harrisburg, I did not enjoy an opportunity to express my sentiments, as I was then in the chair; and I will here take occasion to remark, that although I am not entirely satisfied that the election of justices of the peace should be given to the people, and would prefer that another mode of filling these offices should be fixed upon, yet I know of no other that is not so objectionable that I am inclined to go for their election, as an alternative preferable to any that is within our reach. It has been stated that executive patronage has been complained of by the people of Pennsylvania; and it would be to little purpose that we have reduced that patronage by taking away from the governor the appointment of county officers, if we give to him the appointment during his term of office, of justices of the peace to the amount of two thousand or more. I say during the term of office of the governor, because, as justices of the peace are intended only to be appointed for a term of years, the appointment of all of them would fall within the power of one executives, and thus his patronage instead of being reduced, would be much extended I was unwilling to give power to the courts—that is to say, I was unwilling to give them any power which would bring them into connexion with political parties;—it is a power to which they ought to be strangers, and we should do nothing calculated to place it within their grasp. Entertaining these opinions, I was content to go for the election of these officers, and I voted against the last proposition which gave the appointment to the governor for a term of years. I am still disposed to go in favor of the new mode prescribed in the section, as reported from the committee of the whole.

The latter part of my amendment proposes that the justiees should be classed. My object is, that the people of the county shall not be compelled to elect all of them at one time. There is danger from the excitement which would attend such a state of things; but, there is a still greater danger of a combination among these justices and their friends, and others dependant upon them, to promote their election. There would be from forty to fifty, or a hundred officers, elected through the county, and all having their friends and partizans actively engaged.

This system of classification is not untried. The experiment has been made in the state of New York, and is in operation there. When the constitution of that state was last revised by a convention, it was provided that the justices of the peace should be appointed by the supervisors of the county and the judges of the courts. But, about ten years since, the provision was changed by an amendment to the constitution afterwards adopted, and by which the justices were made elective by the people, in districts, to hold their office for the term of four years, and classed in such manner that one fourth was to be annually elected thereafter. This provision, which has now been in operation in that state for the period of about ten years, has worked to the satisfaction of the people. Believing the provision to be useful, I have submitted it as an amendment to the section now under consideration, in relation to justices of the peace.

Mr. Reigart, of Lancaster, said he had not given much attention to the principle contained in the amendment of the gentleman from Franklin, (Mr. Chambers) but that it appeared to him that the convention was about to enter too much into detail. I think, said Mr. R, that the object we

have in view, may be reacted without the use of so many words. The amendment provides for the election of these officers "in such number and convenient districts in each county as are or shall be directed by law," &c. We are about to alter a general system, without any knowledge as to its practical operation. Is it wise to do so? I think not. I am in favor of leaving as much to the legislature as possible, and I am not disposed to put too much into the fundamental law. Let us incorporate a general provision, and let us leave the rest to the legislature.

But the amendment of the gentleman from Franklin goes, as I have said, too much into detail. I am willing to go for the proposition, but I think that every object could be accomplished in fewer words, by inserting at the end of the section the words "their number to be limited by law." Let the legislature have power under a general provision; let the legislature provide that they shall go out of office annually, so that an annual election may be held for justices of the peace. That body has indisputable power to arrange all details of this description; let them do so. And there are strong reasons why this should be so. Let us suppose that the system provided for in this amendment should be found not to be salutary in its operation. What would be the consequence? The legislature would be tied down—they could not depart from it. What is the detail which the amendment of the gentleman proposes? It says "except those first chosen under this amendment, who shall be classed by law as 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," Now, for any thing I know to the contrary, this may be a good amendment in principle. I do not assert that it is not so; but I say that it goes too much into detail, and that, if we adopt it, we shall absolutely tie the legislature down. They can not move a step, for we shall leave them no discretion.

I suggest to the gentleman from Franklin, whether his views would not be equally met by inserting at the end of the section, after the word "years," the words "and their number to be limited by law." It strikes my mind that the insertion of these words will answer every purpose.

And the question being about to be taken on the adoption of the said amendment;—

A division of the question was called for by Mr. BELL, and was ordered.

And on the question,

Will the convention agree to the said first division, viz: to insert after the word "aldermen," the words "in such number and convenient districts in each county, as are or shall be directed by law?"

The yeas and nays were required by Mr. FULLER and Mr. HIESTER, and are as follow, viz:

YEAS—Messrs. Ayres, Baldwin, Banks, Barndollar, Barnitz, Bedford, Bell, Biddle, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Carey, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clarke, of Indiana, Cleavinger, Cline, Coates, Cochran, Cox, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Darlington, Denny, Dillinger, Donagan, Donnell, Doran, Dunlop, Earle, Farrolly, Fleming, Forward, Foulkrod, Fry, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High,

Hopkinson, Hyde, Ingersoll, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Maclay, Magee, Mann, Martin, M'Cahen, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Miller, Montgomery, Overfield, Payne, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigert, Read, Ritter, Rogers, Royer, Russell, Saeger, Scheetz, Sellers, Seltzer, Serrill, Shellito, Sill, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Thomas, Todd, Weidman, Woodward, Young, Sergeant, *President*—107.

NAYS—Messrs. Barclay, Dickey, Dickerson, Fuller, Harris, Houpt, Smith, of Columbia, Taggart, Weaver—9.

So the first branch of the said amendment was agreed to.

And on the question then recurring,

Will the convention agree to the second division of the said amendment, viz: by adding to the end of the said section the words as follow, "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—"

Mr. FULLER, of Fayette, said that he was opposed to the adoption of the latter branch of this amendment, as he had been of the former. I believe, said Mr. F., that if there was any one subject more than another, which induced the people of Pennsylvania to call this convention together, it was that very subject which we are now discussing. The people of Pennsylvania, so far as we have heard on this floor—and, so far as my own district is concerned, I can speak with confidence—have had this subject deeply at heart for many years past. They have believed, not only that the patronage of the governor was too great as in reference to the appointment of these officers—for that, comparatively speaking, is only a small consideration—but they have believed that the men who were appointed to fill these offices, which to the mass of the people are of so much importance, were not such good, and faithful, and efficient men as they could themselves have chosen. Believing this to be the case, they have been urging a change in the constitutional provision; and yet an amendment has now been adopted, which, in effect, goes to leave the whole matter to the legislatore. And what will be the effect of this?

