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MAY 27 1940

PROCEEDINGS AND DEBATES

OF THE

CONVENTION

OF THE COMMONWEALTH OF PENNSYLVANIA,

TO PROPOSE

AMENDMENTS TO THE CONSTITUTION,

COMMENCED AT HARRISBURG, MAY 2, 1838.

VOL. XI.

1838

Reported by JOHN AGG, Stenographer to the Convention:

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

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1838

PROCEEDINGS AND DEBATES

OF THE

CONVENTION HELD AT PHILADELPHIA.

SATURDAY, JANUARY 27, 1838.

Mr. MANN, of Montgomery, presented a memorial from citizens of Bucks county, praying that the constitution may be so amended, as to prohibit negroes from exercising the right of suffrage.

On motion of Mr. MANN,

The said memorial was laid on the table.

Mr. PENNYPACKER, of Chester, presented a memorial from citizens of Chester county, praying that no alteration may be made in the constitution, having a tendency to create distinctions in the rights and privleges of citizenship based upon complexion.

On motion of Mr. PENNYPACKER,

The said memorial was laid on the table.

Mr. BIDELE presented a memorial, from citizens of the city and county of Philadelphia, praying that constitutional provision may be made for the more effectual security of freedom of speech, of the press, and of peaceably assembling for public discussion, as well as 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. BIDDLE,

The said memorial was laid on the table.

Mr. CHANDLER, of Philadelphia, presented a memorial of like import.

And on motion of Mr. CHANDLER,

The same was laid on the table.

A motion was made by Mr. MILLER, of Fayette, and read as follows, viz :

"*Resolved*, That the minutes of the committee of the whole, of the 18th of October, page one hundred and thirty-seven, be corrected by striking the name of Mr. MILLER from the list of yeas, the said MILLER being then absent:

And on motion of Mr. M., the said resolution was read a second time.

Mr. MILLER explained briefly that his name was recorded as voting in the affirmative, on a certain proposition, in relation to the justices of the peace, whereas he was not in the convention at the time. He asked as an act of justice to himself that the error might be corrected; and he would, he said, have called the attention of the convention to it at a much earlier period, but he was only recently made aware of the fact that such a mistake was on the journals.

And the question was then taken and decided in the affirmative without a division.

So the resolution was adopted.

A motion was made by Mr. BELL,

That the convention proceed to the second reading and consideration of the resolution read on the 11th instant, as follows, 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, but 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."

Which was disagreed to.

The PRESIDENT said, he would take this opportunity to mention, that, in consequence of an inquiry made yesterday by the gentleman from Chester, (Mr. Bell) the Chair had investigated the proceedings in committee of the whole, upon the article now under consideration, in reference to the third section of the constitution, and he found it difficult to say whether that section had, or had not been disposed of. The state of the matter appeared to be this.

The standing committee on this article, reported a new article, consisting of a new set of sections, having no immediate reference to corresponding sections in the constitution. The committee of the whole took up that article, as reported, and made certain amendments, rejecting some of the sections, and altering others; but it did not appear that there was any direct vote of the committee taken, on the third article of the existing constitution. It was printed as if stricken out. But the Chair would not say that this was correct. He believed it was not.

With this statement, it would be for the convention to say what order should be taken in reference to that section.

After some desultory conversation, growing out of the statement made by the Chair, the convention passed to the

ORDERS OF THE DAY.

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 amendment to the sixth section of the said report as modified, being again under consideration:—

Mr. BANKS, of Mifflin, suggested to the mover of the amendment, (Mr. Chambers) the propriety of inserting the words of the said amendment, after the word "thereof" in the fourth line, instead of inserting them after the word "aldermen" in the first line, as they stood at present.

Mr. CHAMBERS said, he did not see that that would make any difference. There would, no doubt, be other amendments offered to the section, and he thought that it would be better to retain the words in their present position.

Mr. FULLER, of Fayette, said he would suggest to the gentleman from Franklin, (Mr. Chambers) to withdraw his amendment, in its present form, and to propose something like that which he (Mr. F.) had drawn up, and which he would read for the information of the convention. It was as follows:

Add to the end of the amendment made in committee of the whole, the words, "but the legislature shall not direct more than two to be elected in any township, ward, or borough, without the consent of the people of such township, ward or borough."

Mr. F. thought that a condition of this nature, if attached to the section, would render it more perfect and, probably, much more acceptable to the people. He would be pleased if the gentleman from Franklin would accept his suggestion.

Mr. CHAMBERS said, that, if he did accept the suggestion of the gentleman from Fayette, he was fearful he would only embarrass the section, and render the action of the convention more difficult. He must, therefore, decline to do so.

On further reflection, however, he was willing to accept the suggestion which had been made by the gentleman from Mifflin, (Mr. Banks.)

And the amendment was then modified by inserting after the word "thereof" in the fourth line, the words "in such numbers as shall be directed by law," instead of inserting the same words after the word "aldermen" in the first line.

And the amendment, as thus modified, being again under consideration;

Mr. FULLER said, that as the gentleman from Franklin had declined to accept his modification, he would ask that it be laid on the table, and would briefly explain the reasons why he could not give his support to amendment now before the convention.

In the first place, said Mr. F., the amendment leaves the whole subject of fixing the number of justices of the peace, in each ward, borough and township, to the legislature. I am opposed to it on account of the

great evil which already exists, from the fact, that there are now too many of these officers. We know that this has been a matter of just complaint among the people, and we know that it is one of those evils which they were most desirous that we should remedy. If the subject should be left entirely open to the legislature, as is here proposed, I have not a doubt, that in many of the districts the legislature will be harrassed, from session to session, to appoint justices of the peace or aldermen, where they are absolutely not at all wanted, and where a majority of the people of the district do not desire them. From the best consideration which I have given to this question, I believe that this is one great cause of the complaints which have been so loud and general against this class of officers in the state of Pennsylvania;—that is to say, that we have too many of them, that their numbers are swelled to an extent which is neither called for by the people, nor in any manner desired by the people. I give this as the result of my own observation and experience. Many districts, I know, are burdened with more justices than they want—more by one half or upwards—and they have been obtained against the wishes of the majority of the people. An additional number, which may be a useless number, must depend upon the single voice of the representative of any particular district; because the legislature, as a body, know nothing, and can know nothing, of the necessity of increasing the number either in one district or another, and they must, therefore, act upon what the representative of any particular district may say. Thus additional officers may be wanted, or may not; the one is as likely to be the case as the other, and how is the legislature to know? Then, as I have said, the increase of the number of the justices of the peace, which increase may be absolutely necessary or which may not be at all necessary, is to depend on the feelings and the wishes of the member from the district. This would be a state of things from which great and growing evils would continue to arise, and it is with a view of preventing those evils that I asked the gentleman from Franklin to offer, in lieu of his amendment, such a proposition as I have brought to the notice of the convention—that is to say, that not more than two of these officers should be elected in any one township, ward, or borough, without the consent of the taxable inhabitants of such township, ward or borough. The people are fully as capable of fixing the number, as any member of the legislature from the district can be; I should say, much more so. They are fully competent to elect an alderman, or a justice of the peace, and they are fully competent to tell how many are requisite for each particular place.

I am opposed to the adoption of the amendment of the gentleman from Franklin, and shall vote against it. I hope that I shall yet be able to secure the support of the convention to the restriction which I propose, and which I regard as one of the most important amendments that has claimed, or can claim, the consideration of this body.

There is also another difficulty which ought to be met. Some boroughs are counted by townships, &c., and contain probably from fifty to a hundred inhabitants. There is no provision made for this distinction. My proposition provides for that case as well as for all others, that is to say, the qualified electors shall be the judges how many of these officers are requisite.

Mr. M'DOWELL, of Bucks, said he trusted that the amendment which had been suggested by the gentleman from Fayette, (Mr. Fuller) would be adopted before this subject was finally disposed of. It meets my views of the question precisely, said Mr. M'D.; and the gentleman has presented to the consideration of the convention, the precise proposition which I had myself drawn, and which I had intended, so soon as an opportunity presented itself, to offer for adoption.

Mr. President, I also concur with the gentleman from Fayette in the opinions which he has expressed as to the importance of this subject. It is important—probably as immediately so to the people of this state as any other upon which this body has been called to act. I do not know indeed whether it is not of more importance than any question which has come up before us in relation to the judges of the supreme court, or of the court of common pleas; and I think that we shall have done but little to improve the condition of the people upon this particular subject, unless we devise some means by which the number of these officers is to be limited.

The suggested amendment of the gentleman from Fayette is this. The matter is left open to the consideration of the legislature; but the legislature shall not have the power to provide for the appointment of more than two such officers in any ward, township, or borough, without the consent of the qualified electors thereof. It will be recollected, moreover, that while the legislature, under this proposition, is to be prohibited from appointing more than two without the consent of the people, it is not at the same time *compelled* to appoint even that number. In some of the counties of Pennsylvania, there are townships in which it would be considered a positive evil to inflict two magistrates upon the people. The matter is thus left discretionary with the legislature, so far as the number of two may be concerned, but they can not go beyond that number without the consent of the people of the township, ward, or borough. It seems to me that this is placing the matter where it ought to be—upon a safe and judicious footing. If you give to the legislature the power to say, how many magistrates there shall be in each township, ward, or borough, do you not run the very same risk as the framers of the constitution of 1790 ran in giving the governor of Pennsylvania the power to appoint what he may think proper to denominate a "competent number of justices of the peace;" for such is the language of the existing provision? Surely, you do so. There is as much likelihood that a broad latitude will be taken in the one case as in the other. The legislature may have the same reasons for appointing a greater number of these officers than the wants and the interests of the people require, that the governor has; and this power may, therefore, be as much abused by the legislature as by the governor. This is apparent—nothing more so. The members of the legislature from the several counties may have an eye to re-election, and may obtain the sanction of the legislature to the appointment of more magistrates than may be wanted, on the private understanding with them that they, in return, shall use their influence to secure his re-election.

Any man of common intelligence, must be able to see what the inevitable result will be, if this matter is left to the legislature. Why not leave it to the people? Is not that the most proper disposition which can be made of it? Are they not capable to judge for themselves, and to decide

whether their wants or their interests, do, or do not, require an increase in the number of the magistrates of any particular section? If they do not want more, they will, of course, be silent. If they do want more, let an application be made to the legislature in writing to that effect. I perceive however, that the proposition of the gentleman from Fayette, does not provide for this form. I should wish, however, that it should be so amended. Let an application be made in writing, to be signed by a majority of the people, and the appointment should not be suffered to be made until it is proved to the satisfaction of the legislature, that a majority of the qualified electors of the township or district, have signed that paper. This it appears to me, Mr. President, is the most plain and simple way of getting at this question, and of adjusting it to our entire satisfaction.

I do hope that the amendment suggested by the gentleman from Fayette will be taken up and adopted, with a proviso, such as I have alluded to, making it obligatory that an application shall be made in writing, and shall be signed in the manner indicated. I do not believe that any provision can be adopted, which will remedy more effectually than this the evils complained of in the present system. It is our duty to prevent a recurrence of those evils, and I trust we shall do so.

Mr. CUMMIN, of Juniata, said that he felt some regret at finding himself compelled to differ from both the gentlemen who had preceded him in relation to the manner in which the offices of justices of the peace should be filled.

I am of opinion, said Mr. C., that in coming to a final decision on this question, as upon all others which may be brought before us, we should take into view the interests of the poor classes of society as well as the rich. I am of opinion that neither the governor nor the legislature of Pennsylvania, should have any connexion or concern, either with the mode in which the justices of the peace should be appointed, or with the number which should be appointed. I believe that the people themselves are the best judges, how many justices will be required, and that they are, in every respect, best qualified to have the charge of this matter in their own hands. There it ought to go, and there, I trust, it will go, absolutely and without qualification. It is a power which will repose more safely in the hands of the people and will be more judiciously exercised by them, than if left with the legislature for the future, or with the governor, as it has been under the provision of the constitution of 1790.

What are the arguments which we have heard? Will it be said that there is any evil growing out of the existence of a large number of justices of the peace? How can that be? If there are but two justices in any ward, borough or township, of course the whole business of the place will go into the hands of those two, and if there are five, they will still have no more. To cut the number down, I regard as an act of oppression upon the poor.

Let us take an example. Suppose that a township is twenty, twenty-five, or thirty miles long, and suppose that in all that township, there are only two justices of the peace. What is the consequence to the poor man—to the labouring man—to the man whose time is his money, and

who is dependent on his daily labor for his daily bread? He will be compelled to pay the cost of going to the extreme part of that township, thus expending money as well as losing time, whereas if there were one, two, or more of these magistrates scattered over the township, it would be the means of curtailing the expenses he must incur. And this, it seems to me, is the great object which we should keep in view, in any provision we may insert in the constitution, as to the justices of the peace. Let the people have their own choice. Let the people say whom they will elect, and how many they will elect.

There is also, Mr. President, another ground on which I am opposed to the adoption of the proposition of the gentleman from Fayette. It is this. We are not the judges, and we cannot be the judges as to what the people who are upon the ground may want. They know how many magistrates are necessary for their interests, and they can regulate the number accordingly. I am opposed, therefore, to filling these offices in any other way except by election by the people, and in such numbers as they may, from time to time, see cause to elect.

These are my views, and my vote will be given accordingly. I believe that the adoption of this course will ease the burden of the poor, while it can do injury to no one.

Leave the whole matter to the people; let them elect the justices of the peace for themselves, and let us give to them a discretionary power as to the number. They, and they alone, are to gain or lose by the operation of the system, and there is no reason to apprehend that they will do any thing which is calculated to affect their own interests injuriously. To my mind, it is clear that the happiest results will follow.

Mr. AGNEW, of Beaver county, said it must be in the recollection of all the members of the convention, that a great deal of time was consumed in the discussion of this subject, when it was under consideration in committee of the whole at Harrisburg. The debate upon it was very protracted; every proposition for amendment of which it was susceptible, was made from day to day; and the final result of all the deliberation and discussion which then took place, was to be found in the report of the committee of the whole, now upon its second reading.

The very amendment now proposed by the gentleman from Fayette, was brought before us, (said Mr. A.) in committee of the whole, and was adopted by a very small majority. Then, on a subsequent day—the eleventh day of July—the vote was re-considered, and the proposition was negatived. So that the principle now under discussion was decided in the committee of the whole.

Mr. President, I have been all along under the impression that when the amendments should come up on second reading, it was not the design of the convention to alter the principles which had been laid down by a solemn vote of the committee of the whole, but rather to put them into a clear and correct form, in order that they might be properly submitted to the people.

If the whole field of debate is to be again opened on every question which has been decided in committee of the whole, we shall have every proposition traversed over again, and this, too, upon the eve of our final

adjournment. I had hoped that the discussion of these matters would not have been renewed, and if they are still to be debated in this way, no man can foresee what is to be the end of our labors. If the whole subject now before us, like some others, had not undergone a long and protracted examination and discussion, it might have been reasonable to renew this proposition, with a view to obtain for it a closer consideration. But it is known to all of us that it was debated not only in July, but after we again assembled in October. I hope, therefore, that gentlemen will turn their attention, not to change the principles which have been settled, but to arrange and correct the phraseology of the amendments.

As to the fears which have been expressed in some parts of this hall, that the legislature will not regulate this subject properly,—that they will convert it into a political machine, and use it for political and party purposes, I apprehend that there is little real foundation for them. Is not the legislature to be trusted on any subject which may come within their appropriate sphere of action? Are they in the petty appointments of justices of the peace, to be regarded as unworthy to be trusted? Is it come to this, that in a republican form of government, where the legislature comes every year fresh from the people, they are not to be trusted in a matter like this? I ask the gentlemen to turn their attention to the principal executive department of the state, and see how these things are regulated there. They are all matters of law—all within the scope and sphere of legislative action. In the constitution of 1790, with the exception of the secretary of state and one other officer—you have no provision which says anything about the executive department. And is it to be said that the legislature is competent to decide upon such important matters as these, and yet that they are not competent to be entrusted with such appointments as justices of the peace?

Are we about to endorse such an extraordinary doctrine as this, by our action here? There are twenty subjects, the regulation and management of which are left in the hands of the legislature, and which must of necessity be so. For instance, you leave with them the subject of registers and recorders. The constitution, it is true, provides that "a register's office and an office for the recording of deeds, shall be kept in each county," but it leaves the whole details to be settled by the legislature. And so it is with reference to many other subjects.

What is your entire system of county and township offices? What does your constitution say about them, except that officers relating to taxes, to the poor, to highways, &c., shall be appointed in such manner as is, or may be prescribed by law. The whole system of the internal policy of every county is left to the regulation of the law. The system has grown towards perfection from time to time, and it has been re-modelled within a very few years. Can it be possible, therefore, that the legislature is competent to regulate the whole internal policy of every town and county, and yet that they are not competent to have the management of the system as to justices of the peace? Is there not something extremely inconsistent in the idea?

It has been said, that if the matter is left to the legislature, justices of the peace will be given in such numbers as to have a political effect. How is this? What foundation is there for so grave a charge? Why

has not this been done by the legislature with reference to county commissioners ?

Sir, these are all idle fears; they will not stand the test of truth. And I will go further, and say, that if these charges be true—if it is indeed true that the legislature cannot be trusted touching matters of this description—then I say that a republican form of government is an experiment which has failed. It is no longer an instrument fit for the government of human society. There is neither force nor virtue in it. But I, for one, entertain no such fears. I trust that gentlemen may be prevailed upon to withdraw their objections.

I certainly, however, concur in the opinion which has been expressed by the gentleman from Fayette county, (Mr. Fuller) that there is something which wants correction in the section, in relation to the boroughs. The amendment, as reported from the committee of the whole, 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 qualified voters thereof," &c. Now, I apprehend it cannot be the intention of this body that every borough which may contain but fifty inhabitants should be a separate district for the election of justices of the peace; the language of the section, therefore, should be reduced to such a form as to give a discretionary power to the legislature in this respect. There are boroughs which make districts of themselves, and it might be well to say that justices of the peace shall be appointed in such boroughs as might be directed by law. The state of Ohio has a provision in relation to these officers, in few and simple words. I will read it for the information of the convention.

"A competent number of justices of the peace shall be elected by the qualified electors in each township in the several counties, and shall continue in office three years; whose power and duties shall from time to time be regulated and defined by law. "[Vide Constitution state of Ohio, Art. 3., sec. 2.

This is the principle which has been adopted in the constitution of the state of Ohio. Nothing is said there about districts or about the number, but the constitution simply declares that a competent number shall be elected in each township in the several counties. I have never heard any complaint there, that the legislature has done any wrong either in the election of the justices of the peace, or in the number. I have never heard a complaint that they put to bad uses the discretionary power with which they are entrusted. I believe there has been no difficulty of any kind. The legislature fixes this matter by law, and when particular cases require regulation, they have the power to regulate them in such manner as they may think proper.

So it is also by the constitution of the state of Indiana, the provision of which, I suppose, was taken from the constitution of Ohio. A constitution is intended only as a general law; it is not intended to go into details. If it were so, there would be no end to it. You declare in your constitution, that your judiciary shall consist of so many courts and of so many judges, but beyond this you do not go. You leave the details to be settled by the legislature. So it is with constables—these are matters which are left within the discretion and control of the legislature.

I repeat the opinion I have expressed, that all the fears and apprehensions which appear to have taken possession of the minds of some gentlemen, as to the extent to which the legislature may be trusted, are without any foundation. There is nothing to justify them. I believe that if we were to adopt such a provision as that which I have cited from the constitution of Ohio, every difficulty would be obviated, and every good and desirable purpose would be adopted. In any event, I agree with the gentleman from Fayette, (Mr. Fuller) that some alteration is required in the language of the section, so far as it relates to boroughs.

With the view of bringing that point before the convention, I have drawn up an amendment, incorporating the principle which is laid down in the report of the committee of the whole, and simply changing the language so far as it is applicable to boroughs. At a proper time I should like to have the opinion of the convention upon it. The terms of the amendment are these:—

"A competent number of justices of the peace and aldermen, shall be elected at the times and places of the election of constables, by the qualified electors in each township and ward of the several counties, cities, and incorporated districts respectively, and in such boroughs as shall be directed by law, and shall be commissioned by the governor for a term of five years."

This amendment, it seems to me, contains the principle established by the committee of the whole, while, at the same time, it takes away all the ambiguity which is apparent in the section as it now stands. And we all know how important it is that the provisions of the constitution should be so framed as, if possible, to leave no room for doubt or misconstruction.

Mr. CURLL, of Armstrong, said, Mr. President, I have heretofore been content to give my silent vote on the various propositions which have been submitted here, in relation to the justices of the peace; and I have, although myself many years a justice, listened without being much disturbed, to the opprobrious epithets by which that class of our citizens have been designated by the great and small guns of the law in this body. They have been called by every derogatory epithet which the vocabulary can furnish.

I concur in the opinion which has been expressed in many parts of this hall, that great care should be taken in the selection of justices of the peace, for however low may be the estimation in which some gentlemen may affect to hold them, there cannot be a doubt that the just and proper exercise of their functions is a matter in which the great mass of the people are deeply interested. I say that great care should be taken in their selection; and that care, I believe, is about to be secured by the action of this convention, which, by a decided vote, has agreed to throw the choice into the hands of the people. The people are the best judges of the capacity and the moral conduct of those who may offer themselves as candidates.

The delegate from Crawford, (Mr. Farrelly) in some remarks which he offered yesterday, tossed out some epithets, accusing the justices of the peace of the administration of fire-side law. And the gentleman from

Northampton, (Mr. Porter) whose voice we so often hear on this floor, has also been pleased to pour out the vials of his wrath upon me, because, he says, I have impugned his motives; and I see myself designated in one of the newspapers of this morning as a justice of the peace. Sir, I deny that I did impugn the motives of that delegate. And although justices of the peace have been charged by some gentlemen with almost every evil that can be laid at the door of man, I thank God that not one of that class who has a seat in this body, has been charged with being a traitor to the party who elected him to serve them here. I would take leave to refer gentlemen who, like the delegate from Northampton, are so fond of anecdotes, to the "Crawford Democrat," and the "Lehigh Bulletin," for some pretty anecdotes in reference to the conduct of certain members of this convention. It is probable they may find anecdotes enough there to take up their attention, without racking their brains that they may hunt up some stale and musty joke, in the hope of exciting a laugh at the expense of others.

As regards the question before the convention, I feel disposed to favor the proposition of the gentleman from Fayette, (Mr. Fuller.) I wish that the people should have the privilege of saying how many justices they want. They are as competent to judge as the legislature—yes, and much more so. I would be willing to say that each township should be, at all events, entitled to two justices; and that the number may be increased at the expiration of five years in proportion to the increase in the number of taxable inhabitants. I have no idea of referring it to the representatives of the people to do that, which the people can more understandingly and with a prospect of more beneficial results do for themselves; and in this matter, as I have said, I believe that they are the best judges. I confess, however, that I have not that want of faith in the legislature, which seems to be imputed to us, because we desire to restrain the action of that body in some respects. In any vote which I may have given here in relation to the legislature, I have never acted upon the assumption that the members were worse men than we ourselves. This has been no rule of action with me. But I believe that it is necessary not only that we should give the election of justices of the peace to the people, as the majority of this convention has determined to do, but, that the people should also possess the authority to create as many as they wish. And if they create more than they want, they are to be the sufferers; let them be whipped with their own rod. All power is theirs; let them be the judges. They can decide all these matters better than we can. I am unwilling, therefore, to do anything which will tie up their hands, and shall oppose any and every amendment which may, in my judgment, have that tendency.

I have felt it due to myself, Mr. President, to make these remarks in vindication of myself, and in explanation of the vote which I intend to give, and I will not detain the convention with any further observations.

Mr. Forward, of Allegheny, said it appeared to him that there were strong objections to the amendment of the gentleman from Fayette, (Mr. Fuller.) Under such a provision, at what time shall the number be ascertained? How often? In what manner? If there is any reason for the amendment, it has reference merely to the number being fixed by the

people. Why not leave to them also the mode, the manner and the time? These are sufficient reasons to induce me to vote against the amendment.

But there are also other reasons of a forcible character. The number of magisrates should of couse, be graduated according to the population and the business, and especially with reference to the latter. In the agricultural counties, there is but a small amount of litigation; whereas in those where the store keeper, the manufacturer, and the mechanic reside, litigation is going on every day. It is the business of such men as the latter to deal with others, and from the very nature of the contracts which are made, a great deal of litigation may arise. Why then not leave the details to the legislature? Is it supposed that they will be indifferent to these things? That they will regard them as not worthy of their attention? Do you give to the people of the different townships any agency in determining the number of supervisors, of assessors, of collectors or of constables that there may be employed in the different townships? Why do you leave all these things to the legislature? Has any evil arisen from having done so? No. Does any one complain of improvident legislation in regard to them? No.

But, Mr. President, I have a still more decisive objection to the amendment than any I have yet mentioned: It is this; that, if such a provision is engrafted on the constitution, the wants of the people will be much less attended to than the wants of the party. It may be a matter of some importance to a party in a particular township, to secure the influence of two or three persons. How will they accomplish this object? They will endeavour to accommodate all, and the result will be that, in that township, the number of justices would be unduly multiplied. Suppose that two or three persons desire to be elected to the office. In order to secure and consolidate the interests of all, it would be found very convenient to have the services of these two or three as justices of the peace. I see no more reason for leaving this matter to the people, than for leaving with them to fix the number of assessors, of constables and so forth, that may be employed in the different townships, and shall give my vote accordingly.

Mr. Fleming, of Lycoming, said that after a discussion of some fifteen days in committee of the whole at Harrisburg, and just upon the eve of its adjournment, at that time, the convention had resolved upon one great principle in reference to the justices of the peace—that was to say, that they should be elected by the qualified voters.

So far, said Mr. F., as I have been able to understand the action of this body, in regard to these officers, this principle alone was determined at that time. It was not understood that any thing like detail was connected with the principle of election then decided.

How does this question stand before us now? As I have said, we have resolved by the vote given in committee of the whole, that the justices of the peace shall be elected. What then follows? The question then presents itself how shall they be elected—in what manner? The section as reported from the committee of the whole, declares "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 qualified voters thereof." Now, I am free to confess that, from first to last, I have never been in favor of this mode of election in the several wards, boroughs and townships; but that I prefer that they should be elected in districts, and those districts to be regulated by the legislature of the commowealth. It seems to me that there must be objections to this mode of election which will occur to the mind of every man who hears me. To my mind, at least, they come with much force. When we speak of limiting the number, should we limit that number to a single justice of the peace to a township, a borough, or a ward? Because we know that there are many townships and boroughs, nay probably, wards, where they need no justice at all—and that there are many where they need only one;—whereas if we undertake to carry out the details of the system here, these very places might probably be entitled to two or three.

I will here take occasion to call the recollection of the members of the convention, to the fact that all the propositions which were presented in committee of the whole which ran into any thing like detail in regard to the election of these magistrates were invariably met and defeated; and that the imperfections of all of them were so fully pointed out that—notwithstanding the long and laboured discussion which took place—not one single amendment which went into detail was supported by the votes of the committee of the whole.

What is asked for now? It is that we shall submit the details of this subject to the legislature. The real question now before this body is, shall we carry out the details necessary for, and preparatory to the election of justices of the peace, or shall we submit them to the proper and legitimate tribunal—that is to say, to the legislature of the commonwealth. The whole question resolves itself into this—nothing more nor less. Are we so suspicious of the legislature of Pennsylvania, have we so little confidence in their patriotism, their integrity, or their regard to the interests and the welfare of the people, that we are afraid to trust them to carry out the necessary details in the election of justices of the peace? Is this the principle by which the action of this body is to be governed? I think it has been already satisfactorily shewn, upon the examination and discussion of this subject, that it is impossible for us to prescribe with certainty or advantage any thing like a limitation of the number of the justices, however desirable it might be that an amendment of that effect should be introduced into the constitution. And I repeat, that in any proposition which has been offered with that view we have found such numberless objections as to cause it to be finally voted down. If I am not mistaken, we have now had about three thousand six hundred justices in the state of Pennsylvania, and there are about one thousand and nine wards, boroughs and townships. This statement, it appears to me, furnishes in itself satisfactory evidence that the system, as it has existed under the constitution of 1790, has been wrong, that the number has been increased beyond the requirements of the people, and that the number ought to be limited. But when we undertake to make a constitutional provision so as to limit the number—and when, in so doing, we find it necessary to run out that provision to such a length in detail that we must unavoidably get into error—I think it is time we should look at

what we are doing. It is not proper that this kind of minutia should be found in the fundamental law of the land. It is not the place for it.

When I found upon examination, that there were so many justices of the peace in commission at this time as I have stated, I began to think that some danger might be apprehended from the reaction of the people upon this subject. If we go on now and insert a constitutional provision limiting the number and taking that power from the legislature, we may in trying to remedy one evil, commit an error which will lead to evils of a much more serious character. We must therefore, move with caution. And when gentlemen talk here of not trusting the legislature with the power to carry out the necessary details of this section, I will beg leave to turn their attention to the next section of the same article as reported from the committee of the whole, and I will ask them to say how it is that we are willing to give to the legislature all the power which that section bestows, and yet that we fear to trust them with the authority contemplated in the one now before us.

The following section says:

"All officers whose election or appointment is not provided for in this constitution, shall be elected or appointed as shall be directed by law."

Here is power given to the legislature by this section as much greater than is proposed to be given by the section under discussion, as can be well imagined. There is no comparison so great as the difference between them. Will gentlemen with such facts as these staring them in the face—with unlimited power and authority given to the legislature in the very next section—will they, I ask, say that in relation to justices of the peace, that body is not worthy to be trusted? How is this strange inconsistency to be reconciled. As my friend from Northampton county, (Mr. Porter) would say, this is really straining at a gnat and swallowing a camel. And yet this immense power in the next section, was given to the legislature almost by the unanimous vote of this convention. I confess myself unable to fathom the wisdom of this distinction.

If it were possible, however, I would alter the reading of the section as it now stands, and instead of having it read "justices of the peace and aldermen shall be elected in the several wards, boroughs and townsnips," I would have it read "in such convenient districts as are or shall be directed by law," that is to say, I would carry out the idea of the amendment of the gentleman from Franklin, (Mr. Chambers) before the vote upon that amendment was reconsidered. This, like all other matters having any thing to do with details, is attended with difficulty; and when we, by a constitutional provision, direct that the justices of the peace shall be elected in such convenient districts as are or shall be directed by law, it necessarily falls upon the legislature to provide for all proper details. I see no other difficulty, except that wards, boroughs or townships should not be divided in making provision for the justices.

In conclusion, I repeat, that I see nothing but difficulty in any proposition which has been offered, having any thing to do with details. We settled, when in committee of the whole, the one great principle that the justices of the peace should for the future time be elected by the people;

and not appointed by the governor, as under the constitution of 1790. This I look upon as the git of all that the people desired by way of amendments to the constitution, so far as these officers were to be affected by those amendments. As to the number, and the time when they should be elected and so forth, I think it is not necessary that we should do any thing, and I believe the people will be satisfied that all these things should be left to the action of the legislature.

Mr. WOODWARD, of Luzerne, said that he had risen for the purpose of reminding the members of the convention, that a resolution had been adopted fixing the second of February, as the day of final adjournment. Between this time and that, said Mr. W., we have some subjects to act upon of an important character—subjects which, in my view, are of more importance than that now before us. I am the friend and advocate of full and free discussion on all matters brought up for the action of this body, but it is not to be forgotten that this subject in relation to the justices of the peace did undergo a very long discussion in committee of the whole, and that the result of every experiment made there was the simple provision now before us in the shape of the report of the committee of the whole. I have no doubt that this will also be the result of the present discussion, even if it should be protracted some days longer.

Under the conviction, therefore, that the report of the committee must ultimately be adopted, however much time may be spent in contesting it, I call for the previous question.

But the call was not seconded by the requisite number of delegates.

And the amendment being under consideration;—

The question was called for by Mr. WOODWARD, and twenty nine others rising in their places.

And on the question,

Shall the question on the said amendment as modified, be now put?

It was determined in the affirmative.

And on the question,

Will the convention agree to the amendment as modified?

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

YEAS—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Barnitz, Bedford, Bell, Biddle, Bigelow, Brown, of Northampton, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clarke, of Indiana, Cleavinger, Coates, Crain, Crum, Darlington, Denny, Dickerson, Donagan, Donnell, Doran, Farrelly, Fleming, Forward, Foulkrod, Gearhart, Gilmore, Hastings, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Keim, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Maclay, Martin, M'Cahen, M'Sherry, Meredith, Merrill, Pollock, Porter, of Northampton, Purviance, Read, Riter, Rogers, Royer, Russell, Seager, Sill, Smyth, of Centre, Snively, Sturdevant, Todd, Weidman, Woodward, Young, Sergeant, *President*—70.

NAYS—Messrs. Brown, of Lancaster, Brown, of Philadelphia, Clark, of Dauphin, Cline, Crawford, Cummin, Curll, Darrah, Dickey, Dillinger, Fuller, Gamble Grenell, Harris, Hayhurst, Hoffenstein, High, Houpt, Hyde, Magee, Mann, M'Dowell, Miller, Montgomery, Overfield, Payne, Ritter, Scheetz, Sellers, Seltzer, Serrill, Shellito, Stickel, White—34.

So the question was determined in the affirmative.

Mr. Brown, of Philadelphia, county, moved further to amend the section as amended, by adding to the end thereof the following, viz: "But no township, ward or borough shall elect more than two justices of the peace or aldermen, without the consent of a majority of the qualified electors within such township, word or borough."

Mr. B. said that the question about to be decided—the very first blow about to be struck was, whether the people are fit to do any thing, or not fit to do any thing. The convention had already decided that they are competent to elect their magistrates; and it was now about to say, if they are not competent, also, to determine their number. It was no detail, as the gentleman from Lycoming, (Mr. Fleming) had argued, but, it was a question whether the legislature, composed as it is, of men coming from all parts of the commonwealth of Pennsylvania, are better able to judge as to the number of justices and aldermen that should be elected in any township, ward, or borough, than the people themselves? He believed that the people are competent—all competent to decide and settle the question for themselves. He believed that the citizens of every township knew how many magistrates they wanted. He entertained no doubt whatever that the inhabitants of the township he (Mr. B.) represented knew how much business (to use the language of the gentleman from Allegheny) they do, and therefore how many magistrates they required. So do the people living in Luzerne, Susquehanna, Allegheny, or any other county.

He had yet to learn that the representatives of the people knew more than the people themselves. He maintained that leaving the number to be fixed by the legislature, was avowing that the people are not capable of judging as to the requirements of their county. The gentleman from Allegheny (Mr. Forward) asked how the legislature was going to manage—whether members would not be actuated, in a good measure. by their political feelings, and thus legislate with a view to suit political aspirants?

He, Mr. B., knew not exactly how that might be; but, at any rate, the effect of the amendment would be to confer a power on the representatives of the people, which the people themselves could and ought to exercise. There could be no question of it. And, this way of crying out, as many gentlemen here do, was enough to make the heart sick—why, cannot you trust the legislature? And why cannot you trust the governor? Why not trust the executive, and the next legislature? Now, he (Mr. Brown) desired not to place any responsibility upon any body, or any man; what he wished was that the people themselves—the source of all power—should exercise this power, which was proposed to be vested in the legislature. He would say let this power rest with the people. He asked—why not trust the people? Why were gentlemen so ready to trust the legislature and the governor, and yet show no disposition to trust the people? He would say to the gentleman from Allegheny—why not trust the people to say what number of officers they want? That system of government would be the best if the counties were divided into wards or districts, &c. so that the counties might elect their county officers, the townships elect all their township officers, &c. The legislaiure was not

created for the purpose of reglating county matters, or affairs. It was not intended that they should take so narrow and close a view of local regulations: but that on the contrary, they should take a broad and expansive view of all that relates to the general welfare of the state. The legislature as a body could have no common interest with township, or county officers.

He was desirous of leaving the people to say what number of officers they deemed necessary, and not leave the question to be settled by one central power. He hoped that the amendment would be adopted, and that this convention would show by its action and conduct that it reposed some confidence in the judgment and integrity of the people. The delegates of this convention, he trusted, would evince by their conduct that they entertained no such apprehension or belief as that the people of a single township would elect a greater number of officers than they really required, or would be serviceable to them. And, further—that a legislative body possessed no common feeling with them, and knew nothing of their wishes. He would close his remarks by reiterating his belief that the people themselves could much better arrange what number of officers they required, than the legislature for them. He trusted, therefore, that the amendment he had offered would receive the sanction of this body.

Mr. READ, of Susquehanna, remarked that if the gentleman from the county of Philadelphia, had referred to him as being opposed to the principles of the amendment, he was mistaken. He was not aware that he had said any thing which could be construed as unfavourable to the amendment. He was in favor of it.

Mr. FULLER, of Fayette, regarded this as a very important question. It would be recollected that when the subject was up before in committee of the whole, they agreed that the qualified electors should choose justices of the peace and aldermen. After that, a reconsideration took place, not on account of the reasons assigned by gentlemen, but owing to defects in the section. The amendment contained the same principle. The convention was to agree upon the number on second reading. The section passed in committee of the whole, as electing instead of appointing, leaving as he had just stated, the number to be fixed on second reading.

It was admitted that some restriction should be imposed as to limiting the number of aldermen and justices of the peace. There was no opposition. Now, it appeared that the gentleman from Lycoming, (Mr Fleming) and the gentleman from Allegheny, (Mr. Forward) contend that the matter had better be left to the legislature. As the convention had now established the principle of electing instead of appointing, it was necessary in carrying out that principle, to remove the evil complained of, as to their having too many justices of the peace appointed. But, why leave the regulation of the number of officers to the legislature? Why should not the convention say the number that shall be elected in each township, ward, and borough? There has been no good reason assigned to the contrary. What he desired and asked was that the people of the district in which the officer is to reside and exercise his office, shall determine how many officers they want. He would now leave the ques-

tion to the decision of the convention, in the hope that it would be in favor of leaving the people to regulate the number of the justices themselves. He asked for the yeas and nays.

Mr. SILL, of Erie, said that in his opinion the section as it now stood was imperfect, and the vote he would give on the amendment to the proposed amendment, would depend much upon what he should be able to ascertain was to be the jurisdiction of the magistrates who should be thus elected. He had supposed that the natural result of an election, if nothing more, was stated in the amendment? If they are elected as township officers, or borough officers, and there was nothing in the constitution to give them more decided jurisdiction in that township or corporation, he did not know that it should be beyond the limits of it. He thought there should be something in the constitution prescribing the extent, or the limits to which they should exercise their jurisdiction. Now, this appeared to him to be a matter most intimately connected with the question before the convention. If we considered them as county officers—as officers whose jurisdiction extend throughout the county, or convenient districts in the county, as shall be designated their jurisdiction, then it would not be so important as to the character or the number of those officers. For, if it should be discovered, in any one township, that they had not got a competent officer, and if he did not possess the confidence of the public, they might resort to the officer of another county. But, if they were to be considered as mere local officers, whose jurisdiction was confined to where elected, then he (Mr. S) should say it would be injudicious—it would be injudicious—it would be unwise, and it might operate most unjustly, were the number restricted by the people of a township. His opinion was that this matter had been treated as though the justices were mere local officers, and that only, in the township interested in their offices.—He however, did not apprehend this to be the case. And, if such is the understanding, such may be their power and authority. But, was it so, in fact? Certainly it was not. There were many other individuals interested, and must be interested in the magistrates of any one township: persons residing in other counties, in other parts of the state, may have suits brought before those magistrates. He contended that it would tend to produce injustice to the people, if it should happen that one township should select but one justice, or two, if the township was large? He asked if a stranger should come to a township, and bring an action, where there was but one justice, whether it would be giving him a fair chance? It might, or might not. But ought he not to have an opportunity to bring his action somewhere before a tribunal, which might be regarded as more impartial? And, the greater the number of justices in one township, the greater the chance of impartiality. But, the objection he had, related more to the extent of their jurisdiction. He would ask if this would be considered a satisfactory mode of doing justice—supposing that in a township there was one or perhaps two justices of the peace who were connected by the ties of relationship, or consanguinity, (and it would be in the recollection of gentlemen that there were townships in which the case might arise, of two men getting themselves elected, who were related to each other,) and who would not be supposed to act impartially between those who elected them, and those coming from another district? Was it not right that those coming from another dis-

trict should have their choice of justices? But, under the circumstances he had just stated, what justice could be expected? What chance would the stranger have? He (Mr. S.) would repeat the question he had already put:—Was it not right and just that men should have an opportunity of selecting the justice in whom they could have confidence? One general object in administering justice, was to render it in a manner that should give satisfaction to the people. We know that at present the justices are commissioned for particular districts, and that those districts sometimes embrace several townships—and that by the construction given by the act of assembly to the constitution, the justices extend their jurisdiction throughout the county. But, do we know (continued Mr. S.) what construction would be given to *this* provision? Do we know that that construction would be given to it? And, if this construction should be given a justice could have jurisdiction only in his own township, and that a man who has any cause of action against an individual in the township, must resort to that justice, and that justice only. I ask you if any thing would be gained? In my opinion, certainly not. For there might be cases, (and I have no doubt there are cases,) of strangers who would not resort to such a tribunal. And, where is the necessity for it? Is it not right—is it not proper that there should be some choice in the jurisdiction?—that a man who has some cause of action should have an opportunity of going to a tribunal which he believes to be impartial? Why, most unquestionably it is right and proper, and, in this case, would not be attended with any inconvenience. Without, then, there is some provision of this kind going to extend the jurisdiction either throughout the county, or to convenient districts, as the legislature may designate, I shall vote against the proposition. For I do hold it to be a wrong law—an unjust law—that the people of any one township or borough, may say there shall be but two magistrates in that township or borough, and that every individual, whether he reside in that township or borough, or not, if he seek for justice, must apply to those officers, and those alone, whether they have, or have not, any prejudices against them. It appears to me that such a regulation would give great dissatisfaction. It would be a cause of dissatisfaction. What is the object of a constitution, but to extend justice impartially to all? Is it not fair and right to give a man some choice in the tribunal? Most unquestionably it is. My intention was, (if the question had not been ordered,) to have proposed an amendment of this kind, either that the jurisdiction of the justices that should be elected, (and I am in favor of that being done,) should extend throughout the county, or to convenient districts, as the legislature might prescribe. I think it is a matter that ought to be regulated. Besides, there might be cases attended with great inconvenience, and I say with absolute failure and defect of justice.

Mr. S. stated he knew of townships of considerable extent and population in the neighborhood of boroughs, where they have no justices of the peace residing there, nor never had any. Well, supposing that the people there should continue of the same mind, and that after having elected two justices, in pursuance of the constitution, they should happen to resign, or die, or remove from the district or county, and the citizens should fail to elect another justice, and the impression should prevail that no justice should have jurisdiction out of his own county—he would ask,

under those circumstances, how a man was to bring his action for debt, if there was no justice of the peace? This, he conceived, showed the importance of a constitutional provision of the character he had described, and which should prescribe and define what should be the extent of the jurisdiction of the justices of the peace. This question had been treated as if it was one which related to mere local township officers—as if none had any interest except those residing in townships. Now, if the justices of the peace were local officers, as were the supervisors of highways, or the guardians of the poor, and the people should fail to elect, nobody would be injured but themselves. But it was not so with respect to the justices of the peace. The whole community was interested. They were elected as justices, with an important jurisdiction, and all who had claims within their jurisdiction must resort to them. The whole community then, have an interest in their conduct and in their acts. For these reasons he would at present vote against the amendment. Mr. S. then suggested the following modification:

"The jurisdiction of said justices shall extend to every part of the county in which they may reside, but each justice shall keep his office in the district where he was elected."

Mr. M'Dowell, of Bucks, said—I should not have arisen but for the suggestions of the gentleman from Erie. Sir, I think there is an entire misapprehension of the clause adopted this morning. The delegate seems to think that we are now determining the jurisdiction of the magistrates. I do not think so. If I understand the matter rightly, the question of jurisdiction is wholly within the power of the legislature. We have not in the amendment just adopted, said one word about the jurisdiction of the magistrates. I do not think there is any thing in relation to the jurisdiction of townships, wards, and boroughs—the very matter the gentleman wishes to accomplish. We only provide one thing—the number of magistrates in the respective wards, townships, and boroughs, and the manner in which they shall be elected. The matter of jurisdiction, as I have already said, is one entirely for legislation; and it is perfectly within the power of the legislature, and competent for them at any time to say that the jurisdiction of a magistrate shall extend over the county, or shall extend only within certain districts, which shall be provided by them.

Now, sir, what is the question before us? It is contended on one side, that all this power should be vested in the legislature; while, on the other, that a portion of the power should be reserved to the people. Now, I beg gentlemen to understand that we do not give the legislature the power of appointing two magistrates in every township, borough or ward, because, as we lawyers say, it is *prima facie*, a sufficient number, and that not more are wanted. We prefer that the people themselves should elect and have the control of the justices of the peace. But, it is contended by the gentleman from Allegheny, that there are townships, wards, and boroughs that will need more than two. What do we offer to do? All we say is, that the legislature shall not be judges of the exceptions, but that the people in their townships, wards, and boroughs, shall have the liberty of electing officers for themselves. Sir, I hold it as a principle, that the power should be exercised by the people themselves, unless a delegation of that power is necessary. It is for the people themselves to

decide whether they need more than two justices of the peace. I ask, gentlemen, whether under the old constitution, the power given to the governor of appointing a competent number of magistrates, has not been abused? What, sir, is the power which is now asked to be given to the representatives of the people? Why, to appoint a competent number of justices of the peace. That very power which gentlemen say has been abused by the executive, they are willing to give to the legislature. What a farce is this! Give the legislature that power, and my word for it there will not be a legislature in seven years, when there will be less than five hundred applicants teazing them for the office of justice of the peace, and they will say we have got but two, and we used to have eight. The members will then say of the applicant, he is a clever fellow, a good hearted man, and who goes the "whole hog!" Now, if you will go for my justice—I will go for yours.

But this is not the only evil which will result from leaving it in the hands of the legislature. You will have the time of that body taken up, weeks and months, in legislating for justices of the peace; for you may rest assured that there will be no end to the applications. Nay, weeks and months will be occupied in log-rolling magistrates into office. I will not give my sanction to such a state of things.

Mr. CHAMBERS, of Franklin, said that the argument of the gentleman who had just taken his seat (Mr. M'Dowell) was predicated upon the mistaken supposition, that under the amendment which had been adopted, the legislature was to be authorized to appoint justices of the peace. The gentleman, said Mr. C., has compared this proposed exercise of power, with the abuses of power, on the part of the executive of Pennsylvania, under the existing provision of the constitution of 1790. If these abuses have been committed by the governor, he was exercising to an undue extent, the patronage which the constitution of 1790 bestowed upon him. But it is not proposed that the legislature should appoint these magistrates. They are to exercise no patronage—they are to grant no favors. The exercise of the power of appointment is a different thing from the proposed exercise of power limiting the number. The people are to make the choice, and the legislature are to do nothing more than determine the number for the several districts. The legislature, I repeat, are not to exercise the power of appointment—that power, of the abuse of which on the part of the executive, complaints have been made, by reason, as is alleged, of his having increased the number of justices, in order to provide for his political friends.

One objection to the amendment of the county of Philadelphia—which is in fact, the amendment of the gentleman from Fayette—is, that it goes too much into detail, that it takes away from the legislature a power which it is proper that department should exercise. There is a strange inconsistency apparent in relation to the delegation of power to the legislature. At one moment you cannot tie their hands close enough; at another, and in the same provision, you will allow them to go to any extent they may please. What is the power of the legislature here? Under this section there are no limits imposed upon the jurisdiction of the justices of the peace, except such as the legislature may choose to impose. This is admitted by the delegation from Bucks. And what is the extent of it?

Why, if they please, throughout the commonwealth. I say, that if the legislature please, under the provision the jurisdiction of the justices of the peace may be co-extensive with the whole commonwealth, for there are no other limits upon it than what the legislature may choose to impose. I agree with the gentleman from Erie, Mr. Sill, that it is desirable that some limits should be imposed upon that jurisdiction, and I would even have gone on and adopted the amendment, which I submitted yesterday, allowing and enjoining upon the legislature to establish convenient districts for justices of the peace.

There is yet a further objection to the amendment before us. The provision that no township, ward, or borough shall elect more than two magistrates without the consent of the majority of the qualified voters, would be in effect to intimate to the legislature, that *all* townships, wards and boroughs should elect two. It would be regarded as an invitation to them to grant two justices in every such place. I have yet some hopes that before this subject is finally disposed of, an amendment may be adopted, which will give to the legislature the power still to create districts; for if the justices are to be elected in wards, we shall not only have in some of the townships an election for justices in wards, but in many parts the election of justices of the peace, in boroughs which are parts of townships, and which for all township purposes, elect with the people of the township.

In Franklin county there are three boroughs, the inhabitants of which elect the township officers along with the inhabitants of the township. Under this provision as it stands, those boroughs which do not contain more than fifty to a hundred taxable inhabitants, would have the same choice for a number of justices, that a population of ten-fold the number would have.

It is my intention, therefore, to vote against the proposition of the gentleman from the county of Philadelphia, on the ground that it enters too much into detail—detail which ought to be left to the legislature. I shall not myself trouble the convention again with the other amendment of which I have spoken, but I hope that some gentleman may be induced to offer such an amendment, imposing it upon the legislature to district these justices of the peace. There is the objection to which I have referred in my own county, against this section in its present form, and I suppose that the same objection exists in other counties—that boroughs elect with the inhabitants of the township for all township purposes. I hope that such an amendment will be adopted; for, in the absence of it, the section will impose upon these districts the duty of electing the justices of the peace, with all the other officers for the township, against the common interest, and against the wishes of the people.

Mr. SMYTH, of Centre, said that, judging from the expressions which had fallen from some of his friends in the course of this discussion, they seemed to be under the apprehension that there was an inconsistency between the amendment of the gentleman from the county of Franklin, (Mr. Chambers) which has just been adopted by a large vote of the convention, and the amendment now proposed by the gentleman from the county of Philadelphia, (Mr. Brown.) I do not think, said Mr. S., that

there is any thing of this kind. It seems to me that the two amendments are both in their places, and both perfectly compatible with each other.

Mr. S. here read and compared the amendments with each other, and then proceeded;—

I can not discover that these amendments put any restriction upon the people. That of the gentleman from Franklin goes to a certain length and no further, in the power which it bestows upon the legislature; and, as to the amendment now pending, I think it merely explains the matter fully and fairly; and nothing more. Surely there is no inconsistency in this, and I hope the amendment may be adopted. The majority of the qualified electors within the township are to say, whether they will have more than two magistrates; and there is no injunction on the legislature to elect more than two, unless a greater number should be asked for. For my own part, I think the matter is very fairly stated.

I have not risen, however, for the purpose of protracting this debate. The discussion of the subject has already consumed much time, and I rose for the purpose of asking the convention to sustain me in the call for the immediate question.

Which call was seconded by the requisite number of delegates rising in their places.

And on the question,

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 amendment?

The yeas and nay were required by Mr. SMYTH, of Centre, and Mr. FULLER, and are as follow, viz:

YEAS—Messrs. Barclay, Barndollor, Bedford, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Coates, Cochran, Cox, Crain, Crawford, Cummin, Curll, Darrah, Dickey, Dillinger, Donnell, Doran, Dunlop, Earle, Foulkrod, Fuller, Gamble, Gearhart, Grenell, Hastings, Hayhurst, Helffenstein, Henderson, of Dauphin, High, Houpt, Hyde, Ingersoll, Keim, Kennedy, Kerr, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, M'Dowell, M'Sherry, Merrill, Miller, Montgomery, Overfield, Payne, Pollock, Porter, of Northampton, Read, Riter, Ritter, Rogers, Royer, Scheetz, Sellers, Seltzer, Serrill, Shellito, Smith, of Columbia, Smyth of Centre, Stickel, Sturdevant, Taggart, Weaver, White, Young—75.

NAYS—Messrs. Agnew, Ayres, Baldwin, Banks, Barnitz, Bell, Biddle, Chambers, Clapp, Clarke, of Indiana, Cope, Crum, Cunningham, Darlington, Denny, Dickerson, Donagan, Farrelly, Fleming, Forward, Gilmore, Harris, Hays, Henderson, of Allegheny, Hiester, Konigmacher, Long, Maclay, Meredith, Merkel, Pennypacker, Russell, Saeger, Scott, Sill, Snively, Todd, Weidman, Woodward, Sergeant, *President*—40.

So the amendment was adopted.

A motion was made by Mr, PORTER, of Northampton,

Further to amend the section as amended, by adding to the end thereof the following:

"No borough forming part of a township, shall be a separate district; and no borough or township shall constitute more than one district for electing justices."

Mr. PORTER explained, that his reason for offering this amendment was, that he did not wish to see boroughs divided in order to form districts for electing justices of the peace; and so far, said Mr. P., as our own borough is concerned, I am sure, that my constituents have no desire to see it divided. I apprehend that under the construction which will be put upon the section as it now stands, such divisions will be likely to take place.

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 section?

The yeas and nays were required by Mr. CURLL and Mr. FLEMING, and are as follow, viz:

AYES—Messrs. Ayres, Baldwin, Barndollar, Barnitz, Bell, Biddle, Brown, of Lancaster, Brown, of Northampton, Chambers, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Coates, Cochran, Cope, Cox, Crain, Crum, Cummin, Cunningham, Curll, Darlington, Dickerson, Dillinger, Dunlop, Fleming, Forward, Foulkrod, Fuller, Gearhart, Hayhurst, Henderson, of Dauphin, Hiester, High, Houpt, Hyde, Keim, Kennedy, Kerr, Krebs, Long, Lyons, Maclay, Magee, Mann, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Miller, Montgomery, Overfield, Payne, Porter, of Northampton, Purviance, Ritter, Rogers, Royer, Russell, Seager, Scheetz, Sellers, Serrill, Snively, Todd, White, Young, Sergeant, *President*—71.