Under the provision of the constitution of 1790, the people of any district, ward, or borough, may have a justice of the peace or aldermen imposed upon them by the appointment of the governor. In addition to this, the people had nothing to do with the number. And how is this? Why, under that same provision, the legislature was to fix the number. And thus, a few petitioners who might be desirous to get one of themselves elected, would petition the legislature without the advice and consent of a majority of the voters of the district. Such, I say, has been the state of things heretofore under the existing provision of the constitution; and the consequence has been that, where two justices of the peace would have been abundantly sufficient to transact all the business of the districts to which they might have been appointed, appointments have been made to the number of four or five. And this, it is, which has been the great cause of complaint with the people of Pennsylvania, in relation to the justices of the peace. It has not been so much in reference to the mode of appointment, as to the number appointed.

Mr. F. said, that whenever a man sought the office of justice of the

peace, he did so for the purpose of obtaining a living. And, most of the men he had known to seek that office, were men unwilling to follow any industrious employment. One half of the people, at least, of the western part of the state would reject this proposition. They have desired that the whole of the justices of the peace should be turned out of office, and that a new set should take their places. This was the sense and the wish of the people in his, Mr. F's., district. It had been stated here by other gentlemen, also, that justices of the peace, with few exceptions, were unpopular and obnoxious—the eulogies pronounced on them by delegates on this floor, to the contrary notwithstanding. He would say that it was entirely a mistake. Nothing would be more gratifying to the people than to get rid of them all at once.

Mr. CHAMBERS explained, that the gentleman from Fayette was laboring under a mistake as to the construction of the amendment. It was not to effect the present justices of the peace, but those who were to be elected.

Mr. FULLER: If so, then I am mistaken.

Mr. CHAMBERS said that his amendment had no relation to the present justices of the peace. His object was to regulate the tenure of those that should be first elected under this constitution, in such a manner as, that one-fifth part of them, should go out of office annually.

After two or three words from Mr. FULLER and Mr. DICKEY,

The yeas and nays were required by Mr. HIESTER and Mr. FOULKROD, and they were ordered.

The question was then taken on agreeing to the amendment, and it was decided in the negative—yeas, 45; nays, 72.

YEAS—Messrs. Ayres, Baldwin, Barnitz, Biddle, Carey, Chambers, Chandler, of Philadelphia, Clapp, Cline, Cochran, Crain, Crawford, Cummin, Cunningham, Darlington, Denny, Donagan, Dunlop, Earle, Farrelly, Fry, Gilmore, Hays, Hiester, Hopkinson, Maclay, Mann, M'Sherry, Meredith, Merrill, Miller, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Royer, Russell, Saeger, Scheetz, Scott, Serrill, Sill, Snively, Thomas, Sergeant, *President*—45.

NAYS—Messrs. Agnew, Banks, Barclay, Barndollar, Bedford, Bell, Bigelow, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Beaver, Clarke, of Indiana, Cleavinger, Cox, Crum, Curll, Darrah, Dickey, Dickerson, Dillinger, Donnell, Doran, Fleming, Forward, Foulkrod, Fuller, Gamble, Gearhart, Grenell, Harris, Hastings, Hayhurst, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, High, Houpt, Hyde, Ingersoll, Keim, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Magee, Martin, M'Cahen, Merkel, Montgomery, Overfield, Payne, Pollock, Reigart, Read, Ritter, Rogers, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Sturdevant, Taggart, Todd, Weaver, Weidman, Woodward, Young,—72.

A motion was made by Mr. M'DOWELL and Mr. GAMBLE,

That the convention reconsider the vote given this afternoon on the first division of said amendment;

Which was agreed to.

Mr. M'DOWELL said it seemed to be the disposition of the convention, when this subject was discussed at Harrisburg, that each township, ward and borough should be a district, and should have the election of their jus-

tices and aldermen. If any thing was right, it was that matter. It was contended for day after day. He recollected that there was much discussion as to whether the word "senatorial," was sufficiently definite. He thought he understood the object of the amendment of the delegate from Franklin. The impression on his mind was, that it would lead to gerrymandering on the part of the legislature. He did not believe that the convention would be willing to adopt the amendment.

Mr. FORWARD, of Allegheny, said he recollected perfectly well that the subject was discussed at Harrisburg, and that after much debate, the words we find here inserted, were agreed to, viz: "that every ward, borough and township shall be a district." He had voted for the amendment of the delegate from Franklin, (Mr. Chambers) under a misapprehension. He would now vote against it because it would be bad policy to give the legislature the power to cut up districts—to practice gerrymandering, and great inconvenience might be produced by their legislation under this amendment.

Mr. BELL, of Chester, remarked that he, also, recollected the subject having been discussed at considerable length at Harrisburg. The gentleman from Bucks (Mr. M'Dowell) had observed that the convention seemed to have been of the opinion that each township, ward, and borough, should have the election of their justices. But was it so *settled* before? and he would refer the gentleman to the language, which is—"the justices of the peace shall be elected"—not saying how many shall be elected. He would ask, if the convention had ever determined upon the number of functionaries that should be chosen?

Now, it was for the convention to say whether they would state the number in the constitution, or leave it to the legislature to say how many officers shall be chosen? Who, he asked, was to determine the number? If this convention did not say what it should be, why, then, the legislature must be left to exercise their discretion and judgment on the subject.

Mr. M'DOWELL said, that in moving a re-consideration of the vote, he had not said a word about the number.

Mr. BELL. The gentleman has moved to re-consider, in order to vote in the negative. What is the proposition of the delegate from Franklin, (Mr. Chambers)? It is that the legislature shall determine the number.

What number? Why, the number in each township or district. Is it not necessary either to put some such provision in the constitution, or to allow the legislature to fix the number.