NAYS—Messrs. Agnew, Banks, Barclay, Bedford, Bigelow, Bonham, Brown, of Philadelphia, Clapp, Crawford, Darrah, Dickey, Donagan, Earle, Farrelly, Grenell, Harris, Hastings, Hays, Henderson, of Allegheny, Konigmacher, M'Cahen, Pollock, Read, Riter, Seltzer, Shellito, Sill, Smith, of Columbia, Smyth, of Centre, Stickel, Sturdevant, Taggart, Weaver, Weidman, Woodward,—36.

So the amendment was agreed to.

A motion was made by Mr. MAGEE, of Perry county,

Further to amend the section as amended, by adding to the end thereof the following, viz:

"No justice of the peace shall have jurisdiction in civil process out of the township in which he shall have been elected."

And the question having been taken,

The said amendment was rejected.

A motion was then made by Mr. SILL, of Erie,

Further to amend the section as amended, by adding to the end thereof the following, viz: "And the jurisdiction of said justices shall extend to every part of the county in which they may reside, but each justice shall keep his office in the district where he was elected."

Mr. DICKEY, of Beaver county, said that he hoped this amendment would not prevail. I believe, said Mr. D., that this is a subject which ought to be left to the discretion of the legislature. I believe that the

time will come, that it will be absolutely requisite to the proper administration of justice, that the jurisdiction of the justices of the peace should be restricted to the wards, townships and boroughs, in which they may be elected. But, I am not ready at this time, to give my vote in favor of placing a provision of that nature, in the fundamental law of the land. I would leave the subject to the legislature, in order that they may act upon it, according to the wants and the wishes of the people, as those wants and wishes may from time to time develope themselves.

I suppose it must be known to the members of the convention, that this subject has heretofore been agitated in the legislature, and that on one occasion, that body came very near to passing a law, restraining the jurisdiction of justices of the peace in civil cases, to the townships and wards for which they were appointed. There can not be a doubt, that great and monstrous injustice has taken place, by the extensive jurisdiction which these magistrates have held. It has been a matter of much complaint from time to time, that the jurisdiction was so extensive, and that it ought to be restricted. But, sir, the constitution is not the place for such details. I do hope they will be left to the legislature, and that we shall not interfere with them here. I will not say any thing further, but I hope that we shall be favored with the yeas and nays on the adoption of the amendment.

Mr. Biddle, of Philadelphia city, said that he believed it to be a great evil that a plaintiff in a suit, should have an opportunity to select a magistrate from a large number, whilst to the defendant, no choice whatever was left. By this means, said Mr. B., if there were ten magistrates in his district, nine of whom are known to be opposed to the principle on which his case rests, a plaintiff may still go to a tenth, who is not opposed to it. This, I think, is a hardship; it is an evil which requires correction. I am, therefore, in favor of restricting the jurisdiction of the justices of the peace in such a manner, as that the plaintiffs may be as limited as possible in the choice of their magistrates, and that the defendants may have exact and impartial justice done to them.

For this reason, I regret that I can not vote in favor of the amendment of the gentleman from Erie. In my view, it is too broad, and can not be attended with any other than injurious effects.

Mr. Sill, of Erie, said that he would say only a few words in reply to the gentleman from Beaver, (Mr. Dickey) and the gentleman from the city of Philadelphia, (Mr. Biddle.)

The argument of the latter gentleman, and I believe also, said Mr. S., of the gentleman from Beaver—if I rightly apprehend him—against the adoption of amendment is, that they are desirous to have the trial of cases impartial. I am as anxious to promote this great object as any member of this body can be, and it is precisely for that reason, that I have offered the amendment. I invite the attention of the convention to it, and I submit to them whether, upon a careful examination, they will not find this to be the very reason why the amendment should be adopted.

It is known to all of us that there are many townships in the commonwealth of Pennsylvania, which contain only a very few citizens. It is known to us also, that there are many townships in the state, where a few

persons can regulate the election; at all events, it can not be improper to say that there are many townships where a few persons or families can regulate the elections, and keep their friends in office. Suppose that a stranger from another district or county, has a case of action against an individual residing in one of these townships. Suppose, also, that the latter is an influential individual. Suppose that there are but few citizens or inhabitants in the township, and, as is not unusual in such instances, that the individual against whom the suit is brought, is a man of controlling power and influence in the elections. I submit to this convention whether a stranger bringing a suit against such an individual, before a justice of the peace who may have been elected by the influence of that very individual, who still retains his office by it, and who may be thrust out of office by it at the first election—I submit to this convention whether in such a case, and under such circumstances, there can be a fair chance for the upright and impartial administration of justice? Is it reasonable to suppose that, before such a justice, thus holding his office by the influence of one of the parties to the suit, and fearing to lose the office by the exercise of that same influence, if he should do any thing to offend its possessor, is it reasonable to suppose that two such parties can meet on fair and equal ground, with a certainty that an impartial trial will be had, and that an impartial judgment will be given? Sir, we have studied human character to little purpose, if we suppose that the chances are any thing like equal. This is precisely the basis upon which my amendment is formed; and the very reason upon which I have offered it is, that there may, for the future time, be a chance for a fair and impartial trial.

Let me call to the recollection of gentlemen, the argument which was urged on the floor, with reference to the appointment of the president judges of the courts of common pleas. It was urged, and probably with a considerable degree of truth, that even in those much larger jurisdictions in the counties and in the districts, a stranger not residing among the parties, and not being identified with the peculiar prejudices and feelings and interests of that neighborhood, would administer justice more satisfactorily than a judge who resided there among the people litigating, and whose mind was, therefore, open to the influences of local partialities and local interests. How much more forcibly then does this argument apply in the case before us; where the whole community by whom the justice of the peace is elected, may be composed of a few individuals or families, and who, as I have said, may probably have a controlling power, and may, from year to year control the elections of the township. It seems to me, that the force of this argument must be at once apparent to the mind of every man. And there is nothing of theory, or speculation in all this. I speak of facts. I say that it is not unusual for such a state of things as I have noticed, to occur. In the course of my experience, I have known many places where such a state of things is to be found. Do you wish the laws and the constitution of the state of Pennsylvania to be such, that any man having a claim against an individual residing in one of these townships, shall be compelled to resort to that justice of the peece, who knows that he may at the next election be put out of office by the power and influence of that very individual? Is this your intention? It cannot be. There would indeed be little justice in such laws or such a constitution.

The gentleman from the city of Philadelphia, (Mr. Biddle) thinks that much hardship results from allowing the claimant to select the magistrate from a number. Under the present system, I have never heard it alleged that hardships were endured to any extent, and yet the jurisdiction of the justices of the peace extends through the county. I do undertake to say, that if you restrict the jurisdiction of the magistrates to their wards, townships or borough in which they may have been elected, you will make a provision which will surely fail to give satisfaction to the people. They will say that they can not have the same chance of justice that they would elsewhere meet.

I have been led to offer this amendment, in the hope that it might be adopted, and in the belief that this matter ought to be placed on a footing so fixed and definite, that every gentleman, when he returns to his constituents, may tell them precisely what the provision is. This he can not do, without the adoption of an amendment such as that before you.

Mr. FULLER, of Fayette, briefly replied to the argument of the gentleman from Erie, (Mr. Sill) which he contended was entirely erroneous, and that experience of the past in reference to the jurisdiction of justices of the peace, proved to his, Mr. F's. mind, at least, that it was much to be preferred to that suggested by the gentleman, which he thought would lead to the realization of those evils that the delegate wished to guard against. Mr. F. entertained the opinion that the better course to adopt was, to leave the subject to the legislature for their regulation, according to circumstances.

Mr. BIDDLE, of Philadelphia, said that when he differed from the delegate from Erie, he was inclined to doubt his own judgment. There was no gentleman in this body whose lead, generally, he would rather follow; but, in the present instance, he felt bound to differ from him. He thought it was important that every individual should select the tribunal before which he was to appear. The defendant, it had been supposed, might be an influential man, and would have it in his power to frustrate the ends of justice. Now he, Mr. B., would ask whether it was not more likely that the plaintiff would be possessed of influence, and that he would have it in his power to crush the unfortunate debtor? And, was it not much more probable that a rich and influential man, who, perhaps, had a great deal of business done by the justice, before whom the case was heard, would get judgment in his favor? He contended that the defendant had a right to select his own court.

He thought it a great evil to admit the claimant to select the magistrate before whom the complaint is brought. Great injustice is done thereby in small claims under five dollars and thirty-three cents, as from his judgment in such cases there is no appeal. A remedy should be devised for this oppression of the poor, for such it certainly is. He felt bound to admit that this subject was full of difficulty; and while at Harrisburg, he had taken occasion to remark on the evils incident to it. He should be compelled to vote against the amendment of the gentleman from Erie.

Mr. M'CAHEN, of Philadelphia county, moved the previous question; which was sustained.

And on the question,
Shall the main question be now put?

The yeas and nays were required by Mr. CHAMBERS and Mr. SMYTH, of Centre, and are as follow, viz:

YEAS—Messrs. Barclay, Bedford, Biddle, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Clapp, Clarke, of Beaver Clark, of Dauphin, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Darrah, Dickey, Dillinger, Donnell, Doran, Foulkrod, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Helffenstein, Henderson, of Allegheny, Hiester, High, Hyde, Keim, Kennedy, Kerr, Krebs, Long, Lyons, Magee, Mann, M'Cahen, M'Dowell, Merkel, Miller, Montgomery, Overfield, Pollock, Porter, of Northampton, Purviance, Read, Riter, Ritter, Rogers, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Sturdevant, Taggart, Todd, Weaver, Weidman, White, Woodward—70.

NAYS—Messrs. Ayres, Baldwin, Banks, Barndollar, Barnitz, Bigelow, Chambers, Chandler, of Philadelphia, Clarke, of Indiana, Cleavinger, Cline, Coates, Cochran, Cope, Darlington, Denny, Dickerson, Donagan, Dunlop, Earle, Farrelly, Fleming, Forward, Harris, Hays, Henderson, of Dauphin, Houpt, Ingersoll, Konigmacher, Maclay, M'Sherry, Meredith, Merrill, Payne, Royer, Russell, Serrill, Sill, Snively, Young, Sergeant, *President*—41.

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, so far as relates to the sixth section?

The yeas and nays were required by Mr. CRAWFORD and Mr. DONAGAN, and are as follow, viz:

YEAS—Messrs. Banks, Barclay, Barndollar, Barnitz, Bedford, Bigelow, Bonham, Brown, of Lancaster, Brown, of Nothampton, Brown, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Crain, Crawford, Cummin, Cunningham, Curll, Darrah, Dickey, Dickerson, Dillinger, Donnell, Doran, Earle, Fleming, Forward, Foulkrod, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Helffenstein, Henderson, of Dauphin, High, Houpt, Hyde, Keim, Kennedy, Kerr, Krebs, Lyons, Magee, Mann, M'Cahen, McDowell, Merkel, Miller, Montgomery, Overfield, Payne, Pollock, Purviance, Read, Riter, Ritter, Rogers, Scheetz, Sellers, Seltzer, Shellito, Sill, Smith, of Columbia, Smyth, of Centre, Stickel, Sturdevant, Taggart, Weaver, White, Woodward, Young—76.

NAYS—Messrs. Agnew, Ayres, Baldwin, Biddle, Chambers, Chandler, of Philadelphia, Cline, Coates, Cochran, Cope, Cox, Crum, Darlington, Denny, Donagan Dunlop, Farrelly, Harris, Hays, Henderson, of Allegheny, Hiester, Hopkinson, Ingersoll, Konigmacher, Long, Maclay, McSherry, Meredith, Merrill, Porter of Northampton, Royer, Russell, Saeger, Serrill, Snively, Todd, Weidman, Sergeant, *President* 38.

So the report of the committee of the whole as amended, so far as relates to the sixth section, was agreed to.

Mr. EARLE, of Philadelphia county, thought the section imperfect in one respect, and that it would fall short of the expectations of the people. He alluded to that part of it which was introduced on the motion of the gentleman from Northampton, (Mr. Porter) providing that no borough which constitutes a part of a township, shall be a separate district. The question arises, at once—what is a borough? And, he, Mr E., would ask, if the Northern Liberties of the county of Philadelphia are not a borough. So of the district of Penn township which constitutes four

wards, and Kensington, five wards. They may all be termed boroughs. But, whether they are so, or not, is the question.

A motion was made by Mr. MERRILL,

That the convention do now adjourn.

Which was agreed to.

Adjourned until half past nine o'clock on Monday morning.

MONDAY, JANUARY 29, 1838.

Mr. KONIGMACHER, of Lancaster, submitted the following resolution, viz:—

Resolved, That the ninth article of the constitution be referred to the committee appointed to prepare and engross the amendments for a third reading, and that they be directed to report an amendment to said article, providing that the right of trial by jury may be extended to every human being, and that the said committee be directed to prepare and engross said article for a third reading.

Mr. KONIGMACHER moved that the convention now proceed to the second reading and consideration of the same, but the motion was not agreed to.

Mr. PAYNE, of M'Kean, submitted the following resolution, viz:

Resolved, That the convention will, on Wednesday next, resolve itself into a committee of the whole, to take into consideration alterations and amendments to the fourth section of the first article of the constitution, and that that shall be the order of the day for Wednesday next.

Mr. PAYNE moved that the convention now proceed to the second reading and consideration of the same, but the motion was rejected.

Mr. M'SHERRY, of Adams, moved that the convention reconsider the vote given on the 19th instant, on the adoption of the report of the committee to whom was referred the manner of distribution of the Debates and Journals of the Convention, in order that he might move a special amendment, which, he hoped, would be agreed to.

The motion to reconsider was agreed to;

And the report being under consideration,

Mr. M'SHERRY moved to amend the same in the 12th line, by inserting the words as follow, viz: "To the American Philosophical society, one copy; the Mercantile Library company of Philadelphia, one copy: and to the Apprentices' Library company of Philadelphia, one copy:" and by striking therefrom the word "thirteen" in the 18th line, and inserting in lieu thereof, the word "ten."

Mr. DARLINGTON of Chester, moved further to amend the report in the 12th line, by adding the words—"To the Pennsylvania Hospital Library, one copy," and in the 13th line, to strike out "ten" and insert "nine."

Mr. PORTER, of Northampton said, that if this motion was agreed to, he would move an amendment, to supply every college in the state with a copy.

Mr. COX, of Somerset, suggested that the amendment of the gentleman from Chester, was not in order. The vote was taken on the motion to reconsider, for the purpose of introducing a special amendment.

Mr. M'SHERRY accepted the amendment as a modification of his amendment.

Mr. SMYTH, of Centre, asked for the yeas and nays on the amendment, and they were ordered.

The question was then taken on the motion of Mr. M'SHERRY and decided in the negative by the following vote, viz:—

YEAS—Messrs. Barnitz, Brown, of Lancaster, Brown, of Philadelphia, Chambers, Chandler, of Philadelphia, Clark, of Dauphin, Cline, Cope, Cox, Crain, Cunningham, Darlington, Hays, Hiester, Hopkinson, Ingersoll, Kerr, Mac'ay, M'Cahen, M'Dowell, M'Sherry, Merrill, Nevin Purviance, Read, Riter, Royer, Russell, Saeger, Snively, Todd, Young, Sergeant, *President*—33.

NAYS—Messrs. Agnew, Ayres, Banks, Barclay, Barndollar, Bedford, Bell, Bonham, Brown, of Northampton, Clarke, of Beaver, Clarke, of Indiana, Cleavinger, Cochran, Crawford, Crum, Cummin, Curll, Darrah Dickerson, Dillinger, Donagan, Donnell, Fleming, Forward, Fry, Fuller, Gamble, Gearhart, Gilmore, Harris, Hastings, Hayhurst, Heffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Houpt, Hyde, Kim, Kennedy, Konigmacher, Krebs, Long, Magee, Mann, Martin, Merkel, Miller, Montgomery, Overfield, Pollock, Porter, of Northampton, Ritter, Sellers, Setzer, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Sturdevant, Taggart, Weaver, White, Woodward—64.

The report of the committee was then agreed to.

SIXTH ARTICLE.

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 sixth section of the report, as amended, being under consideration,

Mr. PAYNE, of M'Kean, moved that the convention reconsider the vote of the 27th instant, on the said report, so far as relates to the sixth section, as amended.

Mr. PAYNE stated his object to be to move an amendment which he had prepared, and had intended to propose on Saturday, but the number of amendments which were offered, precluded him from doing so. The amendment of the gentleman from Northampton, (Mr. Porter) which had been agreed to, would not answer the expectation or meet the approbation of the people. The people in the townships would get at variance with the people in the boroughs, and elect officers resident in the most remote part of the counties. The choice, if the former were the strongest, would always go against the boroughs. He had another objection. In the town-

ship he represented, the large boroughs were thinly populated, and require no justices. He intended to move to reject the whole section as amended, and to substitute the amendment which he had prepared.

I am not, said Mr. Payne, very particular about this matter, but I should like to have the vote reconsidered, in order that we may, at all events, have an opportunity to strike out the amendment of the gentleman from Northampton, (Mr. Porter) if for no other purpose. I hope, also, that some gentleman will prepare an amendment providing for the regulation of the districts.

Mr. Fuller, of Fayette, said it appeared to him that it would be entirely useless to reconsider this vote. The very objection raised by the gentleman who has just taken his seat, said Mr. F., is to my mind evidence against the necessity of a reconsideration.

Mr. F. made a few brief remarks in reply to the objections of Mr. Payne, which, however, could not be distinctly caught, and concluded by saying—

The amendment prepared by the gentleman from Northampton, (Mr. Porter) which was engrafted on to the section on Saturday is, in my view, entirely harmless. I think, indeed, that we could do as well without it, as with it. And I can see no necessity to reconsider the vote.

Mr. Payne said, that the gentleman from Fayette, (Mr. Fuller) did not exactly answer the objections which he had urged against the amendment, and in favor of a re-consideration. Those objections, said Mr. P. were, that where there was a borough in the township, and the balance of the township were able to out-vote that borough, they would, in nine cases out of ten, elect their officers, and deprive the borough of their officers, although it is known that the borough is the place where the officers ought to be elected. It is there that men of business are generally to be found. In nine cases out of ten, where they were able to do it, they would elect their justices at the further end of the township, and if it is to be a constitutional provision, that no borough shall be a separate district, the legislature will have no power over it.

Mr. Woodward, of Luzerne, said that he felt generally disposed to vote against all motions to reconsider, unless the necessity for so doing, should be made very apparent. My reason for this is, said Mr. W., that I am anxious to go ahead, and to get through our business with as much despatch as is possible, with a due regard to safety.

In the present instance, however, I am inclined to the opinion that the vote ought to be reconsidered, as I think that the amendment of the gentleman from Northampton, was adopted without proper reflection; and, if it were not so, I feel satisfied, in my own mind, that its practical operation will be injurious, and therefore, it is, that I am disposed to reconsider the vote, in order that we may get at that amendment. It seems to me to be unreasonable in its character, mischievous in its operation, and such as cannot be otherwise than unacceptable to the people. And I hope that the reconsideration will take place without more words; and but simply for the purpose, as I have said, of getting rid of the amendment of the gentleman from Northampton, which, I cannot help thinking, was adopted unadvisedly and without due consideration.

Mr. CHAMBERS, of Franklin, said that when the previous question was demanded and sustained on Saturday last, he was under the impression that the whole section was not in the form required for perspicuity and certainty. And, notwitstanding, that several gentlemen were then of opinion, that it had been adopted after mature deliberation and reflection, I think, said Mr. C., that it is now evident to all, that what was done, was hastily done, and that it is deserving of reconsideration, not, however, for the purpose indicated by the gentleman from M'Kean county, (Mr. Payne.)

There seems to me to be a misunderstanding in the minds of some gentlemen, in relation to the mode of election, in most of the boroughs of the state. In the county which I in part represent, there are boroughs that elect by the voters of the township for all county officers. They are boroughs for certain limited purposes only, and I understand this to be the case in other counties of the state. Now, an amendment to a certain extent, such as that submitted by the gentleman from Northampton, and adopted on Saturday, is requisite for these boroughs and townships, as there are many of them; for, in the absence of such a provision, boroughs having fifty or one hundred taxable inhabitants, would be a separate district for the election of these officers. All details in relation to these districts, ought to be left to the discretion of the legislature. The amendment as at present adopted, reads:—

"No borough forming part of a township shall be a separate district; and no borough or township shall constitute more than one district for electing justices."

Now, there may be boroughs of such a size that it would be proper to let them vote for their justices, and this I think ought to be left to the legislature. The amendment I think should be modified in this respect; probably the difficulty might be obviated by the introduction of the words, "until otherwise directed by law."

I suggest also another matter to the consideration of the convention.

I would ask the members whether or not, under the section, as it was reported to us from the committee of the whole, it is imperatively enjoined upon the people of all the townships in the state to elect aldermen as well as justices of the peace? Is it not imposed upon the voters in all the townships of the commonwealth to elect aldermen as well as justices of the peace? Is it not enjoined upon all voters in the city of Philadelphia, that they shall elect justices of the peace as well as aldermen? Should not the word "or" be substituted for the word "and"? In forming a constitution, we ought to use certain and unambiguous language—language which will not admit of a doubtful construction.

I hope that the motion to re-consider will prevail, in order that the attention of the convention may again be brought to this section, important as it is to the people of the commonwealth.

Mr. BANKS, of Mifflin, said that it had for the most part been his rule to sit still and listen during the protracted discussion which had taken place on this section of the constitution.

When, said Mr. B., the gentleman from the county of Philadelphia

called for the previous question on Saturday last, I felt as though we were likely soon to be brought into a situation which, as the gentleman himself must by this time have discovered, would not answer our purposes. And I begin to fear that there is a probability that we shall leave the constitution, in this particular, in a worse condition than it was when we took it up.

The remarks of the gentleman from Luzerne, (Mr. Woodward) from M'Kean, (Mr. Payne) and from Franklin, (Mr. Chambers) are all of them in my judgment appropriate.

But there is one matter which has not been spoken of by them. Is it intended to leave justices of the peace a jurisdiction over commonwealth cases, as well as civil cases? If the terms of the section are permitted to remain as they now stand, the jurisdiction of the justices of the peace is either limited by the wards, boroughs or districts in which they may be elected, or it is co-extensive with both. The amendment of the gentleman from Northampton, which now forms a part of the section, provides that the legislature shall not authorize the election of justices of the peace, in boroughs forming parts of townships.

What is the exact meaning of this amendment, it is for the gentleman from Northampton to explain, for I do not think that any other member can do so. There are boroughs in the state that are joined with the townships in the election of certain officers, but it is not to be presumed that they will remain stationary in point of population. It is most probable that in a few years, many of those boroughs which now contain but from fifty to a hundred taxable inhabitants, may contain five hundred or more. I hope that the gentleman from Northampton, will vote in favor of the motion to re-consider.

As to the proposition to limit the number of the justices of the peace to two to each district, according to the amendment originally offered by the gentleman from Fayette, (Mr. Fuller) I have much doubt as to its propriety. For my own part, I should like to see a provision inserted in the constitution of Pennsylvania, similar to that which is to be found in the constitution of the state of Michigan, where the justices of the peace are elected for the term of four years—one to go out every year, and, consequently, one to be elected every year. I should be gratified if we could limit the number to five, except in boroughs, wards and so on, where there might be an immense mass of population. At all events, I hope that the motion to re-consider will prevail, so that an opportunity may be given to us to put this section in a less objectionable form.

Mr. PORTER, of Northampton, said that he could not exactly tell whether the gentleman who had just taken his seat, (Mr. Banks) intended to read him a lecture, or not. If he did so, said Mr. P., I will at any rate take it in good part, and I will briefly explain why I offered the amendment which has called forth so much animadversion.

I suppose it is competent for a member of this body to be opposed to this mode of electing the justices of the peace, and yet that, finding his opposition unavailing, he may use his best exertions so to regulate that mode as to make it as little objectionable as possible. This is precisely the position in which I stand. From first to last, I have been opposed to the entire section, because it proposed that the justices of the peace should be

elected. It is known to all the members of this convention, that I have always been opposed to the election of judicial officers; but since the principle had been settled in committee of the whole, that the justices should be elected, and as there appeared no disposition to change it, I felt desirous that the section should at all events go forth to the people in as unexceptionable a form as possible. I am above all subterfuge; and whatever gentlemen may be pleased to think of my course, they may be assured that they will never find me flinching from what I believe to be a conscientious discharge of my duty.

I do not know that I shall make any objection to the re-consideration of the vote, if the section can thereby be made more perfect. That part of the amendment which says that no borough, forming part of a township shall be a separate district, &c., was no project of my own. It was introduced by the gentleman from Franklin. But I do not wish to see justices of the peace multiplied beyond the proper number. I am of opinion that we have too many already. It is conceded upon all hands that we have too many—I shall, therefore, go in favor of any proposition which will restrict the number. I voted for the amendment introduced by the gentleman from Fayette, because I thought it would have that effect. In my borough we have about six hundred voters. It is divided into two wards; we have seven justices of the peace, and only two of them that do business—at all events, the remainder do but little, if any. I believe that two would be amply sufficient for the transaction of all the business there. I entertained the opinion, therefore, that no borough forming part of a township, should be a separate district. Probably, a little phraseological alteration, such as the introduction of the words "until otherwise directed by law," as suggested by the gentleman from Franklin, (Mr. Chambers) might be desirable.

I repeat that, after all the efforts which I could make to render the section as unobjectionable as possible, I felt myself bound to vote against it, because I could not give my sanction to the principle it contained in reference to the election of judicial officers.

Mr. Forward, of Allegheny, said the convention should bear in mind that although in the section as it now stood, the number of "two" justices of the peace was mentioned, still there was nothing imperative in that respect. The number might be fixed by the legislature, and although the word two was mentioned, yet in some places there might only be one elected. I think, said Mr. F., it would be better to elect separately either one or two justices of the peace, or to leave the matter to the direction of the legislature. At all events, I think the vote should be re-considered in order that the amendment of the gentleman from Northampton, (Mr. Porter) may be made more acceptable. I think that it would be better to leave the boroughs to elect their justices of the peace; otherwise, I apprehend that much inconvenience might be produced.

Mr. Hiester of Lancaster, said that he had been opposed altogether to the adoption of this section, for the reasons, which on a former occasion, he had explained to the convention. But, said Mr. H., inasmuch as I know it to be certain that the principle laid down in it would be adhered to by a decided majority of the members of the convention, I was disposed like the gentleman from Northampton, (Mr. Porter) to do all within my power to render the section as perfect as possible.

When the section first came up in committee of the whole, I thought it was imperfect, and with all the amendments and modifications which have since been adopted, I still believe that it is not as perfect as it ought to be But, to use a term of rather expressive import in these days, we have been tinkering at it day after day and we have made two or three amendments which, in my view, have rendered it even more imperfect than it appeared to be in committee of the whole. There is a diposition manifested on the part of this body to run too much into detail on this, as there has been on other matters which have come up for our deliberation and action. This is to be deprecated. We should lay down general principles only in this, which is to be the fundamental law of the land, and we should leave the legislature to go into details. Certainly it is not our province to do so. In the constitutions of the states of Ohio and Indiana, I find that, in relation to the justices of the peace, there is no more of detail than in our section, as it was in committee of the whole. In proof of this, I will briefly refer to them.

The constitution of the state of Ohio, article three, section two, reads as follows:—

"A competent number of justices of the peace shall be elected by the qualified electors in each township in the several counties, and shall continue in office three years; whose power and duties shall from time to time be regulated and defined by law."

Here, continued Mr. H., there is not a word said about the number of these officers, nor how it shall it be fixed, whether by the legislature or the people. I apprehend, however, that the legislature regulates that matter, and I believe it to be much better that all minor matters of this description should be left to the action of the legislature.

The constitution of the state of Indiana, article five, section twelve, reads as follows:—

"A competent number of justices of the peace shall be elected by the qualified electors in each township in the several counties, and shall continue in office five years, if they shall so long behave well; whose power and duties shall from time to time be regulated and defined by law."

Here also, continued Mr. H., there is not a word said about the number. The framers of these constitutions laid down a general principle, and left the details to be carried out by the legislature. And such should be our course here.

For these reasons, I shall vote in favor of the motion to re-consider, not, however, for the purpose of introducing the suggested amendment of the gentleman from McKean, (Mr. Payne) but to do away with the matter of detail which we have already added to the section since it came up on second reading in convention; and which, in my judgment, renders it more complicated and more difficult to be carried out than if we had left the section as it was in committee of the whole. It strikes my mind, however, that there is something in the suggestion of the gentleman from Franklin (Mr. Chambers) as to making the section read "justices of the peace *or* aldermen," instead of "justices of the peace *and* aldermen" as it reads at present. If left as it is, I think it is very probable that it would bear the construction indicated by that gentleman, which certainly

never could have been the intention of the committee who reported the section.

When we take into consideration how very difficult a matter it is, to fix the number of the justices of the peace by a constitutional provision, it does seem to me that it would be better to leave it entirely to the legislature. Here, for example, may be a township which at this time may require only one justice of the peace, or probably none at all—for we know that there are many townships which require none at the present time—but which may, in the course of a few years, have increased so much in their amount of population as to require two, three, or more justices. Any provision which we may place in the constitution, cannot answer for any length of time; and it is right, therefore, that the regulation of this matter should go to the legislature, where such changes may from time to time be made as circumstances or the increase of population may from time to time require.

For these reasons, I shall vote in favor of the motion to re-consider.

Mr. BROWN, of Philadelphia county, said that he supposed it was almost useless to say any thing in opposition to the motion for re-consideration. But, said Mr. B., I will ask the attention of the convention to the different motives which actuate gentlemen in their support of that motion, so that we may see how little chance there is, if it should prevail, of our coming to any definite conclusion.

The gentleman from M'Kean county, (Mr. Payne) who submitted the motion to re-consider, wants to insert a provision the nature of which he has indicated. The gentleman from Lancaster, (Mr. Hiester) desires to throw the whole matter back to where it was in committee of the whole. The gentleman from Franklin, (Mr. Chambers) desires to have an alteration made in the phraseology, and the gentleman from Mifflin, (Mr. Banks) desires a re consideration for something else.

Mr. BANKS rose to explain. He was desirous that the motion to re-consider should prevail, in order to amend every part of the section.

Mr. BROWN resumed.

The gentleman from Mifflin, then, desires to amend by wholesale.

The gentleman from M'Kean, (Mr. Payne) who, as we all know, joined the convention at a late period of its session, is not aware, and can not be aware of the nature of the difficulties we experienced in committee of the whole, in coming to any settlement of this question. He is not, probably, aware that every proposition which the ingenuity of gentlemen could suggest, was brought up, discussed and voted upon. But with other gentlemen the case is different. Surely, if the past is not altogether lost upon us, we must see that it is a hopeless case, especially at this late hour, to introduce these various propositions. With the exception of the separation proposed by the gentleman from Northampton, (Mr. Porter) I think the section is as perfect as it can be.

Let it, therefore, remain as it is; and when it shall come up on second reading, we can go into committee of the whole, for the especial purpose of changing the phraseology, if it shall be found that such a change is necessary or desirable. But if we agree to re-consider the vote, the whole

matter will be again laid open; we shall once more be thrown upon the sea, and we know not when or where we may bring up.

I hope, therefore, that the motion to re-consider will be rejected, and that we shall let the matter rest until gentlemen bring their own conflicting opinions to something like a point, so that one may not vote for one reason and another for another.

Mr. BELL, of Chester, said that when the convention was in committee of the whole, on the sixth article, and this section in relation to this very important class of judicial men under consideration, we were told to wait till it should come up on second reading, at which time, in all probablity, the convention would be in a better temper to come to a calm and quiet conclusion.

And what do we hear now? said Mr. B. The gentleman from the county of Philadelphia (Mr. Brown) tells us now that we should wait until the article comes up on its third reading, when it is probable (and, as we all know, *merely* probable) that we might again go into committee of the whole for the purpose of considering this very imperfect and objectionable section—objectionable in every point of view in which it can be considered, whether as regards the principle or the phraseology.

There is no one fact more certain than this—that whenever a body like this acts from impulse, or in a hurry, their acts will generally end in error. On Saturday, before the demand was made for the previous question, every proposition for amendment was received with so much impatience, and with such an appearance of disgust, that many of us retired from the contest, and were willing rather that the section should be agreed to in the shape in which it stood, than expose ourselves to the temper of the convention.

I had an amendment to offer, which, in my view at least, is of considerable importance, and involving an important principle. I have not yet intimated here what the character of that proposition was, although it has been the subject of private conversation among some of us. Nor will I at this moment say what it is, as I am fearful that, if I did, it might probably be the means of losing some votes in favor of the motion to re-consider.

According to the phraseology of the section, as it now stands, the citizens of counties would have a right to elect aldermen. It was a subject of serious consideration whether we ought to say any thing about aldermen. That word is used in the constitution of 1790, and was derived from the charters of cities in England creating municipal corporations. He would repeat that it was questioned if, in this constitution, we should say any thing about aldermen. He would vote in favor of the motion to reconsider.

Mr. EARLE, of Philadelphia county, said that he had always been of the opinion that legislation by the previous question, was the most irrationa, of all legislation. It was a rule that ought never to have been introduced Indeed it was originally introduced for no other purpose but to prevent or suppress a mere disposition to procrastinate the business by the introduction of frivolous amendments, or frivolous speeches. Happily under our

new rule we have arrived at a rational mode of legislation. It was a rule which should be adopted by all legislative bodies. He trusted that now we had adopted it, we would apply it in a rational manner, and not spring the previous question, and thus prevent delegates from laying their views before us, which might be, perhaps, of the highest importance. He regretted that his colleague did not vote for the pending question, instead of the previous question, as gentlemen appeared to be dissatisfied with the amendment of the gentleman from Northampton, (Mr. Porter.) He hoped that for the future the convention would legislate by the question, and not the previous question. He could not concur with his colleague that we had better postpone this matter till the third reading.

He, Mr. E., had objected to put off till the second reading, and had seen the folly of it. When the convention arrived at second reading, gentlemen were prevented from offering amendments. He was not for putting that off till to-morrow which might be done to day. When we came to a third reading we should be told to wait for future amendments.

The amendment of the delegate from Northampton (Mr. Porter) was radically inconsistent with other parts of the section. We are told that each ward must choose an alderman separately, and that the townships and boroughs shall not elect their magistrates jointly. But when we come to a borough, which is divided into wards, and has a large populatiou, who desire to elect their magistrates separately, still gentlemen say that shall not be done. And thus, it was imperatively necessary to say that the people shall follow one rule in the city, and another in a borough, but precisely contrary. There was as much reason why the citizens of each ward of a borough should elect their own magistrates, as that it should be done in the city of Philadelphia. It was as easy to unite the county of Pike and the county of Wayne, as the borough of Harrisburg. There was no consistency in the reason. He hoped the motion to re-consider would prevail.

Mr. Brown, of Philadelphia county, said he would look to the history of the past, which was admonitory. We began this discussion in relation to the justices of the peace, on the third of July, and it occupied four or five days before the amendment was passed, which was in these words, viz:

Section 5. "Such number of justices of the peace and aldermen, shall be elected in the several wards, boroughs and townships, for a term of five years, as a majority of the voters of the districts may determine by ballot, after this constitution shall be adopted, and every five years thereafter, in such manner as shall be directed by law."

That amendment was adopted by a vote of fifty-four to forty-nine. The question was sanctioned, afterwards again opened by the delegate from Susquehanna, (Mr. Read) for the purpose of giving the legislature some control in the matter, and after thirty or forty propositions had been offered by different members, the amendment remained as it was, and as he had just read it, without regulating the number. And now it had got back to this shape:

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 con-

stables, by the qualified voters thereof, and in such manner as shall be directed by law, and shall be commissioned by the governor, for a term of five years. And no township, ward or borough, shall elect more than two justices of the peace, without the consent of a majority of the qualified electors thereof.

Then, next came the amendment he objected to, adopted on Saturday.

"No borough forming part of a township, shall be a separate district; and no borough or township shall constitute more than one district for electing justices."

We do not open this subject now, in order to get a majority of the amendments. The gentleman from Chester (Mr. Darlington) had suggested a new principle, and shown, in every way, his hostility to the election of justices of the peace; and doubtless, he would do all he could do to defend the accomplishment of that object. We should therefore gain nothing by re-consideration, except to alter the amendment. And, that could be done without re-considering the whole subject, and going into committee of the whole. He trusted that the convention would not re-consider, but keep the section as it is, until we get a majority to agree.

Mr. FLEMING, of Lycoming, said that he would, notwithstanding the remarks of the gentleman from the county of Philadelphia, (Mr. Brown) vote for the re-consideration. The section was, as he said on Saturday, very defective He was now ready to hear coolly, and calmly any and every proposition that might be offered. He had not been satisfied with any proposition that had been introduced. Every one relating to fixing the number of justices of the peace, was attended with difficulty.

The moment we attempt to enter into the details—to carry out the elective principle, as suggested by the gentleman from the county of Philadelphia—to leave the people to select the number of justices of the peace they may deem proper, every man of any experience cannot but see that the attempt must be attended with enormous difficulties. Gentlemen were all very anxious, and naturally so, to bring the business of this convention to a close, but he would put it to those delegates who seemed disposed to pass lightly over the section before us, and not give to it the consideration which its importance demanded, and making it as perfect as possible, whether they would be acting prudently? Let gentlemen not forget that the election of the justices of the peace makes a very important change. And, so important did he regard it, that he was entirely opposed to trusting legislation in reference to it.

If any gentleman wished to make a suggestion, he would not go for the previous question, or restricting the debate until, every gentleman had had an opportunity of expressing his views. In whatever shape the section was adopted, the election of the justices of the peace was a material and very important change, and it was necessary to act with discretion. It did not necessarily follow that because the section, in its present shape, had been adopted by a vote of this body, it could not be made more perfect. He confessed that he was desirous to go into a re-consideration in order to make it as perfect as possible.

Mr. FULLER and Mr. HENDERSON, of Dauphin, asked for the yeas and nays, which were ordered.

The question was then taken on the motion to re-consider, and decided in the affirmative—yeas 76, nays 35.

YEAS—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Bedford, Bell, Biddle, Bonham, Brown, of Lancaster, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Indiana, Cleavinger, Cline, Cochran, Cox, Crain, Crum, Cunningham, Darlington, Dickey, Dickerson, Donagan, Donnell, Earle, Farrelly, Fleming, Forward, Gamble, Gilmore, Hastings, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hyde, Ingersoll, Keim, Kerr, Konigmacher, Long, Maclay, Magee, M'Cahen, M'Sherry, Meredith, Merrill, Miller, Montgomery, Nevin, Payne, Pollock, Purviance, Read, Ritter, Rogers, Royer, Russel, Saeger, Seltzer, Serrill, Sill, Smyth, of Centre, Snively, Stickel, Studevant, Taggert, Todd, Weaver, Weidman, White, Woodward—76.

NAYS—Messrs. Barnitz, Bigelow, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Beaver, Clark, of Dauphin, Cope, Crawford, Cummin, Curll, Darrah, Dillinger, Doran, Dunlop, Fry, Fuller, Gearhart, Grenell, Harris, Hayhurst, High, Houpt, Kennedy, Krebs, Mann, M'Dowell, Merkel, Overfield, Porter, of Northampton, Riter, Scheetz, Sellers, Shellito, Smith, of Columbia, Sergeant, *President*—35.

The question then recurring on the following amendment, offered by Mr. SILL, on the 27th instant:

"And the jurisdiction of the said justices shall extend to every part of the county in which they may reside, but each justice shall keep his office in the district where he was elected."

Mr. SILL (at the suggestion of Mr. Porter) withdrew the amendment.

A motion was then made by Mr. PORTER, of Northampton,

That the convention re-consider the vote given on the 27th instant, on the amendment to the said section, in the words as follows, viz: "No borough forming part of a township shall be a separate district, and no borough or township shall constitute more than one district for electing justices."

Mr. MEREDITH, of Philadelphia, suggested that as the majority seemed to think that a new section should be introduced, the best way would be to negative the report of the committee.

The motion to re-consider was agreed to.

Mr. PORTER then withdrew his amendment, and offered the following:

"Justices of the peace or aldermen *may* be elected in the several wards of the city, and of the incorporated districts of the county of Philadelphia, and in the several boroughs and townships by the qualified electors thereof, in such number, and at such time as shall be directed by law; and shall be commissioned by the governor for a term of five years. No ward, borough or township, shall be entitled to elect more than two justices of the peace, or aldermen, unless by consent of a majority of the qualified electors thereof. And in no instance shall the number for any ward, borough or township, exceed five."

Mr. WOODWARD, of Luzerne, asked for a division of the question, to end with the words "five years."

Mr. PORTER explained that his reason for substituting the word "may" for "shall," was, because some do not wish justices of the peace, and this is imperative.

Mr. DICKEY, of Beaver, thought it was not in order to offer a substitute for the entire section, after a motion had been made to re-consider, and agreed to.

The PRESIDENT decided that the amendment was in order—there being no substantial difference between it and the section now before the convention.

Mr. MERRILL, of Union, said it seemed to him that there ought to be a modification of the amendment. It surely was not the intention of the delegate from Northampton, (Mr. Porter) to say that the borough of Harrisburg, or any other large borough, shall not elect more than five justices of the peace.

Why, he Mr. M., would ask, ought we to put any restriction against their having more than that number? For, the time might come when more than ten would be required. He thought it was asking too much when it was proposed to limit the number in this manner. We know not but, before many years had passed away, that Harrisburg or Reading might become a city. The one might have aldermen, and the other none. He wished that the gentleman would say that the wards shall elect separately as well as the boroughs. Why should the whole borough of Harrisburg be thrown together in the election of justices of the peace? There was no reason whatever. It might be divided as to politics, but we were not to regard this. There seemed to be great impatience manifested by the convention on this subject as well as on every other.

Let gentlemen reflect that if they send out one imperfect amendment, the consequence might be that the people would vote against the whole constitution. It would be mortifying enough if the proceedings of this convention should be voted down for want of precision. He had some feeling on this point. He had no desire to see their work thrown to the winds, and all owing to its being in an unintelligible shape, so crude indeed, that no one—not even delegates themselves—could understand it. For himself, he could say that he was willing to devote all his time to put the constitution in the best form, whether he approved, or not, of the amendments. Then it would be for the people to decide, and if it should be against his opinion, he would be satisfied.

We must take time to do well, or else go home and say that we can do nothing. He would not like his literary reputation to be destroyed. For the reasons which he had assigned, he asked the gentleman from Northampton to give some consideration to the suggestions he, Mr. M., had thrown out.

It is for this reason (said Mr. Merrill) that I ask the members of the convention to give their deliberate consideration to this matter. The principles by which it is to be regulated are now fully known and understood by all of us, and I have no doubt that, with a little patience, we may in the course of a short time—say an hour to an hour and a half—put the phraseology of the section into such a form as to make it entirely unex-

ceptionable. All that is necessary for this purpose, is a little calm consideration.

Mr. DARLINGTON, of Chester, said, that he concurred in the opinion which had been expressed by the gentleman from the city of Philadelphia, (Mr. Meredith) that the proper way to get at this matter, would be, in the first place, to reject the report of the committee of the whole.

I believe (said Mr. D.) that one of the great difficulties which we experience in coming to a final settlement of this question, is to be attributed to the attempt which is made to incorporate into the constitution of Pennsylvania, a provision which does not exist in the constitution of any other state of the Union—that is to say, a provision in relation to aldermen. The aldermen are the creatures of the law; their offices are defined by law; the time of their service, the manner of their being chosen, and their duties, are all matters which are defined and regulated by law. In the constitutions of the states of Tennessee, Illinois, Indiana and Ohio, you find a provision regulating the justices of the peace, but no where, I think, do you find a provision in relation to aldermen. It is entirely unnecessary to say any thing about the last named class of officers. There is no need for any constitutional provision in regard to them. All we want here, unless I greatly misapprehend, is the insertion of such a provision as we find in the constitutions of the states of Ohio and Indiana—leaving all the details to be decided by the action of the legislature. With a view to accomplish this object, I have sketched what is nearly the provision of the constitution of Indiana, with one or two slight exceptions, and which, I think, would cover the whole ground in question. The constitutions of both the states of Ohio and Indiana, declare "that a competent number of the justices of the peace" shall be elected, &c. Now, I propose, that the number for each township shall be regulated and defined by law, and that they shall be elected for the term of five years. If, therefore, the whole of this section is rejected, as proposed by the gentleman from the city of Philadelphia, it seems to me that some such new section might be agreed upon, dismissing all the details, and leaving them to the legislature, where they properly belong. For my own part I cannot vote for it, because I am entirely opposed to the principle of electing the justices of the peace. I thought it well, however, to bring this proposition into view, so that the convention might adopt it, if it should happen to meet the views of the majority.

Mr. FLEMING, of Lycoming, said that he also had drawn up a proposition which, he hoped, might be the means of bringing this discussion to a close. And (said Mr. F.) it appears to me that we shall at last be compelled to come back and settle down on something like the provision which I am now about to read. When we undertake to frame a constitutional provision defining and laying down the precise districts in which the justices of the peace shall be elected or within which they shall be bound to act, I apprehend we are attempting to carry out the detail of the matter a little too far. If there is any one thing which more than another, has been clearly and abundantly demonstrated by the experience of this body, it is this,—that it would be imprudent and impolitic, to fix, in the fundamental law of the land, the districts in which the justices of the peace should act. And if, as our experience has shown, it is improper and

impolitic to do so, why is it that we adhere to any proposition or principle of detail, which is wrong in every point of view in which it can be regarded, and which from the first moment at which it was presented, and on all occasions, has been uniformly defeated, on the ground that details thus laid down, however plausible in appearance or in theory, could not be carried out in practice.

When we undertake to say, by a fixed provision in the fundamental law of the land—which cannot be reached, probably, for very many years—that the justices of the peace shall be elected in each ward and that their number shall be limited in such wards to one, two, three, or any other given number which we may choose to assign, what is the situation in which the people of Pennsylvania are placed by the action of this convention? They may have the number prescribed by the constitution, in each ward or each township. None of these justices may have committed any offence or misdemeanour that would enable the inhabitants of the township to remove them, yet they may be absent, and there may be no provision for that case; and although, as I have said, the number may be prescribed by the constitution, yet they may not have a single individual in such ward or township capable to act for them. When we see the difficulty attending every proposition which has been submitted prescribing the number and the districts,—for, so far as regards the principle of election there is no difference of opinion among the majority of the convention—why should we still endeavor to force these details into the constituton? Have we not found that those difficulties have increased upon us at every step, rather than diminished. Why, then, I ask, should we still persist? why is it, that we cannot leave it to the legislature, to carry out the necessary details attending the election of justices of the peace. What is it that stands between us and such an arrangement? Are we afraid to trust the legislature? Why should we be so? Do we not trust the legislature with matters of vastly more importance than this, however important this may be, and I do not intend to intimate that it is not so. We submit to the senate the election, as it were, of the judiciary of Pennsylvania,—we submit to the senate the selection of the judges,—that is to say, we submit to that body the power of passing upon the nominations made by the governor for a number of the appointments of the first importance in the commonwealth.

In the very next section after the one now under consideration, we give to the legislature unlimited power. That section declares that "all officers whose election or appointment is not provided for in this constitution, shall be elected or appointed as shall be directed by law."

Here is a sweeping power given in a single sentence! And yet, with these facts before us, we are about to say that we will not, or dare not, trust the legislature with the power to regulate the number of the justices of the peace, or to fix the districts in which they shall be elected.

I have stated that I have drawn up an amendment; and although it is contained in a few words, still I regard it as covering the whole ground, and as placing the section in such a shape as will enable the legislature to carry out the wishes of the people, in all matters having reference to the election of justices of the peace. It reads as follows:—

"Aldermen and justices of the peace shall be elected by the qualified electors in such districts, and in such number, and at such times as may be prescribed by law. They shall be commissioned by the governor for the term of five years."

This is simple and to the purpose. All the other powers which have been incorporated in different provisions here submitted, as, for instance, the power to remove a justice for non performance of his duty, or for misdemeanor in office,—all such power, I say, is given in other sections of the constitution. Hence it is unnecessary to make a provision of that kind here, and I submit, whether, after we have had all these propositions before us, and after we have found them all to be defective, it is not proper that we should leave the number and the districts to the legislature. To my mind the propriety of that course is obvious, and I believe that we shall have to come down to that at last.

Mr. FARRELLY, of Crawford, said that by turning to the tenth section of the fifth article of the constitution of 1790, gentlemen would find that the provision in relation to justices of the peace ran thus:—

"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."

All that we want now, (said Mr. F.) is to pass upon the mode of appointment. This, I apprehend, is all that is required at our hand.

Viewing the subject in this light, I will take leave to bring to the notice of the convention, a substitute for the report of the committee of the whole, which I will read for information. It is in the following words:

"Aldermen in the wards of the several cities, and justices of the peace in the incorporated districts, boroughs, and townships, shall be elected by the qualified voters of such wards, incorporated districts, boroughs, and townships, and shall be commissioned by the governor for a term of five years, if they shall so long behave themselves well."

I think that this embraces the whole subject. It simply provides for the election, instead of the appointment of these magistrates, and leaves all the details to the legislature.

Mr. PORTER, of Northampton, said, that with a view to make his amendment more definite he would modify his motion, by moving to amend the section as follows:

Striking therefrom, in line one, the word "and," and insert "or," and the word "shall," and insert "may" in lieu thereof.

In line two, insert after *wards* "of the cities and the incorporated districts in the county of Philadelphia and in the"

In line three, strike out the words "the time of the election of constables," and insert "such time as may be directed by law."

Add to the end of the section as amended, "and in no instance shall the number for any ward, borough, or township, exceed five."

I have only a single word to say, continued Mr. P., in explanation of

the reason why I urge that the words "the time of the election of constables" should be stricken out.

There is no constitutional provision as to the time when the constables shall be elected. I would be willing, when we come to the schedule, to say that, until otherwise directed by law, the justices of the peace shall be elected at the time that the constables are elected; but it presents a strange anomaly now that you appoint the time of the election of justices of the peace, and make it dependent on an event which can be altered by ordinary legislation;—intending to attach a provision in the schedule to operate until the legislature shall act upon the subject.

Mr. DICKEY, of Beaver, said it was a matter of perfect indifference to him whether the justices of the peace were elected at the time of the election of constables or not. That would seem, however, (said Mr. D.) to be the most convenient time. But I object to that portion of the modified amendment of the gentleman from Northampton, (Mr. Porter) which proposes to insert the word "may" instead of the word "shall"—thus leaving it discretionary with the legislature to say, whether our justices of the peace shall be elected, or not. I am for making the terms of the section absolutely imperative, by saying that these officers *shall* be elected; and not for leaving an implied discretion to the legislature, by the use of the term "may," as to whether they shall or shall not, because we know that the people desire that they shall be elected for the time to come, and not be appointed as heretofore they have been.

I trust, therefore, that, at all events, that part of the amendment of the gentlemen from Northampton, will be rejected. I do not know that the other parts of it are very objectionable, but I will ask for a division of the question.

Mr. EARLE, of Philadelphia county, said he thought that the section was in excellent order before the gentleman from Northampton, (Mr. Porter) made his new motion, and that it might be taken precisely as it stood without the amendment now proposed by that gentleman.

In its present form, (said Mr. E.) the section is congruous and consistent; and if it should be found that any amendment in phraseology is necessary, as the gentleman from Franklin, (Mr. Chambers) had suggested, the alteration may be made by the appropriate committee.

The section now provides that the justices of the peace shall be elected by the people. And this, we know, is what the people desire. And it further provides that the justices shall be elected in each ward and township, and in each borough that is not divided into wards. This is what the people also want.

I am in favor of the word "shall" and not "may." I am also in favor of having at least one justice of the peace in every township or ward, and in every borough which is not divided into wards.

The section further provides that the legislature shall not cause more than two of these officers to be elected, without the consent of the people of the ward or township; but that, with the consent of the people therein, the legislature may cause more than that number to be elected.

These are the main features of the section; they are all perfectly reasonable, and, for my own part, I can see no fault in them. We have been

told that there was a difficulty as to jurisdiction. I do not think so. I can see no ground for such an apprehension. The legislature in this respect, may follow the usage under the provision of the constitution of 1790, which provides "that the governor shall appoint a competent number of justices of the peace, in such convenient districts in each county, as are or shall be decided by law."

The legislature have provided for this; and although the governor appoints the justices of the peace for a particular district; still the legislature may provide by law that their jurisdiction should extend beyond a particular district, or that it should be limited to that district. The legislature may make proper provision as to the extent of the jurisdiction, and I am for leaving it with them to do so.

I hope, therefore, that the amendment of the gentleman from Northampton, will be rejected, *in toto*; and also, that the proposition of the gentleman from Erie, (Mr. Sill) if it should come up, will meet a similar fate.

I ask the secretary to read the section, as it would stand without the amendment of the gentleman from Northampton.

And the section having been read accordingly,

Mr. FULLER, of Fayette, said that he did not exactly understand, and would be glad to be informed by the Chair, whether the whole section was now before the convention. There were three different propositions adopted, (said Mr. F.) but only one of them, I believe, was re-considered, and that was the amendment of the gentleman from Northampton.