After reading and comparing the amendment of Mr. Chambers with the report of the committee of the whole, Mr. B. said that he had always though there was an obvious deficit in the report of the committee of the whole, and he had always attributed it to the haste in which the question had been acted upon, and by which many things were left imperfect. The section, as reported, was indicative only of the the decision of the convention that the justices should be elected. Still at that time the hope was entertained—and which, he trusted, was now about to be realized—that upon second reading, the convention would look calmly at its own work, with a view to make it perfect, and to place it in such form as to meet the known wishes of the people. He hoped the amendment of the gentleman from Franklin would stand.

Mr. Brown, of Puiladelphia county, said that if the gentleman from Chester, (Mr. Bell) had been more intimately aequainted with the facts of the case than he had manifested himself to be, he would not have drawn quite so much on his fancy. There is no disposition on our part, said Mr. B., to prevent the legislature restricting the number of the justices of the peace. I say, there is no such disposition. When in committee of the whole, the point was settled, so far as the opinion of the convention went, that each ward, borough and towhship should elect its own magistrates. If the gentleman had read all the section with care, he would have better understood it. But he read the first part of it only. It provides that "justices of the peace and aldermen shall be elected in the several wards, boroughs and townships at the time of holding the election of constables by the voters thereof."

There has been an obvious sleepiness on the part of the convention, as the gentleman who made the motion to re-consider has indicated, or the amendment of the gentleman from Franklin would not have been adopted. I do not always attend to details myself, but the gentleman from Beaver (Mr. Dickey) generally, if not always, does so.

The amendment of the gentleman from Franklin leaves a discretionary power to the legislature, which I am not willing to give. And I trust, therefore, that the motion to re-consider will be agreed to. I am in favor of limiting the number.

Mr. Read said, that the object of the motion to re-consider was, he supposed, merely to strike out the words "and convenient districts," and not to strike out the words which had reference to the number; because if the former were retained, they would stand in contradiction to the principle which had been already established by the action of the convention, that was to say, that each borough, ward and township, should constitute a district.

Mr. Hiester said, that he, like the gentleman from Chester, (Mr. Bell) had always thought that there was something defective about this section. It will be perceived, said Mr. H., that it does not point out the number of the justices, nor the manner in which the number should be ascertained, whether by the people or by the legislature. When, therefore, the gentleman from Franklin (Mr. Chambers) proposed his amendment, it appeared to me that all difficulty would be obviated, by leaving it to the legislature to determine.

But, upon further reflection, I think that we went too far, not only in giving to the legislature the power to restrict the number, but also to make the districts; which, as the gentleman from Susquehanna, (Mr. Read) has correctly observed, would be in contradiction to the terms of the section, which declare that those offieers shall be elected "in the several wards, boroughs and townships." Under these circumstances, I shall vote in favor of the motion to re-consider.

And the question on the motion to re-consider the vote on the first decision of the said amendment was taken, and decided in the affirmative without a division.

So the vote was re-considered.

And the said first division being again under consideration,

Mr. CHAMBERS said, that he had not opposed the motion to re-consider the vote on the first branch of his amendment, because he was not himself so tenacious for its adoption, as to adhere to it against the wishes and the opinions of the majority of the convention.

I will, however, said Mr. C., take occasion to remark that the amendment, so far as respects the districts, is copied from the provision of the constitution of 17. 0. The addition which I have made to it, was made with a view to remedy an inconvenience arising out of the amendment that was likely to be adopted as to the number of these officers. I was content to leave to the legislature the formation of those districts. I have still some confidence in the legislature; I am not one among the number of those who appear to think that that body is no longer worthy of trust or confidence. I believe this power may safely be vested in them. They have been in the possession of a similar power for the last fifty years under the existing provision of the constitution, and, so far as relates to the districts of the justices, I have never yet heard any complaints. If such have been made, they have not come to my knowledge. Still, however, I am willing, if the convention desire it, so to modify my amendment, as to obviate the objection which has been raised, and so as that shall have reference to the number alone and not to the districts.

My recollection on this subject corresponds with that of the gentleman from Chester, (Mr. Bell.) I think that the provision, as reported from the committee of the whole, was resorted to, merely as the expression of an opinion on the part of this body, that the justices of the peace were in future to be elected by the people, instead of being appointed by the governor, as they have heretofore been under the constitution of 1790. We had made proposition after proposition to limit their number, and in every instance without success. Propositions were debated day after day. In some instances, they were adopted, then re-considered, and afterwards rejected. In its present form, however, the section, as reported from the committee of the whole is imperfect, and it is requisite that some amendment or other should be adopted.

I beg to call the especial attention of the convention to the terms of the first part of the section as it now stands. They are as follow: "justices of the peace and aldermen shall be elected in the several wards, boroughs and townships," &c. Now, we have many townships which have boroughs within them; and we have citizens of the borough voting for citizens of the township for township officers. It would, therefore, be for the legislature to provide for them in wards, boroughs and townships, and they would have to separate the borough from the township. The section, consequently, so far from being clear and satisfactory, is obscure and general.

However, so far as regards my amendment, although I do not think that there is much force in the objection, I am willing, as I have said, so to modify it as to meet the number only.

And the amendment was then modified to read as follows, viz:

"In such number as shall be directed by law,"

Mr. PORTER, of Northampton, said that he saw some difficulty in the phraseology of the section as it now stood, in addition to that which h

been pointed out by the gentleman from Franklin who had just taken his seat, (Mr. Chambers.)

The section declares, said Mr. P., that "justices of the peace and aldermen shall be elected in the several wards, boroughs and townships." Now, I will ask, is it intended to say, that every ward in a borough in the state is to be a district for the election of a justice of the peace? Is it intended that where a borough is divided into different wards, there shall be an election in each for a justice of the peace? If it were confined to the several wards of the city, that would be right enough. We should want some general explanation as to that, but if the application of the section is to be such as it seems to be on the face of it, there would be no end to the election of these officers. You may, under such a provision, divide a borough into as many wards as you please for political effect, and then you may elect justices of the peace in them. So, after all, you would leave the matter to the legislature.