I rose, however, chiefly for the purpose of asking the gentleman from Northampton, to modify his amendment, by striking out the word "may" and inserting the word "shall;" and also by striking out the words "and in no instance shall the number for any ward, borough, or township, exceed five;" because, by the adoption of such a provision, a positive restriction is placed upon the people. It is first proposed that the people should have any number they wish, and that proposition is immediately followed up by a provision that the number shall not in any instance exceed five.

If the gentleman from Northampton will consent thus to modify his amendment, I cannot see that there is any objection to its adoption. The great principle which I am desirous to establish is, that the number of the justices of the peace shall be determined by the qualified voters of the district. Without this, I cannot be satisfiedwith the section.

Mr. PORTER, of Northampton, said that the only object he had in view in offering the amendment was to make it acceptable to gentlemen who took an interest in it; but he feared that, like the old man and his son who took the ass to market, in trying to please every one, he would please none at all. He would therefore, disembarrass the proceedings of the convention so far as he could, by withdrawing his amendment.

So the amendment was withdrawn.

Mr. FULLER said, that,—the gentleman from Northampton having withdrawn his amendment—the section appeared to him (Mr. F.) to be as perfect as the convention would be able to make it. If there was anything imperfect in the phraseology, it could be made correct hereafter, when it

comes up before the committee of revision. He hoped, therefore, that no further time would be consumed in discussion, but that the question would be now taken.

A motion was made by Mr. BELL, of Chester,

To amend the said section as amended, by striking therefrom the word "and," where it occurs in the first line, and inserting in lieu thereof the word "or;" and by adding to the end thereof the words as follow, viz: "Provided that any such justice of the peace or alderman shall not be re-eligible to such office for one year after the expiration of any such term of five years."

And the said amendment being under consideration,

Mr. Bell said, it would still be in the recollection of the members of the convention, that ever since this important question had been agitated both in committee of the whole, and on second reading, he had endeavored, unsuccessfully it was true, but not the less ardently, to resist the adoption of a principle which was to subject one branch of the judiciary of Pennsylvania—that was to say, the justices of the peace—to popular action.

I have resisted it, said Mr. B., with all the poor ability which I could command, because I believed that many of my constituents were adverse to that principle, as tending to interfere with the authority, and to undervalue the influence which an important branch of the judicial power of Pennsylvania ought to possess. In my opposition to this principle, I have failed to secure any effective co-operation on the part of this body. I say, I have failed; and I am willing, therefore, (though I do so with reluctance,) to concede that these important officers shall be elected by the people. I was opposed to it, because I thought that you would turn a man into a limited circle, among a limited population, to be re-elected, or not, by that limited population, at the expiration of his term—and that, knowing himself thus dependant upon the popular vote, instead of having in his eye the upright administration of justice, he would merely have before him the character and influence of the parties concerned, and not the character and the merits of the case on which he was to pass.

The convention, however, has resolved that the justices of the peace shall be elected. Be it so. If the convention is satisfied that the people of Pennsylvania demanded this concession at our hands, it is undoubtedly our duty to submit. But, if it is possible, let us at all events avoid some of the evils which must attend the re-eligibility of these magistrates.

The amendment which I have offered does not propose to make an individual who has held the office of justice of the peace ineligible forever after the expiration of his term; but that he shall go out at the end of five years, and that (always supposing that he has behaved himself well,) he shall be re-eligible at the end of one year afterwards;—so that, in the decision of cases, he may not be influenced by his desire of immediate re-election. In reference to certain ministerial officers, as clerks of courts, prothonotaries, recorders of deeds, and registers of wills, I have been opposed to limit the power of the people; because these officers, being merely ministerial, are not of so much importance, and they give

bonds for the faithful performance of the duties of their respective offices. But justices of the peace are placed entirely on a different footing. They are judicial officers—to be elected by the people under the new constitution—and to administer justice, without any security given for the performance of the duties of their offices, without any authority, without any law that could make them amenable to any other power for neglect or non-performance of their duties. It seems to me that the members must see the difference between judicial and ministerial officers in this particular; and I hope that a majority of this convention will agree to the proviso I have introduced, and which will in some degree at least, take away the temptation which will beset the magistrate in the discharge of his duties.

I call for a division of the question; the first on striking out the word "and," and inserting the word "or;"—and the other, on the proviso;—and on the latter, I hope I shall be favored with the yeas and nays.

Mr. DICKEY, of Beaver, said that he hoped the proviso would not be adopted. Its imperfection was apparent on the face of it. It is true, said Mr. D., that the proviso is good for one year, as it purports to be; but it follows as a matter of course, that the justices of the peace, when once out of office, *must* stay out for five years, unless there should happen to be a vacancy;—because the term for which they are elected is five years, and two justices cannot be appointed to the same station. The effect of the provision, therefore, would be to exclude them for five years.

But, independent of this objection, I am entirely opposed to the principle of the provision, and I think the matter should be left to the people. Let them have the power, and let them elect and re-elect whom they may please. If they have good magistrates, they should have the power to retain them; if bad, they will no doubt throw them out at the proper time. But it is obvious to my mind, that if even the proviso should be adopted, it would not answer the purpose which the gentleman from Chester (Mr. Bell) has himself in view.

As to inserting the word "or" in lieu of the word "and," I can see no objection to it.

Mr. BELL said, he would simply remark in reply to the observation of the gentleman from Beaver, (Mr. Dickey) as to the provision excluding the justices of the peace from re-election for the space of five years, that such would not be the case, if, as had been suggested, only one-fifth part went out annually. He, Mr. B., could not, therefore, see that there was much force in the objection.

Mr. CUMMIN, of Juniata, said that he rose with much reluctance to express his ideas in opposition to the amendment of the gentleman from Chester, (Mr. Bell.)

The office to which this section has reference, said Mr. C., is one of a kind not much to be desired. It is a fact within my personal knowledge, that many of my neighbors have refused to accept it, even under the present system, by which they hold office during good behaviour, and consequently are not subject to the doubt and uncertainty attendant on submitting themselves to the people for re-election once in every term of

five years. What is proposed now? In addition to the limitation of their term to five years, they are, under this proviso, to be rendered ineligible for one year after the expiration of any such term. That amendment, if carried into effect, might prevent men of capacity and worth from suffering themselves to be run for that office. It is well known that considerable cost is incurred to enable a man to engage in the duties at the outset. Books are requisite, which are not easily obtained, and the acquisition of which is attended with expense.

Then it is also necessary that a justice of the peace should have a number of books of law. There is one without which he cannot get along at all,—that is to say, *Purden's Digest;* and that book, I believe, cannot be purchased for a less sum than seven dollars and fifty cents. This would be sufficient to discourage any plain farmer or mechanic from embarking in the office of justice of the peace, believing, as they would have every reason to believe, that at the end of five years, they would have no further occasion for their books.

My view, therefore, is that if an individual has once been elected justice of the peace, if he has supplied himself with the requisite books and other accommodations, and if he has performed his duties to the satisfaction of the people—I say such an individual ought to be re-eligible; he ought to have a fair opportunity of being re-elected, if the people are again disposed to renew the trust in his hands. And who are the best judges whether an incumbent is worthy to be re-elected or not? Most undoubtedly the people;—and they never will re-elect a man without believing and seeing that he is adequate to the discharge of his duties honestly, and that he transacts his business to the best of his ability.

For these reasons, I am of opinion that the amendment of the gentleman from Chester, should be put down by the vote of every member of this body. It is a provision which never could be carried into operation without the most injurious results; for no man capable of performing the duties to the satisfaction of the people, would accept the office upon such terms as are here prescribed. I shall, therefore, vote against it.

And the question being then taken,

Will the convention agree to the first division of the said amendment, viz:

To strike therefrom the word "and," in the first line, and insert in lieu thereof the word "or?"

It was determined in the affirmative.

So the first division of the said amendment was agreed to.

The question being on the second division of the said amendment:—

The yeas and nays were required by Mr. BELL, and Mr. SMYTH, of Centre, and are as follow, viz:

YEAS—Messrs. Baldwin, Bell, Crain, Dillinger, Donagan, Keim, Merrill, Miller—8.

NAYS—Messrs. Agnew, Ayres, Banks, Barclay, Barndollar, Barnitz, Bedford, 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, Cochran, Cox, Crawford, Crum, Cummin, Cunningham,

Curll, Darlington, Darrah, Denny, Dickey, Dickerson, Donnell, Doran, Dunlop, Earle, Farrelly, Fleming, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Heffenstein, Henderson of Allegheny, Henderson of Dauphin, Hiester, High, Hopkinson Houpt, Hyde, Ingersoll, Kennedy, Kerr, Krebs, Long, Maclay, Magee, Mann, Martin, M'Caben, M'Dowell, M'Sherry, Meredith, Merkel, Montgomery, Overfield, Pollock, Porter, of Northampton, Purviance, Read, Riter, Ritter, Rogers, Russell, Saeger, Scheetz, Scott, Sellers, Seltzer, Serrill, Shellito, Sill, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Todd, Weidman, Woodward, Sergeant, *President*—99.

So the question was determined in the negative.

Mr. DARLINGTON, of Chester, moved to amend the said section as amended, by striking therefrom the words "at the time of the election of constables," where they occur in the third line.

Mr. D. said that he made this motion because he thought it an unnecessary restriction on the people, as to when they should hold their elections. It should be left to the legislature to say when the elections should be held.

The question being taken on the motion to amend, it was decided in the negative.

And the report of the committee so far as relates to the sixth section thereof, as amended, was agreed to.

The convention then proceeded to the consideration of the seventh section of the sixth article of the constitution, as reported by the committee of the whole:

SECT. 7. All officers, whose election or appointment is not provided for in this constitution, shall be elected or appointed, as shall be directed by law.

Mr. HIESTER, of Lancaster, moved to amend by adding the following:

"No person shall be appointed to any office within any county, who shall not have been a citizen and an inhabitant therein one year next before his appointment, if the county shall have been so long erected, but if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken. No member of Congress from this state, or any person holding or exercising any office or appointment of trust or profit under the United States, shall at the same time hold or exercise any office in this state, to which a salary is, or fees or perquisites are by law annexed; and the legislature may by law declare what state offices are incompatible."

Mr. H. briefly explained the object of his amendment. He would say, let the people elect for twelve months, or any other time they thought proper. According to the terms of the section under consideration, the legislature may provide for the appointment of many other officers in a county than do now hold office. It seemed to him that there should be some restriction in reference to the men who may present themselves as candidates for election in a county. Therefore, he had proposed to insert in the constitution the language to be found in the first clause of his amendment. The second branch of his amendment was in accordance with the sentiment, if not the precise language of the constitution under which the people of this commonwealth had lived for the last forty-seven

years, viz: "that no person should hold an office of trust or profit under the constitution of the United States and of this state at the same time, &c." This provision of the constitution of Pennsylvania was an admirable and beneficial one. And, he trusted it would prove salutary for the future. The last proposition of his amendment left the legislature to say what offices are incompatible. It was to be found in many of the constitutions of the state.

It may be alleged, said Mr. H., that the legislature have now sufficient authority without insertion of any clause in the constitution, conferring the power. It might be so, but still the provision could do no harm. It would enable them to say what offices are incompatible with each other.

Mr. READ, of Susquehanna, said he believed the principle of the amendment was correct, and that the provision would meet with general concurrence. He had not, however, risen to argue this question, but to apologise for an error he had committed, on a former day, in stating, that in a subsequent section, provision had been made on the subject of the incompatibility of offices. He was wrong in that assertion. A word again as to the place and manner of this amendment. As it was now proposed, it would apply to offices in this section only. If it were made a separate section, it would be applicable to all offices. As the provision was now introduced, a judge might be a member of congress. He would therefore suggest to the gentleman from Lancaster, the propriety of offering the clause, not as an appendage to this section, but as a separate section.

Mr. HIESTER said, that if the gentleman from Susquehanna, was right in his construction of the effect of the amendment, it was not such as he, Mr. H., intended. But he did not know that the view of the gentleman was correct. It was his, Mr. H's., object to make the provision applicable to all officers. He thought the gentleman was wrong in his construction. He would modify the provision in the first line, so as to make it read "any office" instead of "an office."

The amendment as modified, was then agreed to, without a division.

Mr. PORTER, of Northampton, said he was unaware that any provision had been inserted as to the incompatibility of offices, in reference to members of the legislature. The act of 1812, excludes them from holding offices, and he would like to see the exclusive principle of this act incorporated in the constitution. The old provision was this:

"No member of congress from this state, nor any person holding or exercising any office of trust or profit under the United States, shall, at the same time, hold or exercise the office of judge, secretary, treasurer, prothonotary register of wills and recorder of deeds, sheriff, or any office in this state, to which a salary is by law annexed, or any other office which future legislatures shall declare incompatible with offices or appointments under the United States,"

But the act of 1812, carried the principle further, because about twenty members had, in 1809, carried home commissions in their pockets.

Mr. OVERFIELD, of Monroe, moved to amend the section as amended, by adding to the end thereof, the words following, viz: "No member of

the senate or of the house of representatives shall be appointed by the governor, to any office during the term for which he shall have been elected."

The question being taken, the amendment was agreed to, without a division.

The report of the committee on the section, as amended was then agreed to.

The eighth section was considered, and agreed to, in the following form, viz:

SECTION 8. All officers for a term of years shall hold their offices, for the terms respectively specified, only on the condition that they so long behave themselves well, and shall be removed on conviction of misbehavior in office, or of any infamous crime.

The ninth section was then taken up for consideration, as follows, viz:

SECTION 9. Any person who shall after the adoption of the amendments proposed by this convention to the constitution, fight a duel, or send a challenge for that purpose, or be aider or abetter in fighting a duel, shall be deprived of the right of holding any office of honor or profit in this state, and shall be punished otherwise in such manner as is or may be prescribed by law. But the executive may remit the said offence, and all its disqualifications.

Mr. HIESTER, rose and said:—Mr. President,

Although it is true that in this commonwealth, public opinion has nearly abolished the savage and barbarous practice of duelling, yet we all know that it still exists among us.

That the amendment now under consideration, as reported by the committee of the whole, will tend further to extirpate it, seems to me to admit of no doubt. Among what class of society is it that we find this practice still to some extent prevailing? Is it among the middling or lower classes, against whom your laws are most readily enforced, or is it among those who from their wealth and elevated rank in society have it in their power to, and most generally do evade the punishment of the law? No one will controvert that the continuance of the practice is confined almost exclusively to the latter class. And the very circumstance of its not being practised by those who, some would designate the *ignoble* and the *vulgar*, is the reason why those who consider themselves the well born and the exclusive gentlemen of the land, continue to be the eulogists and advocates of the practice. They seem to think that such sentiments imply the possession of chivalrous feelings, and of bravery. And that to repudiate duelling would be an indication of cowardice and a want of chivalry.

Now sir, advocating duelling, or even meeting your antagonist in single combat, is in my apprehension not always a mark of true courage. For experience has shown that men who have been wanting in courage to defend their country's rights in the tented field, and some who there actually disgraced themselves, have notwithstanding that, been driven into duels—I go further sir, and maintain that the veriest coward may be, and often is driven into such acts of desperation. In a community where public opin-

ion sanctions duelling, it often requires a greater degree of genuine courage to refuse to fight, than it does to engage in it. That moral and true courage which prompts and sustains a man in braving public opinion, and doing what his conscience dictates to be right, is a rare virtue; and much less common than animal courage, or that which will prompt him to commit the rash and reckless acts, in accordance with the sentiments of those with whom he may be associated. But, however, this may be—under the benign influence of the Gospel dispensation, which pervades our happy country, and in this enlightened age, I trust that in this convention at least, there will be few found, who do not admit the propriety of resorting to the most effectual means, for the total abolition of such an inhuman and unchristian like practice among us.

The question then recurs, will the introduction of this amendment into the fundamental law of the state, tend to promote that object? In my view, Mr. President, it will go far to effect it. For as I have attempted to show, duelling in this state, so far as it still exists, is almost exclusively confined to those who are, or consider themselves, of the higher order of society. And those are the very persons who are most aspiring, and who often strain every nerve to possess themselves of your offices of honor and profit. If then by your organic law you cut them off from attaining this grand object—and for the very attainment of which there are perhaps more duels fought in our country, than for all other causes united, will it not be likely to do more towards its entire suppression than any other thing you can do for the attainment of that object.

But it may be said that we have penal enactments, which if enforced, would accomplish the same purpose—and that if they are not sufficient the legislature have the power to pass such as will be effectual. The reply to this is, that the section does not contemplate the prohibition of the enforcement of the existing laws, or such as may hereafter be passed for the suppression of duelling. On the contrary, it expressly reserves to the laws their full operation. But in addition, it provides for cases which your laws cannot reach. As for instance, when such acts are committed by your citizens out of the limits of the state, your laws cannot reach the offenders, and they go unpunished under our state enactments. And this is the manner in which those acts are generally perpetrated. If however, this section is adopted you have a provision that will embrace not only the cases referred to, but all others. And by which a negative punishment at least (if it may be so termed,) or a privation may be inflicted—and one that cannot be evaded, and may be brought to operate against all such offenders.

While I believe that the punishment, or rather deprivation contained in the section will be effectual, in preventing duels, I cannot consider it too vigorous or severe. Who that seriously reflects on the heinousness of such offences, is prepared to say that they do not merit, at least the punishment (if such it be) which is contemplated in the amendment reported by the committee of the whole. When death ensues in a duel, is it any thing less than wilful and deliberate murder! For generally each one goes out with the fixed purpose of killing his antagonist. And can it be considered too severe a punishment to deprive a man, or his aiders and abetters from holding office, without the pardon of the executive, who deliberately and

with the consequences staring them in the face, rush into the commission of crimes that are an abomination in the sight of God and a christain community?

A motion was then made by Mr. FLEMING,

To amend the said section by striking therefrom the word "fight," where it occurs in the third line, and inserting in lieu thereof the words "be convicted of fighting;" and by making the word "send" read "sending" and the word "be," in the fourth line, read "being."

And the said amendment being under consideration,

A motion was made by Mr. DORAN,

That the convention do now adjourn.

Which motion was agreed to.

And the convention adjourned until half past three o'clock this afternoon.

MONDAY AFTERNOON, JANUARY 29, 1838.

SIXTH ARTICLE.

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 amendment to the ninth section offered by Mr. FLEMING, being under consideration,

Mr. FLEMING said, his object was to provide that the penalty should not be incurred before legal conviction; at the same time allowing the power to the executive to remit.

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

The question was then taken and decided in the negative, as follow, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Barclay, Barndollar, Bedford, Bonham, Brown, of Northampton, Brown, of Philadelphia, Chambers, Clapp, Cleavinger, Cochran, Craig, Crawford, Crum, Dickey, Dickerson, Farrelly, Fleming, Gamble, Grenell, Harris, Hastings, Helffenstein, Henderson, of Dauphin, Hopkinson, Houpt, Ingersoll, Keim, Kennedy, Long, Magee, Martin, M'Cahen, Merkel, Porter, of Northampton, Seltzer, Smyth, of Centre, Snively, White, Sergeant, *President*—42.

NAYS—Messrs. Bigelow, Clarke, of Beaver, Clarke, of Indiana, Cline, Crain, Cummin, Curll, Darrah, Dillinger, Donnell, Earle, Fuller, Gearhart, Hayhurst, Hays, Henderson, of Allegheny, Hiester, Hyde, Jenks, Kerr, Konigmacher, Krebs, Mann,

M'Dowell, M'Sherry, Miller, Montgomery, Overfield, Pennypacker, Pollock, Purviance, Reigart, Riter, Ritter, Royer, Russel, Saeger, Scheetz, Sellers, Serrill, Shellito, Stickel, Taggart, Todd, Weaver, Woodward—46.

The question then being on the convention agreeing to the report of the committee of the whole, so far as relates to the ninth section thereof.

Mr. DICKEY asked for the yeas and nays on the question, and they were ordered.

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

YEAS—Messrs. Baldwin, Barndollar, Bedford, Brown, of Northampton, Chambers, Clapp, Clarke, of Beaver, Clarke, of Indiana, Cline, Cope, Cox, Craig, Crawford, Crum, Cummin, Denny, Dickerson, Earle, Fuller, Gearhart, Harris, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Houpt, Jenks, Kerr, Konigmacher, Krebs, Mann, Martin, M'Sherry, Merrill, Merkel, Miller, Montgomery, Purviance, Read, Royer, Russell, Saeger, Scheetz, Sellers, Seltzer, Shellito, Sill, Smyth, of Centre, Snively, Stickel, Todd, Woodward,—53.

NAYS—Messrs. Agnew, Ayres, Barclay, Bigelow, Bonham, Brown, of Philadelphia, Cleavinger, Cochran, Crain, Curll, Darrah, Dickey, Dillinger, Donagan, Donnell, Doran, Farrelly, Fleming, Gamble, Gilmore, Grenell, Hastings, Helffenstein, High, Hopkinson, Hyde, Ingersoll, Keim, Kennedy, Magee, M'Cahen, M'Dowell, Overfield, Pennypacker, Pollock, Porter, of Northampton, Reigart, Riter, Ritter, Scott, Serrill, Taggart, Weaver, White, Sergeant, *President*—45.

A motion was made by Mr. DARRAH, seconded by Mr. GAMBLE,

That the convention re-consider the vote given on the twenty-fifth instant, on agreeing to the report of the committee, so far as relates to the first section of the ninth article as amended, and which is as follows, viz:

"SECTION 1. Sheriffs and coroners shall, at the times and places of election of representatives, be chosen by the representatives 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."

Mr. MARTIN, of Philadelphia county, said he hoped the motion would be agreed to. It would be remembered that he had offered an amendment to this section, which consisted merely of the addition of the words "and the citizens of the city of Philadelphia," after the word county, in the second line. The amendment was rejected, he believed simply for the want of a proper explanation. He hoped that the vote on the section would be re-considered, and that this amendment would be introduced. The citizens of the city of Philadelphia, had a separate representation in almost every particular but this.

Mr. HIESTER said, that he also hoped the vote would be re-considered. It is right and proper, said Mr. H., that the city of Philadelphia should be a separate district for a sheriff. The city and county of Philadelphia are now connected so far as regards this office. The population is great

—the compensation is great, and the responsibility is very great indeed. It is anti-republican that so much favor should be bestowed on any one individual. When this question was last under discussion, it was raised as an objection against the amendment of the gentleman from the county of Philadelphia, (Mr. Martin) that there ought not to be two sheriffs, because, the courts of the city and county had one jurisdiction. In my opinion, there is no difficulty in this. Those processes put in the hands of the city sheriff may be served by the county sheriff, and those processes put in the hands of the county sheriff may be served by the city sheriff.

Another objection which has been urged against the adoption of the amendment is, that this being a very responsible office, it is requisite that the incumbent should be well paid. If there were two offices created instead of one, there would be a greater security for every individual who might put business into the sheriffs' hands; for as both of them would have to give security, the two together would give a larger amount of security than the one alone. It has always appeared to me an extraordinary fact that an office running up to the value of ten thousand dollars per annum, should be left in the hands of one man. Is it right in a republican commonwealth, that any one man should hold an office yielding so vast a profit? I think not.

Mr SCOTT, of Philadelphia, said that he did not care much about the adoption of this amendment, if gentlemen from the county of Philadelphia, and the majority of the convention desired very much that it should be adopted.

But, said Mr. S, I can clearly perceive that it will involve all the judicial proceedings of the city and county of Philadelphia in inconvenience; and I think it is also clear that, if such a provision as this is inserted in the constitution, every citizen either of the city or the county of Philadelphia, will be found to vote against all the amendments which we may make to that instrument. The jurisdiction of your courts covers the county of Philadelphia. You want a panel of jurors to try a case in the city and county. How are you to get them? To whom is the writ of *venire* to be directed? Is it to be directed to the sheriff of the city, or to the sheriff of the county, or to both? How can you get a jury to try any civil or criminal case? If you want to issue an execution or writ to a man living upon real estate—and that man had a house in the city and a house in the county, to which sheriff would you direct the writ of *fi fa?* Would you direct to both? And would you hold two juries of condemnation upon this double property? And would you involve the defendant in double costs? Would it not be much better to conduct your business as it has been heretofore, and permit your sheriff on the one hand, to get five or six hundred or a thousand dollars more than that officer gets in Lancaster county—for, from what I have seen, I should not suppose that the docket of that county was much lighter than ours—and to permit the defendant on the other, to get rid of his debts with as little difficulty as possible? I ask, would not this be the better and the wiser course?

If you make this a constitutional provision, the inevitable result will be that you must, before the lapse of any considerable length of time, separate the city and county of Philadelphia, and make them separate counties,

If the people of the city and county find that their judicial proceedings are embarrassed by this divided empire of two sheriffs, they will within the space of two years, call so loudly for the erection of the city and county into two distinct counties, that the legislature will not be able to resist the demand. But I, for one, am willing to separate so soon as our friends in the county desire it. I apprehend that they do not desire it at this time; because, two thirds of the county expenses are paid out of taxes levied upon the city. And, I am willing that they should be so paid, because the county has contributed her share towards the growth of the city. But the separation of the two would follow this amendment, as certainly as night follows upon the termination of the day. If then, the convention is determined to give us these double sets of officers, be it so. But I shall vote in the negative.

Mr. CHANDLER, of Philadelphia, said:

Mr. President; I have a great interest in the city proper, and I have risen to say a few words in reply to some observations which have fallen from the gentleman from Lancaster. (Mr. Hiester.) That gentleman alleges as a reason why the office of sheriff in the city and county should be separated, that the profits are greater than should fall into the hands of any one officer under a republican government.

It may be true, as the gentleman states, that some sheriffs have realized the sum of ten thousand dollars per annum;—I hope, at least, that the present worthy incumbent will do so. But the gentleman who last filled that office, and several of his predecessors, I believe, have been ruined—yes, and many of their securities too. This does not look like receiving too great an emolument.

A separation of the city from the county, in relation to the office of coroner, would be another evil. The coroner would reside not in the city, but in the extremity of the county. At present, the duty of the coroner consists principally in holding inquests upon bodies found dead.

If, as my colleague from the city, (Mr. Scott) remarked, it is the desire of the people of the county, that the city and county should be separated, I am willing; I will go heart in hand to gratify their wishes; although, as my colleague also observed, the city is at this time paying a larger portion of the expenses of the county, because, she is paying back the benefits she has received. As one paying tax, I say I will cheerfully submit to the separation if it is desired. We feel indeed a burthen now, but we can bear it, because the county assisted us. I do, however, perceive one evil in this which it is the duty of the convention to put down by all means in its power. I speak of the desire to make—to carve out offices for office-seekers; and I hope that we shall not do any thing to encourage it. We have office-holderrs enough—enough and to spare. It is disgraceful—I do not mean the proposition itself, but the craving for the loaves and the fishes. I shall vote against it.

Mr. M'CAHEN, of Philadelphia county, said he did not think the amendment, if it should be adopted, would increase the officers beyond their present number; for although there were not two sheriffs, yet there were many deputy sheriffs, and by increasing the number of the former only *one*, it was probable that the number of the latter might be considerably reduced.

But, said Mr. M'C., there is one very strong reason, to my mind, why the city and county should be separated in this respect. The duties of the sheriff are too large to be performed by one man, and the securities which are required are so large that it is difficult for the individual who may be elected to obtain them with safety, and with independence to himself. It is a fact which cannot but be known to the members of this body, as it is to the people generally, that many of the sheriffs who have been elected have been compelled to farm out their offices—that is to say, the sureties were appointed partners with the sheriff, and they took shares in the profits, so that instead of being in reality one sheriff, there may be twenty or thirty interested in the office. Thus it may turn out, that you leave the office of sheriff without any responsible head, there being eight or ten, or even a greater number of persons, interested in it. I can see no force, therefore, in the argument as to the increase of the number of officers.

Nor am I able to discover the force of the argument which has been urged in relation to the pannelling of jurors and the service of process. The same difficulty would exist in relation to the issue of a precept that does now exist between one county and another—and no more. If there be any difficulty in issuing a precept here, against property located in Lancaster county, the same difficulty, and no more, would exist in this case, if there were two sheriffs instead of one, as exists in that. There would not, however, be quite so much mileage.

In making these remarks, I do not wish to be understood as being very anxious that a separation should take place between the city and county, although I am willing that it should be so, if the friends of the city desire it. I expect that we of the county could get along without the people of the city, although so great a boast is made that they pay a large portion of our taxes. So far as regards the office of sheriff, however, I am clearly of opinion that the duties would be more faithfully discharged, and more to the satisfaction of the people, if one sheriff were given to the city and one to the county, instead of concentrating the duties and the emoluments of the office as heretofore in the hands of one man. The only difficulty which could result from such a charge would be in relation to the county courts, and this is a difficulty which could be easily obviated by the action of the legislature.

There is another point which I think is deserving of serious consideration; that is to say, the compensation of the sheriff which is very large. It is too great, and ought to be reduced; and it can be reduced, by the amendment proposed, and that without any fear that evil will result, so far as regards the efficient performance of the office. I believe, moreover, that this amendment will be favorably received by the people; and although the gentleman from the city of Philadelphia, (Mr. Scott) thinks that its adoption might defeat all the other amendments we may make to the constitution, I am willing to risk them, though it is probable that he is more anxious for their defeat than I am.

I do not wish to occupy any further time, and I will conclude with the expression of a hope that the motion to re-consider will prevail, and that the amendment of my colleague from the county of Philadelphia, (Mr. Martin) will be made a part of this section of the constitution.

Mr. HIESTER said, that he was not a lawyer, and that he did not lay claim to any amount of legal acquirement; but, nevertheless, said Mr. H., it seems to me that the objection raised by the gentleman from the city of Philadelphia, (Mr. Scott) is easily answered.

The gentleman enquires, if two sheriffs should be elected, how are we to get jurors? The answer appears to me very plain; that is to say, two venires can be issued, one for the city and the other for the county, and the number be mentioned in each.

Again, the gentleman asks if a writ of *fi fa* is issued, and a defendant has property in the city and property in the county, would you issue the precept to both the sheriffs? To this I answer, do in that case as you do in all others of a similar kind. If a man has property in two counties, the sheriff, if he can, takes the amount required from the property in the county where he resides; and if it cannot be taken there, it is then taken from the other.

But I did not rise to protract this debate. I rose principally for the purpose of saying, in reply to some remarks which fell from another gentleman from the city of Philadelphia, (Mr. Chandler) that I have no desire to do any thing which would operate against the present incumbent of the office of sheriff. I know him, and I should be sorry to do any thing which would have a tendency to injure him, either in a pecuniary, or any other point of view. Nothing can be further from my intentions or wishes. And it is to be recollected that the amendment of the gentleman from the county of Philadelphia, (Mr. Martin) can not operate on the present incumbent, because he goes out of office next fall, which will be previous to the commencement of the operation of the amendments made to this constitution, if they should be ratified by the people at all.

Mr. BIDDLE said, that he was unwilling to occupy the time of the convention on this question, especially as it underwent considerable examination and discussion some days since. The gentleman from Berks, however, said Mr. B., has thought proper to call it up again, and I will therefore say a very few words in relation to it.

I have listened carefully, but in vain, for any satisfactory reason why the change contemplated by the amendment of the gentleman from the county of Philadelphia, should be sanctioned by this body. It has been urged as the opinion of some gentlemen that, notwithstanding the vast responsibility attending the office of sheriff, he is still too well paid—that the amount of his compensation is improperly large, and greater than ought to accompany any one office in a republican government. Now, if this is a just cause of complaint, would not the better remedy be, to diminish the fees of the office and thus to render justice cheaper. Surely this would be better than to multiply officers, thus producing great inconvenience in the transacting of business, and increasing the costs attendant upon it.

In relation to the *venires*, the gentleman from Lancaster, (Mr. Hiester) says, that there should be two—one addressed to the city and the other to the county. Suppose there should be personal property part in the city and part in the county, he would have two *fi fa's* issued—one to the city and the other to the county.

I will suppose the debt to be one thousand dollars in amount, and that a sheriff in the city, who has no connexion with the sheriff of the county, debits property to the amount of one thousand dollars—the sheriff in the county also finds property to the amount of one thousand dollars. He levies on it. Both rights are going on together—both have to make returns to the court—and each will make a return, perhaps, that he has sold the amount of the debt. And what is to be done in that case? Why, you must postpone the decision in order to ascertain which sheriff is to have priority, the sheriff of the county, or the sheriff of the city. I will suppose another case—that of a sheriff holding in his hand a *fi. fa.* against an individual, whom he pursues as far as South street, when the individual takes his stand on the other side of the street, and laughs his pursuer to scorn. He says, I am in the county of Philadelphia; you have no right to follow me further; you are only a sheriff of the city, and cannot put a hand on me here. You must go back and get a new writ. But, perhaps, some gentlemen will say, the sheriff will have a writ of *fi. fa.* and *ca. sa*, and then the unfortunate man would come into a court of justice unable to pay his debts, for the costs would be doubled upon him. But, again: where is the sheriff's office to be? Are both sheriffs to live in the county? The county would not suffer it. One sheriff must live in the county, whether in the third district, or not, I do not know. But, (continued Mr. B.) there must be courts to determine whether they reside in the city or county. It appeared to him that the more we looked at the subject, the more difficulty seemed to surround it. The gentleman from Philadelphia, (Mr. Martin) and the gentleman from the county of Lancaster, (Mr. Hiester) whose pursuits had drawn them another way, and who were not conversant with law, had introduced confusion into our proceedings, though unintentionally, of course. They imagined, they said, no difficulty connected with this subject. There are reformers here, who were great admirers of simplicity; but he regretted that their actions had, in many instances, tended to produce difficulty and embarrassment. He was sorry that this motion had been made. He had hoped, that the city and county of Philadelphia, would have been allowed to remain on the same ground, as their friends in every other part of the state. It appeared to him, that the city would not suffer more than the county, from this arrangement; and he would have supposed that the remedy was plain, and that it would be better diminishing, rather than doubling the costs of the defendant.

Mr. REIGART, of Lancaster, said he did not like to speculate in regard to amendments to fundamental laws. As a general principle, he would support the motion; but in the present instance, he could not. He would object to the consideration of the proposition, unless there had been a separation between the city and county, for all judicial purposes. The effect of the amendment would be to create great confusion. Let the legislature act on the subject, if it was hereafter found desirable. As to the value of the office of sheriff, what was that to the convention? He objected to the proposed amendment, because it would produce inextricable confusion in the execution of processes.

Mr. EARLE, of Philadelphia county, said that he entirely agreed with the gentleman, as to the inconveniences which might arise, if the jurisdiction of the sheriffs was not kept perfectly distinct. Yet he thought it perfectly

easy for the legislature to regulate that matter. The magistrates were daily in the practice of issuing writs to the different constables, selected by plaintiffs, and no difficulty occurred in regard to jurisdiction: nor need there as respected sheriffs. The city of London had long been in the practice of electing two sheriffs, but how their respective jurisdictions were arranged, he knew not. There might be two officers elected, and their jurisdictions properly defined. However, he thought with the gentleman from Lancaster, who spoke last, (Mr. Reigart) that it was better to leave this matter with the legislature, and if they choose to pass a law for two sheriffs, and it should be found inconvenient, they could repeal it. He would prefer that the amendment should be so modified as to authorize the legislature to provide for the election of two, and to regulate their respective jurisdictions.

Mr. M'CAHEN said, whether he was acquainted with law or not, or understood what was the character of a writ of *fi. fa.* or *ca. sa.*, yet he believed it would be an advantage to the county to elect its own sheriff. The duties there were generally sufficient for one officer. He thought it would be the means of having more business done in the county. He had no doubt that the citizens of the county could manage their affairs just as well as the city could do it for them. He trusted that the motion to reconsider would prevail, and then the gentleman from the county of Philadelphia, (Mr. Martin) would have an opportunity to modify his amendment, so as to enable the legislature to obviate the objections which had been made.

The PRESIDENT said, that the motion to reconsider the section was in order.

Mr. DARRAH remarked, that his motion was to reconsider the vote on the section.

Mr. MARTIN, of Philadelphia county, said that he had well considered the amendment, and made some investigation as to what would be the operation of it, if adopted. He was of opinion, that the difficulties which the delegates from the city had represented, as likely to occur from the adoption of this amendment, would apply to all cases of two sheriffs in two different counties. If difficulties are to be encountered, in consequence of having a sheriff in the county, as well as in the city, and the jurisdictions of each being properly marked, they must also occur in every county in the state, where individuals hold property on each side of two counties. He, like his friend from the county of Philadelphia, (Mr. M'Cahen) did not profess to know any thing of law, but he looked to the precedents we have in reference to the counties, where the sheriffs have performed the duties of their office to the general satisfaction and benefit of the citizens. He, therefore, could see no good reason for supposing that the experiment, if tried, would not be successful as regards the county of Philadelphia. There could be no more difficulty, in his opinion, in a sheriffs residing and transacting his business in the county of Philadelphia, than in the county of Delaware. What, he asked, is the dividing line between the city and county of Philadelphia? Vine and Cedar streets; Delaware and Schuylkill. And the boundary between Philadelphia county and Delaware county, is Cable's creek. There are more than two hundred thousand people in the county, and upwards of forty thou-

sand taxable inhabitants in the city and county. Yet, with a population rapidly increasing, they have only one sheriff and one coroner, while every county in the state, be it ever so small, has one. The office of sheriff of the city and county, was well known to be a lucrative one, and it was his decided opinion, that the duties and emoluments of it, ought to be divided. The emoluments of the office now amount to five thousand dollars per annum, so that in three years, the incumbent might have a fortune. Several years ago, when Israel Israel, was sheriff, he made ten wards of thirty thousand dollars in three years. He was a close calculator, and knew exactly what he did. The gentleman from the city, (Mr. Chandler) had said that the sheriffs of the city and county generally went out of office poor. And did not the gentleman know the reason why? It was because they went into office greatly in debt, and under an understanding with their sureties that they should share in their profits. Benjamin Dunkes, late sheriff, made forty thousand dollars. If any real or substantial objection could be given why the city and county should not each have a coroner and sheriff, he should like to hear it. But none had yet been given that convinced his mind. He had hoped that when this subject was brought before the convention, that if any solid objections could be urged against the proposition, they would be brought forward. None, however, had he yet heard, and unless he did hear some, he would not give up the point that the county was entitled to the officers she claimed. It could not reasonably be expected that the city and county, with a population daily increasing, could go on long without some alteration in this respect. They stand in a different relation to each other. Each sends their own members to the legislature, and there are courts in the city, with which the county has nothing to do. He concluded by reiterating what he had said, that there could be no difficulty growing out of this much required alteration.

Mr. CHANDLER, briefly replied to the gentleman from the county of Philadelphia, (Mr. Martin.) The delegate had mentioned the proximity of the county of Philadelphia, and the county of Delaware. These matters had nothing to do with each other. And, as to the dividing line between the city and county, we all knew that it was in South street. He contended that the case of the county surrounding the city, was not analagous to separate counties. We all know that the emoluments of the sheriff had been very much reduced. That, however, we had nothing to do with; the legislature could arrange it. He (Mr. C.) was of the opinion that there was no good reason for creating the officers which the gentleman from the county and others desired, unless we first went so far as to separate entirely the county from the city. With respect to there being two sheriffs in the city of London, he would merely remark that they have concurrent jurisdiction, and divide their labors and their emoluments between them.

And the question was then taken;

And on the question,

Will the convention agree so to reconsider?

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

YEAS—Messrs. Banks, Bedford, Bell, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Indiana, Crain, Cummin, Curll, Darrah, Dillinger, Donnell, Doran, Earle, Fleming, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Helffenstein, Hiester, High, Houpt, Ingersoll, Keim, Kennedy, Krebs, Magee, Mann, Martin, M'Cahen, Miller, Overfield, Porter, of Northampton, Read, Riter, Ritter, Rogers, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Sturdevant, Taggart, Weaver—51.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barclay, Barndollar, Barnitz, Biddle, Bigelow, Bonham, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Cochran, Cope, Cox, Crawford, Crum, Cunningham, Darlington, Denny, Dickey, Dickerson, Donagan, Farrelly, Harris, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Hyde, Jenks, Kerr, Konigmacher, Long, Maclay, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Purviance, Reigart, Royer, Russell, Saeger, Scott, Seltzer, Serrill, Sill, Snively, Todd, Weidman, White, Woodward, Sergeant, *President*—63.

So the convention would not reconsider the vote.

A motion was then made by Mr. DICKEY,

That the third section of the said sixth article in the words as follow, viz: "Prothonotaries, clerks of the peace and orphans' courts, recorders of deeds, register of wills and sheriffs, shall keep their offices in the county town of the county in which they respectively shall be officers, unless when the governor shall, for special reasons, dispense therewith for any term not exceeding five years after the county shall have been erected," be numbered "section four," and the other and remaining sections be numbered accordingly.

Which was agreed to.

A motion was made by Mr. BROWN, of Philadelphia,

To amend the said report by adding thereto the following new section, viz:

"The legislature shall, as soon as may be, provide for the better division (wherever the same may be necessary) of the several cities, boroughs, and incorporated districts of the state, into wards, and of the several counties into townships, so that they may all be of convenient size for the qualified electors of each of the wards and townships to meet in town meeting; and shall provide for the meeting of the qualified electors, of each of the wards and townships annually, during the month of March or April, (and at such other times as may be necessary) when the qualified electors thereof shall elect all their ward or township officers, not otherwise provided for in this constitution, and determine all matters exclusively relating to their respective wards or townships."

Mr. BROWN, of Philadelphia county, said he was aware that it was hoping against hope, to entertain the idea that he could secure the vote of a majority of the members of the convention, in favor of this amendment, and probably, under such circumstances, it might be considered weak in him to offer it. If so, said Mr. B., I trust that it is at least an amiable weakness. I came into this convention with a scheme of this kind more at heart, than almost any other amendment which might be offered to the

constitution. I have all along wished to try its fate, but up to this time have been debarred from pressing it upon the notice of the convention, and it is now, I fear, too late to do so, with any prospect of success. Still, however, I could not suffer the opportunity to pass, without at least introducing it, if I can do nothing more.

I believe that if there is any thing approaching to perfection in a republican form of government, it is that the state should be divided into small districts, of convenient size, where the people may meet together once a year, or oftener if it be necessary, in small companies, to transact the business of their district—at which time they can elect their officers, and, as I have said, transact all their local business. I look upon such a community as having within itself the perpetuation of its own liberty, which no circumstance, save an overwhelming external force, can destroy or permanently injure.

This matter I know, is with the legislature, and I have offered the proposition now, not with any hope that I can procure the action of this convention upon it, but that it may stand as a record hereafter to shew that, in the year eighteen hundred and thirty-eight, such an amendment to the constitution was thought desirable and requsite by at least one of the members of this body. It will at least, as I have said, be placed upon the record, and may be referred to hereafter.

I shall now leave it in the hands of the convention, and without occupying more time in its advocacy. I shall not call the yeas and nays upon it, though if any other gentleman thinks proper to do so, I shall cheerfully record my name.

And the question on the adoption of the said amendment was then taken, and decided in the negative without a division.

So the amendment was rejected.

A motion was then made by Mr. Brown, of Philadelphia, to amend the said report, by adding thereto the following new section, viz:

"The legislature shall, as soon as may be, provide for the election in each county, by the qualified electors of the respective wards or townships, or by the electors of the county at large, of a county board, to consist of such number, as shall be deemed by the legislature proper, who shall hold their offices for three years, one-third of the board to be elected annually. The county board shall have charge of all property belonging, and the control of all matters exclusively relating to the county, and shall also have the appointment of all county officers not provided for in this constitution, or the election of which shall not by law be vested in the citizens. No member of the county board shall be eligible to any other office during the time for which he shall have been elected a member. Nor shall he have any interest in any contract made by the board."

Mr. Brown said, that in offering this he had done all he intended to do. It would be perceived, that this second section was part of the same plan as that proposed in the first; that was to say, that after townships of a convenient size had been organized, the citizens, themselves, should do their own business, as they always could do better than by agents.

After alluding to the appointment of school directors, &c., Mr. B. said—

In a free government, however much we may be disposed to trust the legislature in matters of general interest, I am not inclined to give to that body the appointment of officers for the regulation of the business of the different counties, whereof I can get a board for that purpose appointed from among the citizens, and who better understand their interests.

I desire to see this proposition, like the other, placed upon the records of the proceedings of this body. In so doing, I shall have discharged my duty. If the convention will not agree to it, I can not help it. The fault is not at my door.

Mr. PORTER, of Northampton, was understood to say, that he had voted with the gentleman from the county of Philadelphia, (Mr. Brown) on the first of these two propositions, and voted, he believed, in a very small minority with him. But it would never do to raise the superstructure where there was no foundation; to put upper stones where there were no lower ones. Such would be the case if this second section were adopted, the first having been rejected.

The gentleman from the county of Philadelphia and myself, therefore, said Mr. P., must part company here, but probably some kind hearted friend may be found to supply my place, so that the gentleman may not stand entirely alone upon this new edifice.

Mr. BROWN, of Philadelphia, said, that the gentleman from Northampton, (Mr. Porter) was much mistaken in supposing that the second of these propositions was necessarily dependent upon the first, and must necessarily fall to the ground with it. Such, said Mr. B., is by no means the case, although it is true, as I have said, that the two propositions are part of the same plan. If, as the gentleman seems to predict, I am to stand alone as the advocate of this proposition, I am content that it should be so; and probably I may have the greater glory hereafter. We have at least taken one step in advance towards such a system, for we have given to the people the election of justices of the peace, and the number in which they shall be elected.

This, I say, is at least one step towards giving back to the people the rights which have been taken away from them, and which they ought to exercise. And I think we shall find that when they come to elect their magistrates—as we have provided they shall do,—they will find such benefit resulting from the new system, that they will demand at the hands of the legislature, that the election of all their officers shall be given back to them.

And the question on the said amendment was then taken, and decided in the negative, without a division.

So the amendment was rejected.

A motion was made by Mr. EARLE,

To amend the said report, by adding thereto the following new section, viz:

SECTION 11. The qualified voters of each ward and township in this commonwealth, shall, on such day in each year as the legislature may direct, elect two persons to serve as inspectors, and two to serve as clerks of elections, for one year next ensuing their election; and in such election, each qualified voter may vote for not more than one citizen for inspector, and not more than one citizen for clerk, and the two citizens having the highest number of votes for each office, shall be chosen."

Mr. EARLE said, that he regretted that the amendments proposed by his colleague from the county of Philadelphia (Mr. Brown) had been lost, believing as he did that they were founded in wisdom. And my amendment, said Mr. E., is, *in some measure, on the same principle*, though not exactly.

Under the constitution of 1790, there is no provision as to the manner in which these election officers shall be chosen; and the legislature has the power to take to themselves the entire control in relation to these officers, and to give them to the governor. Believing as I do, that they are highly important offices, I am desirous that the choice of them should be given to the people.

But there is another object which I have in view, and which is very near to my heart; that is to say, fairness and honor in the reception and the counting of the votes, but also that the people should *know* that their votes have been fairly received and counted. Whether there have, or have not, been frauds in elections, I do not know, and I cannot, therefore, speak from my personal knowledge or observation. But, from conversations which I have held with intelligent and respectable men of both parties, I do believe that frauds have been perpetrated by election officers, from the fact of their all belonging to one party. Be this as it may, it is very certain that there is a considerable degree of partiality—and, probably, very natural partiality,—manifested by the election officers; and that they do not sufficiently scrutinise the tickets—as they know, by the appearance, that they belong to their own party. This very serious evil, for such it undoubtedly is—would be remedied by having officers appointed by both parties, as is contemplated in this amendment.

My object is to secure a proper scrutiny of those who are not entitled to vote, but who, in the absence of such scrutiny, may succeed in getting in their votes. Under the amendment proposed by me, there will be one inspector and one clerk of each party. As to the judge who gives the casting vote, he may be appointed in such manner as the legislature may direct. I believe this principle to be a sound one, not only in relation to election officers, but to all officers. I do not wish to abolish party spirit, but I wish to see its asperities diminished and softened down.

He wished to mitigate party spirit as much as possible. He did not wish to see one party in a common country treating others as aliens to the country. This filling of all the offices—kept by one party, was sufficient to promote discontent, if not revolution. We must subdivide the offices, so that each party may have a portion. This hostile feeling existing between parties, would then be mitigated.

He could wish to see the senatorial and assembly districts as closely divided as possible, so as to give the weaker party one-third of the repre-

sentation. The people would then be better represented, and their interests better attended to. He held to the principle that the minority should be represented and be heard.

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

The sixth article as amended, was then ordered to be engrossed for a third reading.

On motion of Mr. WOODWARD, of Luzerne,

The convention proceeded to the second reading of the report of the committee of the whole on the fifth article of the constitution, so far as related to the third section thereof.

The amendment to the amendment being under consideration,

The amendment was modified to read as follows, viz: "Until otherwise directed by law, the courts of common pleas shall continue as at present established. Not more than five counties shall at any time be included in one judicial district, organized for said courts. But two or more districts may be united into one circuit, and the president judges of the respective districts so united be required to hold the courts of common pleas in every county within the circuit, in such order and rotation as may be prescribed."

Mr. DICKEY, of Beaver, asked for a division of the question, to end at the word "courts."

He deprecated the introduction of these proposed innovations on the judicial system. He had no desire to see an itinerant judiciary in Pennsylvania. What he liked was an established judiciary. If there happened to be a good judge in a district, the people residing in it ought to have the benefit of his services. He was anxious that all the judges of the court of common pleas should be competent and able men; and, that when it should be discovered that there was an incompetent or inefficient judge in any district, he should be removed.

He did not think that the change contemplated by the amendment of the gentleman from Luzerne would prove beneficial. He was afraid that it rather looked to getting rid of the associate judges, such as were not learned in the law, but who, nevertheless, might be men of good common sense. There would then be seen three judges learned in the law, in one district, sitting on the bench—one in the middle and one on each side. He hoped that the latter part of the amendment would not be adopted. But, with respect to the first part, he had no objection, because it would go to supply the place of the fourth section, which was inadvertently stricken out.

Mr. WOODWARD, said, he did not think that the gentleman from Beaver, (Mr. Dickey) had treated the amendment fairly. It did not propose to dispense with the associate judges or to put three learned in the law together. He (Mr. W) had no such intention. As to the other part of the amendment, when in committee of the whole, he had felt the necessity of it in order to supply the place of the second section.

The provision was necessary to the organization of the courts. It proposed to superadd to organization, the rotation principle which would

produce no change in our system. The reasons for the change in his amendment he had submitted to the convention some days since. He had now modified his amendment according to these reasons. He did not intend now to say one word in favor of the principle. So far as his brief experience enabled him to judge, he could anticipate no evil result, but much that was good. He was perfectly content to yield to the decision of the convention. He believed the first part of his amendment to be indispensable, and he had moved it in committee of the whole. A gentleman who had opposed and defeated it there, now thought it might prove beneficial.

Mr. DICKEY said, he thought some amendment necessary because the provision in the old constitution was negatived. When the gentleman offered his proposition before, he (Mr. D.) had hoped it would have been agreed to. He did not believe that he was mistaken in his construction of the latter clause, to which he objected. It makes it the duty of the president judges to hold the courts "in every county within the district, in such order and rotation as may be prescribed." The legislature would go on to unite three or more counties, which should form a district where the judges reside. Two or three districts might then be made to form a circuit, so as that the judges might rotate.

Mr. WOODWARD disclaimed any such design, and if the amendment conveyed any such idea as the gentleman supposed, it was contrary to his intention. He was much mistaken if the language of the amendment meant what the gentleman said.

Mr. DICKEY said, he must still retain the opinion that his construction was correct.

Mr. WOODWARD, said, here is a judicial district with a president judge; another with a president judge—a third with a president judge. These three judicial districts are now united into a circuit;—and then the amendment provides that courts shall be held in rotation. If any member who has had experience in legislative proceedings, or any other gentleman in this body would introduce into the legislature, a proposition to unite three of these judges in virtue of this amendment, he must have learned in a different school from that in which I have been educated. If, however, any gentleman can in any manner change the language of the amendment so that it may convey my idea more forcibly, I am willing to adopt it. But until he does so, I must insist that this provision will bring only one judge upon the bench at a time.

Mr. DICKEY, of Beaver county, said that he did not feel disposed to enter into any critical discussion on questions of grammar or upon the construction of sentences. All I know is, (said Mr. D.) that I profess to be governed by the rules of common sense; and I have not a doubt that, if this amendment is adopted, it will be in the power of the legislature, so to unite these judges together, as to enable them to act in unison.

Before the amendment of the gentleman from Luzerne was modified, and when the printed copy was placed upon our files, it was contained in the following language:—

"The state shall be divided by law into convenient districts, none 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."

"Alternately and in rotation," continued Mr. D. By this language it would be understood that the courts were to be held here in one term, there in a second term—and there in a third term, and so on. But there is nothing at all to prevent the uniting of the judges. And it is to this that I object.

But I object also to this alternating principle, mainly because, if this amendment is adopted, it will destroy the usefulness of your associate judges who are not learned in the law. I do not think that this is a change which is desired by the people of Pennsylvania, nor do I think that it is desirable for us to insert any provision in the constitution, which will leave it in the power of the legislature to dispense with these associate judges. It will be sufficient for all purposes that we should adopt the first part of the amendment. This is necessary, inasmuch as the third section was inadvertently negatived, and I would leave it to the legislature to regulate the circuit courts. I hope, therefore, that the convention will not adopt the latter part of the amendment; and I ask for a division of the question, the first to consist of so much as is included up to the words "organized for said courts;" and the second, of the remainder of the amendment.