It would be pleasant to me if some regard were paid to perspicuity in making amendments to the old constitution. The committee to whom is assigned the duty of looking over these amendments, for the purpose of correcting the phraseology, have enough to do. I shall be happy if gentlemen here will take a little more labor upon themselves, and not suffer themselves to be asleep while important provisions embracing a whole system, are in the process of adoption. It would be well, I think, that they should pay a little more attention. It is not possible for us to chalk out a whole system in a constitutional provision, unless you would make the instrument as heavy as Purdon's Digest. You can lay down general principles, and that is all. And I think that the legislature of Pennsylvania is not so corrupt as to forbid the idea that you should trust them to make districts for the justices of the peace. I believe that they possess as much public virtue and integrity of purpose as we ourselves possess. I have no idea that we, the members of this convention, stand alone in purity of motive, in just and comprehensive views, or in a desire to do that which will best promote the interests and the welfare of the people of Pennsylvania. I have no idea that we alone are able to send forth provisions so clear and lucid in their language as to prevent the possibility of a double construction. And if any gentleman here is doubtful as to the authority I have to make this statement, I will ask him to meet the committee on revision, and to see what is the nature of their labors.

Mr. MERRILL, of Union, said it should be recollected that the courts had a right to form new townships, but were they, therefore, to form new justices' districts. Was this intended? If so, would it not be better to leave the matter to the legislature? The former would be quite as objectionable as it would be to have the whole thing done by the legislature. That body would make due provision in some way.

Mr. DICKEY said, that this subject had undergone a full discussion in committee of the whole at Harrisburg—that was to say, the subject of the manner and mode in which the justices of the peace should be elected.

A reference, said Mr. D., to the minutes of the committee of the whole will show, that it came up for consideration as early as the third day of July, and that we were ten days upon the fifth section of the report of the committee to whom this article was referred. It will be seen also that all

the propositions which have been offered on second reading, were offered in various shapes in committee of the whole, and that, all of them were negatived, after a full and ample discussion. That discussion lasted to the day on which we adjourned—namely, the eleventh day of July; and when we again assembled in October, the discussion of the subject was again resumed, until finally, as I have stated, all these propositions were defeated.

After all this deliberation and all this discussion, we settled the principle that the people could decide the number of the justices of the peace, as well as elect them; and we left the section in the phraseology in which it now stands. The majority of the committee of the whole, I say, have settled the principle that the people were fully competent to take this matter into their own hands. And I shall, therefore, in conformity with that decision, vote against the amendment of the gentleman from Franklin, (Mr. Chambers.)

Mr. DARLINGTON, of Chester, said it was manifest from the vote which had been taken in such haste this afternoon, as to require a re consideration, that the convention was not prepared to come to a vote this afternoon. The hour was now getting late, and he would. therefore, with a view to give time for further reflection, move that the convention do now adjourn.

Which motion was agreed to.

And the convention adjourned until half past nine o'clock to-morrow mroning.

APPENDIX

TO THE

TENTH VOLUME.

APPENDIX.

The speeches of Mr. DUNLOP, Mr. M'DOWELL, and Mr. DORAN, which should have been inserted in the appendix to this volume, have been detained so long that it has become necessary to close the volume without them. The speeches of these gentlemen will be given in the "GENERAL APPENDIX," constituting the fourteenth volume of this work.

INDEX

TO THE

TENTH VOLUME.

INDEX.

A

ADJOURNMENT—*Sine die*, Resolution concerning, - 193, 240

AGNEW, Mr. (of Beaver)—Remarks of, on resolution for distribution of debates - 144, 145

On Mr. Fuller's motion to amend 2d section of 5th article, - - - 250

AMALGAMATION—Memorials against - - - 29, 193

AMENDMENTS—Resolution as to mode of submitting, 143

APPENDIX 319

ARTICLE III—Second reading of, 4 to 25, 25 to 29, 29 to 108, 110 to 130, 131 to 134

Section I of, motions to amend, 4, 106, 107, 108, 125, 126, 131

Section II of, considered and agreed to, - 134

Section III of, considered and agreed to, - 134

Ordered to be engrossed, - - 134

ARTICLE IV—Motion to proceed to consider, - - 136

Section I of, considered and agreed to, - 136

Section II of, motion to amend - 136

Section III of, motion to amend - 137

ARTICLE V—Motion to proceed to second reading of, - 143

Second reading of, 148 to 170, 170 to 193, 193 to 226, 227 to 238, 242 to 253, 253 to 261

Section I of, agreed to, - - - 148

Section II of, motion to amend, - - 149, 254

Section III of, motion to amend, - - 255

Motion to postpone, - 255

Section IV of, agreed to, - - 259

Section V of, motion to amend, - - 260

Sections VI, VII, VIII, IX, X, XI of, agreed to, - - - - - - 260, 261

ARTICLE VI—Second reading of, 261 to 299, 300 to

Section I of, motion to amend, - - 261

Section II of, motion to amend, - 263, 264, 284

Section III of, motion to amend, 286, 287, 288, 292

Section IV of, agreed to, - - 293

Section V of, motion to amend, - - 293

Section VI of, motion to amend, 294, 300, 307

B

BALDWIN & HAZLETON—Communication from, inviting members to exhibition of steam power, - - 3

BARNITZ, Mr. (of York)—Remarks of, on Mr. Dunlop's motion to amend 1st section of 3d article. - - 112

BANKS, Mr. (of Mifflin)—Remarks of on Mr. Dunlop's motion to amend 1st section of 3d article, - - 112, 113

Remarks of, on resolution for distribution of debates, 145

BEDFORD, Mr. (of Luzerne)—Resolution by, concerning new rule, - - 29

Motion of, to consider same, - 140, 141

BELL, Mr. (of Chester)—Remarks of, on motion for Mr. Dunlop to continue his remarks, - - - 25, 26

On motion for leave for Mr. Cope to record vote, - - 104

On motion for leave for self to record vote, - - 110

On Mr. M'Dowell's motion to amend third section of 4th article, - - 137, 138, 139, 140

Resolution by, as to mode of submitting amendments, - 143

Remarks of, on Mr. Meredith's motion to amend second section of 5th article, 227 to 235, 236, 237 238

Motion of, to amend 2d section of 6th article, - - 263, 264

Remarks of, on same motion, 264

On Mr. Porter's motion to amend 3d seetion of 6th article, 290

Division of question called by, 310

On motion to reconsider vote on motion of Mr. Chambers to amend 6th section of 6th article, - - - - 290