Mr. HAYHURST, of Columbia, was of the opinion that the amendment would be beneficial. If a trial should have taken place, and a new trial be ordered, the change would be more satisfactory. But he doubted the propriety of adopting the provision in its present form. Therefore, he had risen to ask the gentleman from Luzerne whether the amendment included the orphans' courts, and the courts of quarter sessions. If it excluded these courts, he thought the amendment very objectionable, as it would require courts to be held more frequently, and a more frequent payment of juries. If it did not exclude these courts, the principle of rotation, moving the president judges in a circle, one after the other, in a rotary motion, would have a good tendency; and where the judge resident in the county is by marriage or consanguinity extensively connected, this rotary principle will have the effect of bringing there a judge who, being an entire stranger, cannot be warped in his decisions by family influence. But while he was in favor of this rotary principle, if the amendment excluded the courts he had named, he should vote against it.

Mr. WOODWARD said, he would cheerfully answer the gentleman, by referring him to the fifth and the seventh sections of this article. The fifth section provided for the courts of oyer and terminer, and the seventh section made provision for the orphans' courts. This amendment does not interfere with either of these. If it did, he would himself vote against it, but it had no such operation. The regulation of the courts alluded to was already a part of the constitution. The amendment referred solely to the courts of common pleas.

Mr. MERRILL of Union, regarded this as a very important question, and if any doubts remained on the minds of members, the question should be well considered. For years past the governor had found great difficulty in appointing the president judges, and it was of importance that such rule o standard in the appointment of judges hereafter should be established, as would prevent this difficulty which has heretofore existed. Some change was necessary to put an end also to the delays which had taken place in bringing causes to a decision. Business in the special courts had been lingering year after year. It was important that the business should be disposed of, so that no difficulty might arise, or trial be put off, because a judge had been employed as counsel.

There were other grounds on which he desired some amendment. We know that jurors are always sworn to try causes according to the evidence. Judges ought to be, in the same way bound to try causes by the evidence. Yet there is great difficulty of obtaining such trial in small circles, where one man knows every man's business, and where men meet together to talk over other men's affairs. How can you then expect an impartial and fair trial?

Judges ought to know nothing of the individuals whose cases are to be decided on. When judges come to the trial, who know nothing of the parties, and who only make their decisions from the evidence heard before them, then is the verdict according to law. But if the parties are known to the judges, the influence of this acquaintance or connexion tends to a different result.

There was danger of injustice being done. But in all important causes, as the judges who would come to try them would be totally uninformed of the facts and circumstances in relation to them, they would give judgment according to law. Therefore, in Pennsylvania, experience was in favor of the amendment. The gentleman from Beaver, (Mr. Dickey) thought that the second part of the amendment ought not to be adopted. He, Mr. M., did not know that there was any objection to it on principle.

Mr. BELL, of Chester, said he agreed altogether with the observations of the gentleman from Union, (Mr. Merrill) as to the propriety of introducing at some future period, a new mode of dispensing justice, by the means he had pointed out, and which he, Mr. B. presumed were within his own experience.

Mr. MERRILL, explained that he did not mean to charge the judge with dishonesty. Far from it. But what he did mean to say was, that the jury might be biassed by residing on the spot. A jury was sometimes prejudiced in consequence of what they heard out of doors.

Mr. BELL was willing to admit that the evils which the gentleman had alluded to, had been felt, and severely felt, and should be corrected at the proper time. The gentleman from Luzerne, (Mr. Woodward) himself, was not willing to introduce into an organic law any thing that would not conduce to the happiness of the people of Pennsylvania. But, what was proposed by this amendment? Why, neither more nor less than to introduce a new principle into the constitution. He would ask the gentleman from Luzerne, and the gentleman from Union, whether it was pro-

per and necessary to invest the legislature with power over the whole subject.

Have not the legislature a right now to introduce the rotary principle? Where, he asked, was the power to prohibit them from doing so? Here was a scheme, in half a dozen lines, that was to embrace all the happiness of the people, and which the legislature had, in vain, endeavored to produce by several means. He protested against the principle of minute legislation in a body not clad with the powers, and where the people do not look for minute legislation. What he inquired, was the proposed amendment? Why, that the legislature might divide the state into circuits, and might require the judges to rotate. The amendment did not propose to carry out the principle in detail. If the gentleman from Northampton, (Mr. Porter) who had also proposed a similar amendment, and who was learned in constitutional law, could show him the wisdom of this amendment, he, Mr. B., might be brought to a different opinion respecting it.

Mr. PORTER, of Northampton, would endeavor to show the gentleman from Chester, (Mr Bell) that this amendment was very desirable. He would thank that gentleman or any other, to tell him whether he believed the present judicial system of Pennsylvania was now so perfect that in fifty years hence, no alteration whatever would be required, and, whether it would not be proper to give the legislature authority from time to time to make the improvement that might be necessary? He had as little desire as any man could have, to undermine the judiciary, but he thought that there should be a power somewhere to improve the judicial districts. He did not find in the other sections disposed of any power granted to the legislature, to have the courts reorganized.

I desire, said Mr. P., that this power may still be exercised by the legislature.

In relation to this principle of rotation by the president judges, I must say that I have always thought it would be salutary. I do not care who the judge is, how sound or learned a jurist he may be, nor how much of the public confidence he may enjoy; for I believe that there are circumstances which will sometimes induce the people to look at his decisions with distrust, where he has long resided in a district. And I believe also, that the adoption of this rotary principle will accomplish another great good—which is this. It has been said and, probably, with some degree of truth, that when a man has been appointed to the office of president judge, he gets accustomed to the performance of a certain routine of duty in his district, and that he becomes indolent and lazy. This may be the case, or it may not. But it matters little whether the fact is so, or not, if the charge is brought;—I mean it matters little, so far as regards its effect upon the popular mind. One thing you may depend upon as certain—that is to say, that the judges of your commonwealth are but about half paid for their services, and probably are only half worked. The judges in England do twice or three times as much work as the judges in Pennsylvania, and we know that the more business a judge has to do, in all probability the better lawyer he will be. This much our experience teaches us.

These, however, are not the only considerations which are worthy of notice in relation to the alternating principle proposed in this amendment. If the judges rotate, there will be in a judge a principle of ambition and pride. He will keep up his reading; his mind will be kept in constant action upon matters having reference to the discharge of his official functions; because when he goes from one circuit to another, the people will compare him with the other judges, as they come round, and pronounce their judgment freely and without reserve. This will be a powerful stimulus to him to improve himself in the science of the law; to make himself as perfect as possible. I believe, from my own experience, that a judge who does not continually reside in a district, but only comes periodically to preside over a court, will have more influence in laying down the law, than a judge to whom the people of that district may be constantly listening. I do not mean to say that judges or jurors, are weaker or stronger—better or worse—more honest or dishonest than other men. Human nature is the same all the world over; and if, by operating upon a man's honorable ambition, you can stimulate him to a closer attention to the duties of his station, and to render himself more competent to their performance, you will have done a very important work.

But, Mr. President, you will also accomplish another important object. Under the laws of the state of Pennsylvania as they now exist, whenever a judge is interested in a case, it becomes necessary to hold a special court and to summon a special jury—all which is a matter of great expense. By the adoption of the rotary principle, all the inconvenience and expense arising from this source will be avoided. The judge who may be interested will pass away, another judge will come and the cause will be tried at the ordinary term of court without any additional expense to the county.

Taking, then, all these considerations together, and believing that good may result, and that injury will not, I shall go in favor of the principle. If we have any judges on the bench of Pennsylvania who feel indisposed to travel, all I can say is that their health will be the better for this sort of loco-motion; and that if it were not so, the convenience or comfort of a single judge, or of two judges, or the fact of a judge or two being gouty, is not to be put in the scale against the adoption of a good and sound principle. I shall, therefore, as I have said, vote in favor of it.

Mr. Woodward, of Luzerne, said he regretted to perceive that an opinion had gone abroad among the members of the convention, that the amendment he had proposed would dispense with the services of the associate judges. This, said Mr. W., is certainly not my intention and I think I shall be able to demonstrate in a few words that this is not the tendency of the amendment itself.

The second section of the fifth article of the constitution, as it has been amended by this body, declares "that the associate judges of the courts of common pleas shall hold their offices for the term of five years, if they shall so long behave themselves well."

Here is one constitutional guaranty for the existence of associate judges.

The fifth section of the same article provides "that 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."

The seventh section of the same article provides "that 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."

Here, then, you have the second section of this article providing for the appointment of the associate judges; you have the fifth section providing for the establishment of the court of oyer and terminer by two judges of each county; and you have the seventh section providing for the establishment of the court of quarter sessions of the peace, and orphans' court. What more can we desire? Have we not here abundant guaranty that the associate judges are not to be dispensed with by the operation of an amendment which does not name them, which does not relate to them, and which is not designed in any way to effect them.

I have been desired to modify the amendment so as to require that these courts shall be held by the president judges, with the assistance of the associate judges. I think this cannot be done without rendering the provision obscure. I do not understand how the objection can be at all entertained, that the effect of the amendment will be to dispense with the associate judges. I can not see any thing by which such an inference can be sustained. If other reasons sufficient to defeat it can be given, let the amendment be voted down, but I hope that it will not be negatived under the mistaken idea that it will dispense with the associate judges. They have a sufficient guaranty in the constitution, as I have shewn, to prevent any effect of that kind. For my own part, I can see no force in the objection.

Mr. Bell, said he had no answer to make to the objections which had been urged against the amendment. It was a mere recommendation to the legislature to do a particular thing. It was engrafting in the fundamental law an authority for the legislature to do nothing more or less than what they have now the power to do. When the gentleman from Luzerne offered this amendment, before, he had doubts of the legislative power, whence he derived that doubt, he (Mr. B.) did not learn. He (Mr. B.) contended that there was no foundation for a doubt of the power of the legislature to authorise president judges to go out of their districts. Another objection against this amendment, was grounded on the course and powers of the general government. Gentlemen seemed to forget the distinction which exists between the constitution of the state, and the constitution of the United States. Congress exercising delegated powers, could exercise none but what are expressly given, or not reserved. But the legislature can exercise all powers not expressly reserved from them. This is the distinction between congress and the legislature. Where then, in the constitution of 1790, were the legislature restained from carrying out this, or any other scheme for doing justice. The gentleman from Northampton, (Mr. Porter) entertained the opinion that the legislature of Pennsylvania, unless power was expressly given to them, had not the power to alter the judicial system, as established in 1790. Unless that

gentleman could point him to some authority which would sustain that opinion, he (Mr. B.) could only say that he must continue incredulous on that subject. One gentleman suggested one scheme, and another another. But he had yet to be convinced of the necessity of this amendment. If its necessity could be made apparent, and he was convinced that this provision would answer the purpose, he might be disposed to go for it. But he believed that the legislature had the power, and were more competent to settle the details, than this body, whose duty it was to construct the organic law.

On motion of Mr. Gamble,

The convention then adjourned.

TUESDAY, January 30, 1838.

Mr. Biddle, of Philadelphia, presented a memorial from citizens of the county of Philadelphia, praying that the right of trial by jury may be extended to every human being;

Which was laid on the table.

Mr. Payne, of M'Kean, moved that the convention proceed to the second reading and consideration of the following resolution, offered yesterday, viz:

"*Resolved*, That the convention will, on Wednesday next, resolve itself into a committee of the whole, to take into consideration alterations and amendments to the fourth section of the first article of the constitution, and that that section shall be the order of the day for Wednesday next."

The motion was decided in the negative.

Mr. Hopkinson, of Philadelphia, from the committee to whom were referred the amendments to the constitution on second reading, made the following report, viz:

"That the amendments made to the first article, as passed on second reading, are correctly printed. There are, however, found in that article, as amended, certain ambiguities and incongruities which may lead to doubts and difficulties in construction. There are also certain alterations in phraseology which the committee believe would improve the reading of the article, but from the terms of the resolution under which they were appointed, the committee have not, in their judgment, the power to make changes."

The report being under consideration,

Mr. Hopkinson stated that the committee had had three meetings, and that difficulties had arisen which rendered it impossible to proceed in the

discharge of their trust, without the action of the convention. There were some ambiguities and incongruities which seem to require correction. In the fourth section it is said that "each county shall have at least one representative," and afterwards it is declared that no county hereafter erected shall be entitled to a separate representation unless it shall contain a certain number of taxable inhabitants.

The members of the committee differed in their construction of this claus. There was also an ambiguity about the time when this provision shall take effect. The committee after several conferences had failed to come to any satisfactory result; and it was necessary to have the action of the convention—whether by the appointment of another committee or not—was for the convention to determine.

Mr. READ, of Susquehanna, moved to lay the report on the table. He did not intend to call it up again, but that there should be an end of it; because he was satisfied, from what had taken place in the committee, that nothing of a beneficial character could be effected by that committee. If the committee were clothed with greater powers, the effect would be to bring about a reconsideration of the whole matter, to go over the whole ground again, and throw us back to where we were on the second of May. A report of a committee of corsertives on the subject of reference could never effect any good, as the effect would be to make us travel over the whole ground again; he made the motion to lay the report on the table, with a view to put an end to the matter.

Mr. M'SHERRY, of Adams, made an inquiry of the committee as to the order in which the report of the first article should be made. It was his understanding that they were to report the amendments to each section. The yeas and nays on each, were ordered to be entered on the journal. He perceived that, as the committee had reported, there was a section called the fourteenth section, which was a new section. If the amendments should be taken up and examined, it would be seen there was no fourteenth section. He would inquire why this was not added as a new section.

Mr. DICKEY, of Beaver, did not care if the report was laid on the table or not; but it was desirable, when the amendments were submitted to the people, that they should understand them, if the committee do not. There was no difficulty on the part of the convention in understanding the powers with which they were clothed, nor was there in the committee, not of conservatives but of reformers, any difficulty in getting along. If he was at liberty to speak of what occurred while in committee he would do so. It was understood that the committee should recommend some action on the errors of phraseology, and they did proceed to the correction of some of them.

The CHAIR said it was not in order, to speak of what took place in the committee.

Mr. DICKEY hoped no gentleman would object to the statement he was about to make, or else his mouth would be closed. The chairman who reported the proceedings, had said there was a difficulty. Am I not (said Mr. D.) in order to explain what this difficulty is. Mr. D. then went on to state that the fourth section of the first article, after a full and ample

discussion at Harrisburg had remained unaltered A new section had been introduced. called the fifth section. This manuscript section had been adopted without much consideration, and was entirely in contradiction to the old constitution. To present this section as it stands would not be creditable to the wisdom of the convention. He hoped there would be some action of the convention to alter the fourth or the fifth section, so that there may be no discrepancy between the different sections.

The alterations suggested to the article must be made, if we wish to make it conform to the petitions before us. The committee did not think it wrong to render the article so as that it might be acceptable to the people. This is the manner in which we are proceeding. The committee thought proper to make a report, and the gentleman from Susquehanna has moved to lay it on the table—and for what purpose? That these sections may go forth to the people in an incongruous form? He hoped not. Was it improper in the committee to make any alteration? He thought they were fully competent on their own responsibility, to make such change as would remove incongruity. He cared not whether the committee were discharged, or the report laid on the table. He would make a motion that the convention resolve itself into a committee of the whole on the report.

Mr. Hopkinson did not care if the convention went into committee of the whole or not, so that he was discharged from further service upon it. The gentleman from Susquehanna would not say that the difficulty in the committee originated with the conservatives. There had been no division in the committee as to party. There is now an incongruity in the article which must be amended.

Mr. Read said, he did not intend to make this a party question, nor was it his design to cast censure on any one. But it was natural to suppose, in a committee, a majority of whom are opposed to any change, there would be action contrary to the views of the friends of reform. In his remarks he had alluded as much to the minority as to the majority, and had intended no offence to any. The gentleman from Beaver had misunderstood him, if he thought that he (Mr. R.) wished to submit the fourth section of the first article to the people as it is. There was what he must call a contradiction between the fourth and fifth sections which must be altered. This contradiction resulted from the fact, that we had left the fourth section untouched, and given to the fifth section a new date—from 1790 to 1838—thus producing a result which the committee never intended. This whole clause of 1790 would take date from 1838. He objected to submitting this matter to any committee; because, if it should be so committed, and reported on, there would be more difficulty and debate in getting it right, than if we proceed at once in convention; or we may, when this article shall come up on its third reading, go into committee, and thus get rid of the difficulty. He was anxious that the article should be presented in a proper form without ambiguity or discrepancy, but a committee constituted as this committee was, could not get rid of the difficulty. It was necessary that an alteration should be made. He had no wish that the article should be submitted to the people in its present form.

Mr. Forward, of Allegheny, said that a new idea had been thrown out by the gentleman from Susquehanna, (Mr. Read) and that was, that the unaltered parts of the constitution would depend upon their ratification

by the people. In other words that the people are to reject the old and new constitutions.

He (Mr. F.) would be glad to know if the people were to reject the amendments, they would not by that act of rejection leave the old constitution untouched? The amendments are to be submitted to the people for their adoption, and those parts of the constitution which are unamended, are to stand of course. He had not heard it expressed, except by the gentleman, that those amendments which might be ratified, would be a part of the constitution. The matter was too plain to admit of debate. By the 5th section of the first article of the constitution of 1790, it was provided that thereafter no county erected should be entitled to a separate representation, until a sufficient number of taxable inhabitants should be contained within it, to entitle them to one representative, agreeably to the ratio which shall then be established. Now, the manuscript amendment, and which he voted for in a hurry, and without sufficiently understanding it—for it was not explained—would give to every county, not having more than one-half a ratio, a representative. Such was the construction of that amendment. He would venture to say that the majority of the convention never thought of such a construction, and never intended the amendment to have that effect. He was sure that he did not, nor did he think that others did. That construction could not have been given the amendment by the mover of it. It was in direct hostility to the old constitution. The repugnance between the old and new section was most evident.

What, he asked, was to be done with it? He would say that the convention ought to take some action in reference to it, in order to save itself from ridicule and disgrace. The adoption of that step was highly necessary and important It remained for the convention to say whether they would strike out that part of the section which conflicts with the old constitution. He would put it to every member of the convention, to say, whether it would become the dignity and bearing of this body to permit any amendment to go forth to the people in bad English, or in any other respect, exceptionable. An amendment was sent to the table, and no opportunity being given to examine it, it was to go out to the people! That, however, would never do. Certainly a part of the section could hardly be said to be good English.

Mr. READ explained that the clause to which the delegate from Allegheny had reference, was not the fifth but the fourth section.

Mr. FORWARD, then read the fourth section of the first article of the constitution of 1790:

"SECT. 4. Within three years after the first meeting of the general assembly, and within every subsequent term of seven years, an enumeration of the taxable inhabitants shall be made in such manner as shall be directed by law. The number of representatives shall at the several periods of making such enumeration, be fixed by the legislature, and apportioned among the city of Philadelphia and the several counties, according to the number of taxable inhabitants in each: and shall never be less than sixty nor greater than one hundred. Each county shall have at least one representative, but no county hereafter erected shall be entitled to a separate representation until a sufficient number of taxable inhabitants shall be contained within it, to entitle them to one representative, agreeably to the ratio which shall then be established."

This (continued Mr. F.) was the section in the constitution of 1790, and refers to all the counties erected since that period. Now, the fifth section contains provisions in direct conflict with the language of the section which he had just read to the convention. One must be changed. He was not anxious to be a member of the committee—but he felt quite convinced of the necessity of referring the amendments to some committee, to prune them of their incongruities, and to put them into a correct and grammatical form.

He would much like to know by what authority the gentleman from Susquehanna said that the majority of the convention are opposed to all reform. He (Mr. F.) would deny that they were opposed to reform.

Mr. READ said: The conservatives.

Mr. FORWARD: What! did the gentleman stand up to say it was not right to submit the amendments to a committee, the majority of which might be composed of conservatives, and he a member too. Was it proper, he would ask, that the gentleman should denounce the committee? Did the gentleman mean to say that a member was not in favor of reform, because he did not go with him through all the doctrines he advanced in his bank speech? [Here Mr. Read signified his dissent.] The members of that committee were as much in favor of reform as the gentleman himself. They came here for the purpose of carrying out the intentions of the people in favor of reform. He (Mr. F.) wished to know if the committee had been faithless to the trust reposed in them. If so, let the gentleman point out in what.

Mr. READ explained, that when up before, he had said that he meant no censure, nor to charge faithlessness upon the committee. Nothing was further from his mind—he had never dreamed of such a thing. He had only said that the majority of the committee had different notions of reform than had been exhibited in the convention.

Mr. FORWARD replied, that he would take the gentleman's explanation; but he would like to know what the gentleman meant when he said that a majority of the committee would be a minority of the convention, and that nothing could be expected of them. Did he mean to say that the committee were not likely to report any thing to meet the views of the majority? He (Mr. F.) was not complaining of any rudeness on the part of the gentleman himself, but he did complain that what the gentleman had said did convey an insinuation, at least, that such would be the result. He (Mr. F.) would say, in conclusion, that although he himself was a member of the committee, he was not willing that it should be disbanded. He desired that it should continue to exercise the powers imparted to it by the convention.

Mr. WOODWARD, of Luzerne, said it had been his opinion from the beginning that a committee should be appointed, possessing the power to revise the amendments so far as to alter words, phrases, punctuation, &c., without impairing or affecting the sense and meaning of the author of it.

In so large a body as this was, consisting of one hundred and thirty-three members, and amidst occasional haste and confusion as existed here, perfect grammar, or perfect sense, never could be anticipated, and it was

for this reason that he had been in favor of a committee to whom should be confided the duty of putting the amendments in a correct form, believing it to be essentially necessary.

The gentleman from Beaver, (Mr. Dickey) was, at the time, opposed to giving the committee power to change a word. And he believed that it was through him the committee were deprived of that power, which they ought to have had.

Mr. W. concluded with moving the adoption of the following resolution:

Resolved. That the report be recommitted to the committee, with instructions to that committee to suggest existing incongruities, and to recommend such verbal alterations in the amendments as will more clearly express the object of said amendments, without changing their meaning.

Mr. CHAMBERS, of Franklin, said that as one of the committee from whom the report had emanated, he was indifferent whether it was laid on the table, or not. He was not desirous of acting further under that power than it had been already exercised. Yet he concurred with the gentleman from Luzerne, that it was indispensable that a committee should be raised for the purpose of correcting incongruities, making the language as perfect as possible, &c., of the amendments which had been already adopted. This must be done by a committee—not to consist of nine—but of three or five, who would give their undivided attention to this important and responsible duty. This body, from its numbers, could not give its unqualified attention to it. The responsibility was too much divided. What was every body's business was the business of no one. Let the duty be performed by a committee. The attention of a committee had been given only to the first article of the constitution, and yet the committee were unanimous in saying there were ambiguities and incongruities in it. It was also the opinion of that committee, without regard to their conservative or reform principles, that there was defective language in it requiring correction.

The delegate from Susquehanna, (Mr. Read) seemed to consider, that the majority, whom he called the conservatives, ought not to be trusted with the work of revision. He (Mr. C.) had been ranked here as a conservative; and it was true, that to a certain extent, he was a conservative. He nevertheless, had advocated and voted for reform amendments. He was desirous that the amendments should go to the people in proper form, and in a manner that would be creditable to the state. Whose amendments he asked, were these that were to be submitted to the people? They were the amendments of the convention of the commonwealth of Pennsylvania. So that the character of the convention and of the state was concerned; and it would not do to say, in after times, that these amendments did not emanate from us. He would not attempt to shelter himself under an excuse of that sort. Even those amendments which he had not advocated and wholly disapproved of, he much desired should go out in a proper and unexceptionable form. Whether this committee was discharged or not, was immaterial—but that a committee must be raised for the purposes he had indicated, before the convention closed its labors, was certain.

If such a committee was appointed, he would beg to decline serving on it, because the duties would be both arduous and responsible. The gentleman from Susquehanna, (Mr. Read) appeared to think that there were difficulties to be introduced from the manner in which the amended constitution is to be submitted to the people. He (Mr. C.) was entirely of the opinion of his friend from Allegheny, (Mr. Forward) that the convention would not submit the engrossed constitution to the people, but the amendments only. It was ture that they are directed to be engrossed and filed in the office of the secretary of state, as amended. He (Mr. C.) repeated that the amendments are to be submitted. The decision to be made is—for or against the amendments. And, however convinced the gentleman from Susquehanna may be, that it was the constitution of 1790 that was to go to the people, and take effect from 1838, he was entirely under a misapprehension. Why, had not the convention said, by their rules, that those sections of the constitution which are unamended, are not to be voted upon? And, does not the constitution remain as the unamended constitution of the state until amended by this convention, and approved by the people? How was the construction of the constitution effected, if we refuse to change it, and the people are only to pass on such amendments as we send them? Why, the constitution of 1790, would be unchanged—the constiiution of our fathers would be our constitution, and the constitution of our sons.

But all this was foreign to the questiou now before the convention; it was only a reference to matters in relation to which the convention were divided. He would be satisfied whatever might be the disposition of this body; although, as he had already said, he would prefer that another and a small committee should be raised with powers to suggest amendments in phraseology.

Mr. Fleming thought it would be better to postpone the consideration of the resolution for the present. He then moved a postponement of it.

The President here announced that the time for considering reports, resolutions, &c., &c., had expired.

Mr. Denny, of Allegheny, hoped that the resolution would not be postponed, and that the rules would be suspended limiting one hour to the consideration of resolutions, &c.

The question was then taken on suspending the rule, and the motion was agreed to—ayes 58, noes 28.

Mr. Bell, of Chester, moved to amend the resolution offered by Mr. Woodward, by adding to the end threof, the following:

"And that the committee report specially to the convention, any contradiction which they may discover between the amendments proposed to the existing constitution."

Mr. Earle, of Philadelphia county, entirely agreed with the three gentlemen who had just spoken, as to the propriety and necessity of vesting a committee with power to effect the purposes proposed. He only regretted that the committee had not reported sooner. He was not present when the committee was appointed; but when he discovered that one had been appointed, he saw that the resolution did not vest in them

that kind of power which he thought they ought to have. On the 9th of January, he offered a resolution in the following words, and the three gentlemen voted against it on second reading:

Resolved, That the committee appointed on the second instant be instructed to inquire and report, whether any, and if any, which of the amendments now adopted, or which may hereafter be adopted, by this convention, are, or may be in anywise ambiguous in their language, or calculated to convey a meaning different from that which the said committee or any portion of it may suppose to have been intended by the convention; and also that the said committee be instructed to report what changes or additions of phraseology, if any, they believe to be expedient for the purpose of clearly expressing the intent of the convention in the premises.

The convention having refused to consider it, on the 11th, he offered another resolution; which is as follows:

Resolved, That the committee appointed on the second instant be instructed to inquire whether any of the amendments now adopted, or which may hereafter be adopted by this convention, are anywise ambiguous in their language, or liable in the opinion of said committee or any portion of it, to receive constructions different from what the said committee or any portion of it may believe to have been intended by this convention; and that the said committee be instructed to report what changes or additions of phraseology, if any, are necessary in its opinion, to obviate all danger of misconstruction of the true meaning of the said amendments.