BIDDLE, Mr. (of Philadelphia)—Motion of, for T. P. Cope, to have leave to record his vote, - - 108

Remarks of, on same motion, - - 110

Motion of, to suspend rules, 147

Remarks of, on Mr. Meredith's motion to amend 2d section of 5th article, - - 159 to 164

BIDDLE, Mr. (of Philadelphia)—Memorial presented by, in favor of freedom of speech &c., - 239
Motion of, to amend Mr. Ingersoll's motion to correct Journal, - 242
Remarks of, on Mr. Fuller's motion to amend 2d section of 5th article - 250
On Mr Martin's motion to amend 1st section of 6th article, - 262
On Mr. Doran's motion to amend 6th section of 6th article, - 299
BLACK, JOSEPH—Resolution to pay for services, - - 29
BROWN, Mr. (of Philadelphia county)—Question of order made by, 34
Remarks of, on motion to allow Mr. Cope to record vote, 109
Motion of, to postpone resolution for distribution of debates, - 145
Remarks of, on the motion of Mr. Meredith to amend 2d section of 5th article, 218 to 222—225, 286
Division of question asked for by, - 248
Remarks of, on Mr. Fuller's motion to amend 2d section of 5th article, - - 250
On Mr. Mann's motion to amend 3d section of 6th article, - 287
On motion to reconsider vote on motion of Mr. Chambers to amend 6th section of 6th article, - 314

C

CAREY, Mr. (of Bucks)—Motion of, to amend 6th section of 6th article, - - - 304

CHAMBERS, Mr. (of Franklin)—Motion of, to take up resolution concerning 33d rule, - - - 108

Remarks of, on same motion, - - - 108

Motion of, to take up motion to reconsider vote on section concerning divorces, - - - 135

Remarks of, on same motion, - - - 135

Motion of, to amend resolution for distribution of debates, - - - 144, 145

Remarks of, on Mr. Woodward's motion to amend 3d section of 5th article, - 259

On Mr. Ingersoll's motion to correct journal, - 276

Motion of, to amend 6th section of 6th article, - 307

Remarks of, on same motion, - 307, 308, 309, 312, 315

CHANDLER, Mr. (of Philadelphia)—Remarks of, on Mr. Martin's motion to insert the word "white," 72, 73, 74, 75, 76, 77

Memorial presented by, concerning trial by jury, - - 274

Remarks of, on Mr. Bell's motion to amend 2d section of 6th article, - 281 to 283

On Mr. Doran's motion to amend 6th section of 6th article, - - - 297

CHAUNCEY, Mr. (of Philadelphia)—Remarks of, on Mr. Martin's motion to insert the word "white," 68, 69, 70, 71, 72

Motion of, that convention adjourn, - 68

CHAUNCEY, Mr. (of Philadelphia)—Remarks of, on motion for leave for Mr. Cope to record vote, - 108, 109
CLARKE, Mr. (of Beaver)—Previous question demanded by, - - - - 133, 249
CLINE, Mr. (of Bedford)—Remarks of, on Mr. Meredith's motion to amend the 2nd section of the 5th article, 178 to 187
Remarks of, on Mr. Carey's motion to amend 6th section of 6th article, - - - 304
COATES, Mr. (of Lancaster)—Memorial presented by, on trial by jury, - - 29
Memorial presented by, concerning freedom of speech, &c., - - 239
COLONIZATION, AFRICAN—Memorial in favor of, - - 274
COMMITTEE ON ACCOUNTS—Resolution reported from, 29, 274, 275
On PRINTING—Reports from, - 134, 135, 146, 147
CONVENTION—Call of, - - - - - - 67
Remonstrance against prolongation of, - 239
COPE, Mr. (of Philadelphia)—Resolutions reported by, to pay Joseph Black, - 29
Vote of, motion for leave to record, - - - 108
Remarks of, on same motion, - - - 110
On Mr. Dunlop's motion to amend 1st section of 3d article, - - 122, 123
Reports by, from committee of accounts, - - 274, 275
CRAWFORD, Mr. (of Westmoreland)—Motion of, to amend 2nd section of 5th article, - - 243
CRUM, Mr. (of Huntingdon)—Application of new rule, concerning question demanded by, - - 283
CUMMIN, Mr. (of Juniata)—Explanation by, on subject of slavery, - - - 14, 31
Remarks of, on Mr. Bell's motion to amend the 2nd section of 6th article, - 264 to 274, 279
CURLL, Mr. (of Armstrong)—Report by, from committee on printing, - - 134, 135
Motion of, to consider same, 146, 147
Remarks of, on Mr. Mann's motion to amend 3d section of 6th article, - - 286
On Mr. Porter's motion to amend same section, - - 290, 291

D

DARLINGTON, Mr. (of Chester)—Question by, on point of order, - - - 26
Remarks of, on Mr. Martin's motion to insert the word "white," - 38 to 51
Explanation by, - - 87
Motion of, to commit resolution for distribution of debates, - - 146
Leave asked by, to make explanations, - - 147
Remarks of, on Mr. Meredith's motion to amend 2d section of 5th article, - - 194, 195
Previous question demanded by, - - - 239
Point of order made by, - 255
Remarks of, on Mr. Ingersoll's motion to correct Journal, - - 275, 276
Motion of, that convention adjourn, - - 317

DEBATES AND JOURNALS—Resolution concerning distribution of, - - - 3, 4
Considered, - - 144, 145, 146

DENNY, Mr. (of Allegheny)—Remarks of, on Mr. Fuller's motion to amend 2d section of 5th article, - 250

DICKEY, Mr. (of Beaver)—Remarks of, on Mr. Martin's motion to insert the word "white", - - 64, 65, 66, 67
Motion of, to amend 1st section of 3d article, - - 131
Remarks of, on same motion, - 131
Motion of, to consider 4th article, - - - 136
Remarks of, on Mr. Fuller's motion to amend 2d section of 5th article, - - - 250
On Mr. Woodward's motion to postpone 3d section of 5th article, - - - 255, 257
On Mr. Woodward's motion to amend same, - - 258

DICKEY, Mr. (of Beaver)—Motion of, to proceed to consider 6th article, - - 261
Remarks of, on Mr. Sterigere's motion to amend 3d section of 6th article, - - 288
On Mr. Chamber's motion to amend 6th section of 6th article, - - - - 316, 317
DONNELL, Mr. (of York)—Yeas and Nays called by, - 112
DORAN, Mr. (of Philadelphia county)—Yeas and Nays called by, - 26
Remarks of, on Mr. Martin's motion to insert the word "white," - 27
[See Appendix.]
Previous question called by, - 107
Remarks of, on Mr. Meredith's motion to amend 2d section of 5th article, 213 to 218—224, 225, 226
Motion of, to amend 6th section of 6th article, - - 294
Remarks of, on same motion, 294, 295, 300, 301, 302
DUNLOP, Mr. (of Franklin)—Remarks of on Mr. Martin's motion to insert the word "white," - - 25, 26
[See Appendix.]
Remarks of, on motion that he have leave to continue remarks, - - 26
Motion of, to amend 3d section of 3d article as to right of suffrage, - 107, 108
That convention adjourn, - 108
That Mr. Bell, have leave to record vote, - - - 110
To amend 1st section of 3d article modified by, - 111
Remarks of, on same motion, 111, 112, 122

Dunlop, Mr. (of Franklin)—Motion of, to amend 1st section of 3d article, - - 125
to postpone motion to reconsider vote on amendment to section 1st article 3d, - - - - 133
Remarks of, on Mr. M'Dowell's motion to amend 3d section of 4th article, - 140, 141

E

Earle, Mr. (of Philadelphia county)—Motion of to adjourn, - - 27
Remarks of, on Mr. Martin's motion to insert the word "white," 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38
On Mr. Dunlop's motion to amend 1st section of 3d article, 123, 124, 125
On Mr. Merrill's motion to amend same, - - 129, 130
On Mr. Meredith's motion to amend the 2nd section of the 5th article, 187 to 193
Memorial presented by, concerning freedom of speech, &c. - 230
Remarks of, on Mr. Fuller's motion to amend 2nd section of 5th article, - - 250
On question of agreeing to 2nd section of 5th article, - - 253, 254
Motion of, to amend same, - - 254
Division of question called by, - 288

EARLE, Mr. (of Philadelphia county)—Motion of, to amend 3d section of 6th article, - 292
Remarks of, on same motion, - 292

F

FARRELLY, Mr. (of Crawford)—Remarks of, on Mr. Martin's motion to insert the word "white," 77, 78, 79
On Mr. Carey's motion to amend 6th section of 6th article, - 306, 307

FLEMING, Mr. (of Lycoming)—Remarks of, on Mr. Martin's motion to insert the word "white," 59, 60, 61, 62
On Mr. Merrill's motion to amend 1st section of 3d article, - - 128, 129
Previous question demanded by, - - - 129
Remarks of, on Mr. Meredith's motion to amend second section of 5th article, - - 235
On Mr. Doran's motion to amend 6th section of 6th article, - 296, 297

FORWARD, Mr. (of Allegheny)—Remarks of, on Mr. Martin's amendment to insert the word "white," 7, 8, 9, 10, 11, 12, 13, 14, 15, 87 to 93
Motion by, to adjourn, - 63
Remarks of, on motion to re-consider vote on motion of Mr. Chambers to amend 6th section of 6th article, - 313

FOULKROD, Mr. (of Philadelphia county)—Memorial presented by, against amalgamation, - 29

FREEDOM OF SPEECH, THE PRESS, &c.—Memorials in favor of, - 239

FRY, Mr. (of Lehigh)—Yeas and nays called by, - - 149

FULLER, Mr. (of Fayette)—Remarks of, on motion that Mr. Dunlop have leave to continue his remarks, - 26

On Mr. Martin's motion to insert the word "white," - 62, 63

Point of order made by, - 117

Remarks of, on Mr. Dunlop's motion to amend 1st section of 3d article, - - 118, 119

Call to order by, - - 123

Motion of, to amend 2d section of 5th article, - - 249

Remarks of, on same motion, - - - 249, 250

On motion of Mr. Porter, to amend 3d section of 6th article, - - - 291

On motion of Mr. Chambers, to amend 6th section of same, - - - 311, 312

H

HAYHURST, Mr. (of Columbia)—Remarks of, on motion for leave for Mr. Cope to record vote, - 110

HASTINGS, Mr. (of Jefferson)—Resolution by, concerning adjournment *sine die*, - - - 293

Motion of, to consider same, - - - 240

HIESTER, Mr. (of Lancaster)—Motion by, to adjourn, - 67

Remarks of, on motion for leave for Mr. Cope to record vote, - 109

On Mr. Dunlop's motion to amend 1st section of 3d article, - 111

On resolution, concerning distribution of debates, - - - 145

Motion of, to amend same, - - - 145

HIESTER, Mr. (of Lancaster)—Remarks of, on question of agreeing to 2d section of 5th article, - 253
On Mr. Ingersoll's motion to correct Journal, - - - 276
On Mr. Mann's motion to amend 3d section of 6th article, - - 287
On Mr. Carey's motion to amend 6th section of 6th article, - - 304
On motion to re-consider vote on motion of Mr. Chambers, - - 305, 306
To amend 6th section of 6th article, - - 314
HOPKINSON, Mr. (of Philadelphia)—Motion by, that Mr. Dunlop have leave to continue his remarks, - - 25
Remarks of, on same motion, - - 26
Motion withdrawn by - 26
Remarks of, on Mr. Martin's motion to insert the word "white," - - 93 to 100
Motion of, that convention adjourn, - 107
Remarks of, on resolution for distribution of debates, - 145

I

INGERSOLL, Mr. (of Philadelphia county)—Question by, on point of order, - - 26
Motion by, for call of the House, - 67
Yeas and nays called by, - 68
Remarks of, on motion for leave for Mr Cope to record vote, - 109

INGERSOLL, Mr. (of Philadelphia county)—Call to order by, - - 123
Motion of, to amend 2nd sect'n of 4th article, - 136
Motion of, to amend 3d sect'n of 4th article, - 137
Motion of, to amend same section, - 142
Remarks of, on same motion, - - 142
Motion of, that convention adjourn, - 226
Motion of, to correct journal, - - 241, 255
Remarks of, on the same motion, 242, 255, 256
Motion of, to postpone the same, - 242
Remarks of, on Mr. Fuller's motion to amend 2nd section of 5th article, - 250
Motion of, to amend 5th section of 6th article, - 293

J

JENKS, Mr. (of Bucks)—Remarks of, on Mr. Dunlop's motion to amend 1st section of 3d article, - - 116, 117, 118
JOURNAL—Motion to correct, - - - - 241

K

KONIGMACHER, Mr. (of Lancaster)—Resolution reported by, - - - 3, 4
Remarks of on agreeing to the 1st section of 3d article, - 132, 133
Motion of, to consider resolution as to distribution of debates, - - 144
Remarks of, on same subject, - - 144, 146

M

MANN, Mr. (of Montgomery)—Motion of, to amend resolution for distribution of debates, - - 146
Memorials presented by, against amalgamation, - 193
Call of convention moved by, - - - 194
Motion of, to amend 3d section of 6th article, - 286
Remarks of, on same motion, - - - 287
On Mr. Porter's motion to amend same section, - 288
MARTIN, Mr. (of Philadelphia county)—Remarks of, on motion to insert the word "white," - 59
Motion of, that the convention adjourn, - 143, 299
Motion of, to amend 1st section of 6th article, - - 261, 263
Remarks of, on same motion, 261, 262, 263
On Mr. Doran's motion to amend 6th section of 6th article, 297, 298, 299
M'CAHEN, Mr. (of Philadelphia county)—Call to order by, 124
Motion of to amend 2nd section of 6th article, - - 294

M'CAHEN, Mr. (of Philadelphia county)—Remarks of, on same motion, - 284, 285
M'DOWELL, Mr. of Bucks)—Motion of, to amend 3d section of 4th article, - - 137
Remarks of, on same motion, - - 138, 139
On Mr. Meredith's motion to amend 2nd section of 5th article, - - 236, 242
[See Appendix.]
Motion of, to reconsider vote on motion of Mr. Chambers to amend 6th section of 6th article, - - 312
Remarks of, on same motion, - - 312, 313
M'SHERRY, Mr. (of Adams)—Remarks of, on resolution for distributing debates, - 145
MEREDITH, Mr. (of Philadelphia)—Remarks of, on Mr. Martin's motion to insert the word "white," - 100 to 106
Motion of, to amend 2nd section of 5th article, - 149, 195, 248
Remarks of, on same motion, 149 to 158
164 to 168, 248
Resolution by, to supply daily newspapers, - - 193
Motion of, to consider same, - - 239
Memorial presented by, in favor of African colonization, - 274
MERRILL, Mr. (of Union)—Remarks of, on Mr. Martin's amendment to insert the word "white," - - 4, 5, 6, 7
Motion of, to amend 1st section of 3d article, - - 126
Remarks of, on same motion, 126, 127, 128
On Mr. M'Dowell's motion to amend 3d section of 4th article, - - 139, 141, 142
On Mr. Meredith's motion to amend 2nd section of 5th article, - 204, 205, 206, 207
On Mr. Woodward's motion to amend 3d section of 5th article, - - - 250

MERRIEL, Mr. (of Union)—Motion of to postpone same, - 259
Motion of, to postpone consideration of 5th article, - 261
Remarks of, on Mr. Doran's motion to amend 6th section of 6th article, - - 295, 296
On Mr. Chambers' motion to amend same section, - 316
MILLER, Mr. (of Fayette)—Yeas and nays called by, - 111
MONTGOMERY, Mr. (of Mercer)—Remarks of, on Mr. Martin's motion to insert the word "white," 81, 82, 83, 84

N

NEWSPAPERS—Resolution to supply, - - 193, 239, 240

O

ORDER—Decision of Chair on point of, 26, 34, 135, 251, 252, 255
Call to, by chair, - - - - - 122
Call to, - - - - - - 123, 124

P

PAYNE, Mr. (of M'Kean)—Remarks of, on Mr. Martin's motion to insert the word "white," - - 79, 80, 81
PRESIDENT—Communications presented by, - - - 3
Decision of, on point of order, 26, 34, 135, 251, 262, 255
Decision of, confirmed, - - - - 252
PORTER, Mr. (of Northampton)—Remarks of, on Mr. Meredith's motion to amend 2d section of 5th article, 222, 223, 225, 242 to 248
Remarks of, on Mr. Woodward's motion to postpone 3d section of 5th article, - - - 257
Motion of, to amend same motion, - - 259
To amend 6th section of 5th article - - 260
Motion of, that convention adjourn, - 274
Remarks of, on Mr. Ingersoll's motion to correct Journal, - 276
On Mr. Bell's motion to amend 2d section of 6th article, 277 to 281

PORTER, Mr. (of Northampton)—Remarks of, on Mr. Mann's motion to amend 3d section of 6th article, - - 282, 287
Motion of, to amend 3d section of 6th article, - - 288, 289, 290
Remarks of, on same motion, - 288, 289, 290
On motion of Mr. Chambers, to amend 6th section of 6th article, - 315, 316
PURVIANCE, Mr. (of Butler)—Remarks of, on Mr. Dunlop's motion to amend 1st section of 3d article, 119, 120, 121, 122
On Mr. Meredith's motion to amend 2d section of 5th article, - 207 to 213

R

READ, Mr. (of Susquehanna)—Remarks of, on Mr. Dunlop's motion to amend 1st section of 3d article, - 115
Previous question called by, - - - 115
Remarks of, on Mr. Meredith's motion to amend 2nd section of 5th article, - - 195 to 204
Motion of, to adjourn, - 272
Remarks of, on motion to reconsider vote on motion of Mr. Chambers to amend 6th section of 6th article, - - 314
REIGART, Mr. (of Lancaster)—Motion of, that convention adjourn, - - - 107, 253
Division of question called by, - - - 107
Motion of, that convention adjourn, - - - 130
Remarks of, on resolution for distribution of debates, - - - 145
Motion of, to suspend call of convention, - - 194
Previous question called by, - - - 251

REIGART, Mr. (of Lancaster)—Remarks of, on Mr. Porter's motion to amend 3d section of 6th article, - 289
On Mr. Chambers' motion to amend 6th section of 6th article, - - 309, 310
RIGHT OF SUFFRAGE—Propositions concerning extension of, - - - - 107, 108
ROYER, Mr. (of Huntingdon)—Remonstrance presented by, against prolongation of convention, - 239
RULE—Resolution to adopt new, as to moving the question, - - - - - - 29, 240, 241
Thirty-third, resolution to rescind portion of, - 108
RUSSELL, Mr. (of Bedford)—Remarks of, on resolution for distributing debates, - 145

S

SAGER, Mr. (of Crawford)—Previous question moved by, - - - 285
SCOTT, Mr. (of Philadelphia)—Remarks of, on Mr. Martin's motion to insert the word "white" - 52 to 59
Motion by, to adjourn, - 66
To amend 1st section of 3d article, extending right of suffrage, - - 106
Remarks of, on Mr. Meredith's motion to amend 2d section of 5th article, - - 160 to 178
SERGEANT, Mr.—Permitted to record vote, - - - 107
SHELLITO, Mr. (of Crawford)—Remarks of, on motion for leave for Mr. Cope to record vote, 168, 169, 170, 171, 172, 173, 173, 174, 175, 176, 177, 178
On Mr. Dunlop's motion to amend 1st section of 3d article, - 113, 114, 115
On Mr. Mann's motion to amend 3d section of 6th article, - - 286, 287
SMYTH, Mr. (of Centre)—Remarks of, on Mr. Dunlop's motion to amend 1st section of 3d article, - - - 122
Yeas and Nays called by 133
Motion of, to amend resolution for distribution of debates, 145, 146
Remarks of, on Mr. Doran's motion to amend 6th section of 6th article, - - 302, 303

STERIGERE, Mr. (of Montgomery)—Explanation, by concerning white freemen, - - 48, 49
Remarks of, on Mr. Martin's motion to insert the word "white," 84, 85, 86, 87
On motion for leave for Mr. Cope to record vote, - 108
Motion of, that the convention adjourn, - - 143, 238
Leave asked by, to read a letter from Judge Fox, - - 148
Motion of, to amend 2d section of 5th article, - - 251
Remarks of, on same motion, - - 251
Division of question required by, - 252
Appeal from decision of Chair by, - 252
Motion of, to amend 3d section of 6th article, - - 287, 288
STICKEL, Mr. (of York)—Motion of, to postpone further consideration of Mr. Dunlop's motion to extend right of suffrage, - - - - 111
Motion of, to re-consider vote on amendment to 1st section of 3d article, - - - 123
STURDEVANT, Mr. (of Luzerne)—Remarks of, on resolution for distributing debates, - - - 145
Motion of, that convention adjourn, - - 193

T

THOMAS, Mr. (of Chester)—Motion of, to amend resolution for distribution of debates, - - - 146
Motion of, to postpone consideration of same, - - 146
TRIAL BY JURY—Memorial concerning, - - - 29, 274

W

"White,"—Motion of Mr. Martin to insert, amended, 4 to 25, 25 to 29, 29 to 106

Woodward, Mr. (of Luzerne)—Remarks of, on Mr. Martin's amendment to insert the word "white," - 16 to 25
Explanation by, - - 34
Remarks of, on motion for leave for Mr. Cope to record vote, - - 109, 110
Motion of, to postpone report of committee on printing, - - - 135
Motion of, to proceed to the consideration of 5th article, - - - 143
Motion of, to amend 3d section of 5th article, - 255, 258
Remarks of, on same motion, - - - 255
Motion of, to postpone 3d section of 5th article, - 255
Remarks of, on same motion, - - 255, 256, 257

Y

Yeas and Nays—On Mr. Martin's motion to insert the word "white," - - - 106
On Mr. Scott's motion to amend 1st section of 3d article concerning right of suffrage, - - - - 107
On Mr. Stickel's motion to postpone Mr. Dunlop's motion to amend same, - - - - - 111
On previous question, 115, 116, 129, 133, 134, 249, 252
On Mr. Dunlop's motion to amend 1st section of 3d article. - - - 125
On Mr. Dunlop's second motion to amend same, - - - - 125
On Mr. Merrill's motion to amend same, - - - - - 130
On Mr. Dickey's motion to amend same, - - - - 131, 132
On the 1st section of the 3d article as amended, - - - - 134
On Mr. Ingersoll's motion to amend 2d section of 4th article, - - - 136
On Mr. Ingersoll's motion to amend 3d section of same, - - - 137

YEAS AND NAYS—On Mr. M'Dowell's motion to amend same, - - - - - 142
On Mr. Ingersoll's motion to amend same, - - - - - 143
On Mr. Biddle's motion to suspend the rules, - - - - - 147, 148
On Mr. Reigart's motion to suspend call of convention, - - - - 194
On Mr. Meredith's resolution to supply newspapers, - - - 240
On Mr. Hasting's resolution to postpone day of adjournment, - - 240
On Mr. Bedford's motion to consider resolution relative to the question, - 241
On the adoption of the same resolution, - - - - - 241
On Mr. Meredith's motion to amend 2d section of 5th article, - - 248
On Mr. Crawford's motion to amend same, - - - - 248, 249
On Mr. Fuller's motion to amend same, - - - - - 251
On the report of the committee of the whole, as to 2d section of 5th article, - - - - - 25
On the 2d section of 3d article as amended, - - - - - 254
On Mr. Woodward's motion to postpone 3d section of 5th article, - - 258
On Mr. Martin's motion to amend 1st section of 6th article, - - - 263
On Mr. Bell's motion to amend 2d section of same, - - - - 283, 284
On report of committee of whole, as to same section, - - - 285, 286
On Mr. Mann's motion to amend 3d section of 6th article, - - - 287
On Mr. Porter's motion to amend same section, - - - - 292
On agreetng to the 3d section of 6th article as reported, - - - 292, 293
On Mr. Doran's motion to amend 6th section of 6th article, - - - 304
On Mr. Carey's motion to amend 6th section of 6th article, - - - 307
On 1st branch ofMr. Chambers' motion to amend same section, - - 310, 311
On 2d branch of same motion, - - 312

END OF VOLUME TEN.