Here are the names of those gentlemen recorded against the consideration of it. The object to be effected by the resolution of the delegate from Luzerne, (Mr. Woodward) was the same as his. He considered it indispensably necessary that a committee should be vested with this power of putting the amendments in the most accurate form, before being sent forth to the people, for it is well known to gentlemen, that there are a great many of them in a very imperfect and incorrect shape; which, in some instances, was attributable to the operation of the previous question, it having been moved unexpectedly, and thus prevented the mover of the amendment from putting it in a proper and correct form. He was glad that a committee had been appointed to do what he had proposed should be done by his resolution. If the committee or any portion of it should find that the meaning of any of the amendments, was doubtful or ambiguous, then it would be their duty to report the fact to the convention, so that all obscurity might be removed. It was of the greatest importance that every defect or error of that character should be removed, as it might form the ground-work upon which the people might reject all the amendments.

He wished to refer to one amandment that had been adopted, in relation to the number of senators that each county will be entitled to send to the legislature. It was the opinion of many gentlemen learned in the law that it would allow the legislature to unite the city and county of Philadelphia in one senatorial district. Now, as this was not intended, and if such a meaning or inference could be drawn from the section, then the committee ought to report the section, in order that it might undergo amendments, so as to make it conform to the meaning intended to be given it. He would vote for the resolution of the gentlemen from Luzerne and Chester, although he confessed that he would certainly have preferred that it should have been in such a form that if the committee or any portion of it, thought any of the amendments ambiguous, or liable to more than one construction, they should report what changes of phraseology would prevent that ambiguity or misconstruction, because if the minority

of the committee might construe it differently from what was intended, so also might the people.

Mr. WOODWARD accepted the amendment of the gentleman from Chester, (Mr. Bell) as a modification.

Mr. FORWARD, of Allegheny, said that if a member of the committee believed that any amendment was liable to a different construction than what was intended to be given it, the committee was in duty bound to make a special report to this body.

Mr. KEIM, of Berks, said, when this committee was first appointed, my fears were that it was entirely too large for any efficient purpose. The ominous number nine, by "the deep nine," was entirely too bulky in its inception to correct our phraseology. No two of the committee speak the English language alike. Magna Charta, schedule, and such words would be at once the explosion of a mine among them, while the bill of rights might become the cause of private injury in the discussion. It is true, sir, there appears to be no criterion of propriety in the language we use at present, for Webster has superseded Johnson, and set at defiance old and well established principles. Since the former lexicographer imposed his volumes upon us, chaos has come again, and the black letters seem just as popular as any other of the innovations of the day.

His rule, if that be a rule, which acknowledges no fixidity of purpose, is to allow every one the use of any words that may be convenient, whether they were ever uttered before or not. This committee have already reported, "that they cannot agree."

Mr. K. then read the following:

"The committee to whom was referred the amendments to the constitution on second reading, to report, prepare and engross them for a third reading, report,

"That the amendments made to the first article, as passed on second reading, are correctly printed. There are, however, found in that article, as amended, certain ambiguities and incongruities, which may lead to doubts and difficulties in construction. There are also certain alterations in phraseology, which the committee believe would improve the reading of the article; but from the terms of the resolution under which they were appointed, the committee have not, in their judgment, the power to make changes."

When I look at the names of the committee and learn that they owe their appointment to the accident of their having been the chairmen of the standing committees of this house, and not to the design that they should accomplish any good purpose, I am mortified that so much goodness should be so badly put together.

They are politically constituted, six conservatives to three reformers, and the remainder being so much in favor of the old constitution, it is probable that no new words will meet with respect from that quarter. There is quackery too about them, for whether we take them according to the theory of Hippocrates *vomitus vomitum curat*, or the Homoepathic doctrine of *similia similibus*, no good can possibly result from them.

In whatever aspect I view their report, I am always reminded of an old woman who falling asleep by the way side, was unfortunately deprived by some one of her nether garments. When she awoke she doubted whether she was herself or not, and was obliged to ask others as to her own identity. The identity of this committee with themselves may well be doubted if their spiritless report is any indication whatever of their ability.

Let us do them a favor and aid in their being discharged, so as to establish another committee composed of three instead of nine.

Mr. DENNY said that he was much pleased with the remarks of the gentleman from Berks, (Mr. Keim.) If that gentleman was to take some cast off clothes, perhaps they would be found to fit him equally as well as any other. Now, he (Mr. D.) had that morning felt disposed to ask leave to be discharged from the committee, but he thought that if he did, it might be regarded by some as shrinking from the discharge of a duty which the convention had imposed upon himself and others. He came here to fulfil his duties, as a member of this body, and he did not feel himself released from them unless circumstances should render it necessary for him to withdraw. He was unable to perceive that the committee was constituted in the manner stated by the gentleman from Berks. But, whether it was composed of reformers or conservatives, was a matter of little consequence to the convention, provided the members performed their duties. And, he (Mr. D.) would undertake to say that the commttee had no other desire. When he went into the committee room, it was with a determination to discharge his duties unbiased by any political feeling. No other feeling occupied his breast.

Now, if the members of the committee were to be classified as conservatives and reformers, he apprehended it would be found that there were more reformers than the delegate from Berks had intimated there were. But, whether they were radical reformers, was another matter. He thought that if the gentleman would look at the new committee he would discover that there was a majority of honest reformers. [Here Mr. Keim expressed his dissent.] The gentleman might shake his head, nevertheless, he, (Mr. Denny) would say "reformers." But independent of that cognomen, they were honest men, desirous of carrying out the wishes of the convention. The report of the committee showed exactly how they were situated, for want of the power they ought to have had bestowed upon them. He recollected when the gentleman opposite him (Mr. Earle) proposed, by his resolution to give the power now required by the resolution of the gentleman from Luzerne.

That resolution was voted down, because it was believed by many that the committee should not possess the power. When we looked at the resolution, we found it a simple and naked resolution directing the committee to prepare and report the amendments. No power was given, and I suppose that the only authority the committee had, was to look to the dottings of the ii's and the crossings of the tt's. We did not, however, ask to be discharged, because we thought that there were duties to be performed which must be performed by some committee or other, and that it would be impossible for the convention to get along with its business in the absence of such a committee. If the committee heretofore appointed, is believed not to be adequate to the discharge of the duties imposed upon

them, there are a number of wise men in the convention, and a better selection may be made. For my own part, I will resign my place with all cheerfulness to any other gentleman. I have no anxiety to remain where I am. I feel, however, the responsibility of my situation. I feel that if we are to submit to this convention, the amendments corrected as to their phraseology, we will, in some degree, be responsible for it. I do not concur in the opinion which has been expressed in the course of this debate, that it will be impossible for a committee to make such alterations or suggestions as will comport with the views of the majority of the convention. I believe, and the committee believe, that it is their duty to carry out the views of the majority in any suggestions which they may make touching the alterations of the phraseology; but the committee have not gone beyond the narrow bounds within which they believed themselves to be confined by the resolution which appointed them. They have stated to the convention the difficulty under which they labor; and the same difficulty, I believe, will attend any similar committee which may be raised. Whatever propositions may be made by this or any other committee, will come before the convention for approbation or rejection.

I should regret extremely to see any of the amendments go forth in a disreputable manner, after the long time we have been engaged upon them. I trust that no such mortifying circumstance will attend the final close of the labors of this body. I trust that every thing we have done, or may yet do, will be sent forth to the people in a shape so intelligible and perfect, as to leave no room for doubts or misconstructions. To accomplish this object, I believe that it is absolutely necessary that that committee should be clothed with the power contemplated in the proposition of the gentleman from Luzerne, (Mr. Woodward.)

Mr. M'Dowell, of Bucks, said that he could not understand what this committee, consisting of eight or nine members, had to do with the convention, or the reform principles of the convention. I confess, said Mr. M'D., that I am at a loss to know why there should be any difficulty among the members of the committee, because some are conservative and some are radical. What, let me ask, have they to do with any principle, or with any matter of substance, which may have been adopted by this convention? They have, or ought to have nothing to do with it; and I cannot therefore see why there should be any difficulty. They have no power, or at least they ought to have no power to interfere with any single principle, of any one amendment, which this convention has agreed to establish. Why then is it that conservative and radical principles are thus called into action? For what purpose? To what end? For my own part, I am entirely at a loss to conjecture.

But, Mr. President, I do not believe that this is the great evil or the difficulty which lies in the way. I believe there is another, and I will take leave, with entire respect to the committee and to the convention to suggest what, in my judgment, it is.

I believe, then, that the evil consists in the number of delegates of which the committee is composed. I believe that if this committee were discharged, and if out of the same gentlemen who now compose it—for I am sure that none more competent could be found here—a committee of three were to be selected, I say, I believe that such a committee would

discharge their duty to the convention and to themselves, much better and much more expeditiously, than the committee of nine members which we now have. I suppose it probable that, at one meeting of this committee of nine, there may be three members present, and that, at another meeting, there may be three other members present, who were not present at the preceding meeting; and that thus they come in one or two at a time, seldom, if ever, meeting all together, and consequently never acting in concert. Does any gentleman imagine that it is necessary to have a committee of nine gentlemen to point out grammatical errors or incongruities? I cannot believe it, nor can I believe that the difficulty lies between the two parties in this convention. I suggest this matter respectfully to the members of the committee. I do not know what the opinion of the gentlemen composing it may be, whether they think that their number is too great or not. But it strikes me that it is, and I cannot help thinking, as I have said, that a committee of three will get through the business more expeditiously, and more to the satisfaction of the convention.

Mr. STURDEVANT, of Luzerne, said that he did not rise for the purpose of making any remarks on the question before the convention. I do not myself entertain a doubt that the proposition of my colleague, (Mr. Woodward) as modified under the suggestion of the gentleman from Chester, (Mr. Bell) will, if adopted, prove entirely satisfactory, that all the difficulties now complained of will be obviated by it, and that the committee will be able to progress with their labors expeditiously and harmoniously.

Governed by these feelings, I have risen for the purpose of putting an end to this debate, so that we may be enabled to go on with the matters before us, and to close our labors prior to the year eighteen hundred and forty-five, which has been fixed upon by many good citizens of this commonwealth, as the time at which it is probable our final adjournment may take place. I therefore demand the question on the pending amendment.

Which motion was not seconded by the requisite number of delegates.

And the question then recurring on the adoption of the amendment of Mr. WOODWARD, as modified:—

Mr. CHAMBERS, of Franklin, rose and said, that when he took occasion to address the convention upon the subject of the action of this committee, and of the further power which it was proposed to give to it, he had stated that so far as his own feelings were concerned, he was indifferent whether the report might be ordered to lie on the table, or whether it might be acted upon otherwise. I stated, said Mr. C., that I should prefer that another committee should be appointed in our place, and which should consist of a smaller number of members. I concur entirely in the views expressed by the gentleman from Bucks, (Mr. M'Dowell) that a small committee would perform the duties which might be imposed upon them, much more expeditiously, and much more to the satisfaction of the convention, than a large committee, such as that now in existence. Allusion has been made to the great difficulty of getting a large committee together. Up to this time, the members of the committee have been very attentive, and we have had, at three meetings, as many as seven out of nine present. However, it is a committee which, if all is committed to it that is proposed in the amendment, will be under the necessity of sitting

daily, and there will, undoubtedly, be much difficulty in the proceedings of a committee so numerous. Although I entertain these sentiments, I still hold to the opinion I have before expressed; and, notwithstanding the reflections which have been made by the gentleman from Berks, (Mr. Keim) I shall not suffer any feeling of resentment to influence my mind, or to lead me to change that opinion.

I, therefore, with the approbation of the other members of the committee, submit the following motion:

To amend the resolution, as modified, by striking therefrom, after the word "that," the words "the report be recommitted to the committee," and inserting in lieu thereof the following, viz: "said committee be discharged, and that said report be referred to a select committee of three."

Mr DICKEY, of Beaver, said that when he was before in possession of the floor, he had expressed his indifference whether the report of the committee was laid on the table, or whether it should be referred back again, or whether the committee should be discharged.

But, said Mr. D., from what has subsequently passed in the course of debate, and from the reflections which have been cast upon the committee in various parts of the house, I believe it to be my duty to state here what has been the course of action on the part of that committee.

When I was up before, I stated that the committee met, and that, at their first and second meetings, there was not a doubt entertained as to the power given to it by the convention.

The CHAIR here interrupted Mr. Dickey, and stated that these remarks were out of order. It was not in order to detail to the convention the proceedings which had taken place in committee.

Mr. DICKEY. Why, sir, my remarks might cut somewhere;—that is true. I was about to say that it was not ——

The CHAIR again interposed, and called the gentleman from Beaver to order. The remarks the gentleman had indicated his intention to make, were entirely out of order.

Mr. DICKEY resumed.

Sir, reflections have been cast upon this committee which they did not deserve, and which ought not to have been made; and if I were at liberty, under the rules of this body, to state the transactions which actually took place in the committee, I should have no difficulty in demonstrating that those reflections were, as I state them to be, entirely undeserved.

But let us take a case, and this at least, I suppose, I am entitled to do. Let us suppose that a committee was appointed in the senate of Pennsylvania, consisting of the number of nine, to whom was referred a certain subject, that they might prepare it to be engrossed and report upon it. Suppose that the committee, when they met, found no difficulty in ascertaining the extent of their power; and that they should believe that, under the power thus bestowed upon them, it was fully competent for them to alter the phraseology, so long as the alteration did not affect the meaning or the principle, and that it was competent for them to point out incongruities in language, or incongruities existing between one section and another.

Suppose that the committee, in the exercise of their power, which they did not doubt was conferred upon them, should proceed to their labors, and that a member should rise and move that a certain section, which was incompatible with another section of the constitution, should be negatived. Would there be any thing improper in so doing? Suppose that another member of the committee had, prior to that, made a motion that another portion of the section should be stricken out, in order to make the two sections consistent with each other. And suppose the member finding that his motion to strike out would make a new section that would not suit him,

"Should turn about, and wheel about, and jump Jim Crow."

Imagine to yourselves a case of this description. It would then be easy to suppose that difficulty might exist in the committee; and that then, and not before, the committee would talk of their power of recommendation to the convention.

And then suppose that the committee finding themselves, not probably in the troubles of Werter, but in certain troubles affecting their own peculiar notions, should draw up a report something in the nature of that which has been presented here. And here you have the case.

Now, it will be recollected that the subject-matter of the fourth section of the first article of the constitution of seventeen hundred and ninety, was considered at Harrisburg, in committee of the whole—that attempts were made by a number of delegates to make some amendments, and that the committee of the whole decided that the section should not be amended. And it was read a second time, and passed.

The fifth section which we find here, and which was offered by the delegate from the county of Philadelphia, (Mr. Earle) was adopted on second reading as a manuscript amendment, and was passed upon by the convention not upon as much consideration as the subject deserved. I am warranted in making this assertion, because one of the members of the committee voted for the adoption of that amendment on second reading, and that member now sees that it is inconsistent with the fourth section. The delegate from Susquehanna, (Mr. Read) now admits that the incongruity is so great between the fifth section, thus adopted, and the fourth section of the constitution that it will be requisite to have the action of the convention upon them, in some manner, so as to make the two consistent.

Mr. Read begged leave to explan. I admit, said the gentleman, the incongruity between the different parts of the fourth section, but not the incongruity between the fourth and the fifth section; that is to say, if the fourth section were put in the form in which this convention intended to put it.

Mr. Dickey resumed.

The gentleman from Susquehanna admits that, as the fourth section now stands, it requires alteration. He thinks that an alteration, of some kind or other, ought to take place, in order to make the two sections consistent with each other, and I can tell the gentleman that the convention, when in committee of the whole at Harrisburg, decided absolutely that there should be no alteration; and I can tell him also, as I have before

stated, that this fifth section was adopted on second reading in convention, without that full consideration which had been previously given to the fourth. I am aware that the gentleman from Susquehanna is of opinion that a different construction would be given to the fourth section. He is under the impression that the terms, "each county shall have at least one representative," would give to each county, under the constitution of 1838-9, a representative. I do not place such a construction upon these words. I do not believe that any new construction would be given; but if we send this section out to the people unamended, many counties in the state would be then unrepresented.

The contradiction which exists between the fifth section thus adopted, and the fourth section of the constitution, is this:—The constitution of 1790, declares that "each county shall have at least one representative, but no county hereafter erected, shall be entitled to a separate representation, until a sufficient number of taxable inhabitants shall be contained within it, to entitle them to one representative, agreeably to the ratio which shall then be established." Now, under the operation of the existing provision, it is well understood that the counties which might be organized after the adoption of the constitution of 1790, should not have a separate representation, until the taxable inhabitants should have amounted to the lawful ratio, whatever that might be.

Henee those counties not having the ratio, are not entitled to a separate representation. In this new section which was adopted on second reading, and as I say, without proper reflection, it is declared that "not more than three counties shall be united to form a representative district. No two counties shall be so united, unless one of them shall contain less than one half of the average representative ratio of taxable population: And no three counties shall be so united, unless two of them combined, shall contain less than one-half of the representative ratio aforesaid."

I propose to illustrate this contradiction between the two sections by reference to a few facts.

The county of Union has a population of about four thousand. Under the provision of the constitution of 1790, the ratio was about three hundred.

The county of Mifflin is short; it is short by more than one-half.

The county of Juniata is short, but it has over one-half of the ratio. It may be the intention of the delegate from the county of Philadelphia, (Mr. Earle) to give a representative upon a large fraction, that is to say, upon more than one half; as for instance, to give to the counties of Union, Mifflin, and Juniata, each a representative upon a population less than the ratio—yet greater than one-half of the ratio, whatever that might be. It would be impossible for this state of things to be brought about under this fifth section, inasmuch as it is inconsistent with the sixth section of the constitution of 1790, which has not been altered; it would be impossible, as matters now stand, to give to Mifflin, Union, and Juniata, a separate representation.

And here it was that the difficulty originated. For my own part, I thought there was nothing improper in any committee, appointed for the purpose of correcting the phraseology, stating these facts to the convention,

in order that the convention might again resolve itself into committee of the whole, for the purpose of amending one section or the other.

There is a difference of opinion as to the section in which the requisite amendment should take place. The gentleman from Susquehanna, (Mr. Read) thinks that it should take place in the fourth section. I do not concur with him. I think that the fifth section ought to be negatived; and I think that it would not be in any sense improper, nor out of character, for the committee appointed to revise the amendments, or for any one of its members, to make a report recommending that the fifth section should be negatived, and that the convention should resolve itself into a committee of the whole for that purpose.

I repeat the opinion which I have before expressed, that it is a matter of indifference to me whether the committee be discharged, or whether the report be referred back to them. I am inclined to the belief, however, that a committee consisting of a number so small as that indicated in the amendment of the gentleman from Franklin, (Mr. Chambers) would not be desirable. Suggestions will occur to one out of nine, which might not occur to one out of three. If it should be found that a committee of nine cannot with convenience act together, they might appoint a sub-committee. There is always safety in a number of persons.

Mr. Fleming, of Lycoming, said that he should be sorry to have the committee to whom these important matters had been referred, discharged before they had well entered on the performance of the duties assigned to them. If, (said Mr. F.) I correctly understand the purport of the resolution under which the committee was raised, it was appointed for the purpose of examining what we have done, of pointing out errors in phraseology and of making their report to the convention.

From the evidence which we have this morning had of the ability of the gentlemen composing this committee, to point out errors in the work we have done, we ought to be amply satisfied that, so far at least, they have discharged their duty faithfully. They have found errors in almost every line, and every motion which we have made in committee of the whole, would appear to be wrong and full of errors. The whole mass of the constitution thus far submitted to them, is reported to be a mass of incongruities and inconsistencies. It was for this very purpose that the committee was appointed; and, finding that they are fully competent to point out errors, what better evidence can we have of their ability to discharge the duties assigned to them. They were set apart to perform a particular duty, they have given us evidence of the fidelity and ability with which they have entered upon that duty, in doing the very thing which they were appointed to do. And we, the members of this convention, finding that the committee have thus done their duty, are now asked to discharge them from the further consideration of matters referred to them. This is certainly a very strange course to pursue. I cannot reconcile it to my idea of what is proper or consistent.

I do not believe that any other nine gentlemen in this body can be selected so competent, so capable, and so amply qualified to detect errors and incongruities as the very gentlemen who now constitute the committee. It appears to me that they are performing precisely the duties which they were required to perform, and yet we are called upon to discharge them.

For what? Not because they have failed to discharge their duty? Nothing of the kind. For my own part, I am not willing to give any vote which goes to show, even by implication, that I have not the fullest confidence in the committee. After they have had the matters referred to them under their consideration, and have actually exposed the errors which existed in such amendments to the constitution as had been before them, what fault can you find with them? What have they omitted to do, or what have they done which did not come within the legitimate sphere of their duties? If the convention should think proper to clothe them with greater power, I, for one, am willing. I am willing to give the committee power to make such a report as they may see fit—subject of course to the revision and reconsideration of this body. We see that the committee have acted with perfect unanimity; at least I infer that such must be the case, because there has been no minority report made this morning containing a different state of facts from that presented by the venerable gentleman, (Mr. Hopkinson.) So that, in every point of view, it appears that this committee are discharging there duty as faithfully as possible, and I see no reason why they should be discharged. I shall, therefore, vote against the amendment of the gentleman from Franklin, (Mr. Chambers) and in favor of the resolution of the gentleman from Luzerne, (Mr. Woodward.)

Mr. Brown, of Philadelphia county, said he felt no disposition to protract this debate, but that inasmuch as, on the motion of the gentleman from Luzerne, (Mr. Sturdevant) the convention had resolved that the question should not at once be taken—and as it was undoubtedly a question of great importance—he would in as few words as possible, express the opinion he entertained upon it.

I shall go, continued Mr. B., against the discharge of the committee. I do not know who are the nine gentlemen composing that committee, nor who is its chairman, but I look at the nature of the report they have made to this body, and to the extent to which they have acted, in what they believed to be the discharge of their duties. Viewing the matter in this light, I think it is not judicious to give to this committee the power to throw into this convention a new constitution about the second day of February, the time of our final adjournment. They have, in fact recommended almost an entirely new constitution. So far as the first article is concerned; they have recommended that whole sections be stricken out. Surely, there is no great chance that we shall get through with our labors by the time appointed, when we find new things thus thrown wholesale into the convention! But, I say, let their report come; let us have the worst at once. Experience has taught us that every attempt to bring before the convention any report calculated to satisfy the members of this body, or to bring its labors to a more speedy termination—I say, experience has shown us, that every such attempt has proved a total failure. I believe that the cause of failure is radical somewhere in this body; I am not at liberty to say where it is, even if I know where it is, and if you cut this committee down to the number of three, as is proposed by the amendment of the gentleman from Franklin, (Mr. Chambers) I do not believe that you will gain any thing by it, or be any nearer to the object you have in view; for a committee of three, will bring in a similar report to a committee of nine; and a committee of two will bring in a similar report to a committee of three.

Let, then, this committee stand; let us know the worst, and let us have it before us; and the sooner it is done the better. I am anxious that we should get through with our business as soon as possible, and I am not disposed to do any thing which may have a tendency to prolong the period of our final adjournment to a still more distant date. We have, it is true, been many months together; but I hope better things are in store for us, than the gentleman from Luzerne, (Mr. Sturdevant) indicates as the opinion of many good people of this commonwealth—that is to say, that we shall not finally separate until the year 1845.

Let us, then, meet this matter at once; let us have the report of the committee, and then let us dispose of the subject as a majority of the convention shall think proper. This is what we shall have to do at last, and we may as well come to it first as last. I should have been glad if the gentleman from Beaver, (Mr. Dickey) had adhered to his original proposition to go into committee of the whole. The convention consists of one hundred and thirty-three members, and surely, we are competent not only to decide whether the incongruities and inconsistencies which have been spoken of do actually exist, and, if so, that is the best mode of rectifying them. Still, however, I respect the opinion that, inasmuch as a committee has been appointed, I hope they will give us their report.

Mr. M'CAHEN, of Philadelphia county, said, that nearly two hours had now been spent in the discussion of this question, and he thought every delegate must be prepared to give his vote. He would, therefore, call for the immediate question.

Which motion was seconded by twenty-nine other delegates rising in their places.

And the question being taken,

Shall the question be now put?

It was determined in the affirmative.

And the question was then taken:

Will the convention agree to the amendment?

Which was decided in the negative,—ayes 43, noes 47.

So the amendment was rejected.

And the question was then taken on the adoption of the resolution, as modified, and was decided in the affirmative without a division.

So the resolution was adopted.

And the report was recommitted to the committe with the instructions indicated in the said resolution.

ORDERS OF THE DAY.

The convention then again 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 recurring,

Will the convention agree to the first division of the amendment to the said report, as follows, viz: "Until otherwise directed by law, the courts of common pleas shall continue as at present established. Not more than ——— counties shall at any time be included in one judicial district, organized for said courts?"

Mr. MERRILL moved to fill the blank with the number "four."

Mr. WOODWARD moved the number "five."

Mr. FLEMING moved the number "six."

And the question on the highest number—"six," was taken and lost.

And the question on the next highest number—"five," was taken and decided in the affirmative.

And the blank was filled accordingly.

And the question then again recurring, on agreeing to the first division of the amendment to the said report,

Mr. FORWARD, of Allegheny, said that if he understood the clause now under consideration, the first part of it was a fit subject for the action of the committee appointed on the schedule. It declares, (said Mr. F.) that the courts of common pleas shall continue as at present established, until otherwise directed by law. This, certainly, is matter proper for the schedule.

As to the number of counties to be contained in the district, I think it is a matter which may be safely left to the action of the legislature. I do not, for my own part, see the necessity of imposing this restriction here. I suppose the legislature will not be inclined to enlarge the boundaries unnecessarily; and it seems to me, therefore, that the restriction may be well dispensed with.

In regard to the second branch of the proposition of the gentleman from Luzerne—but which is not now immediately under consideration—I concur with my learned friend upon the right, that it is a matter which should be left in the hands of the legislature. We are conferring no power upon them, and we are imposing no restriction.

And the question was then taken, and decided in the affirmative without a division.

So the first branch of the amendment was agreed to.

And the question then recurring,

Will the convention agree to the second division of the said amendment, as follows, viz:—

"But two or more districts may be united in one circuit, and the president judges of the respective districts so united be required to hold the courts of common pleas in every county within the circuit, in such order and rotation as may be prescribed."

Mr. WOODWARD said, that he hoped the convention would indulge him in making a few observations, before the question was finally taken on the adoption of the second division of the amendment he had proposed.

I understand that it is still the conviction of many honest minds in this convention, that this amendment, if agreed to, will have the effect of dispensing with the associate judges of the commonwealth. I regret that this conviction should still be retained; for, if such should be the effect of the amendment, there will be no man in this hall, or out of it, who will lament its adoption more unfeignedly than I shall. I believe these associate judges to be absolutely indispensable for the purpose for which they were originally created; and I beg leave to call the attention of the members of this body to the organization of the courts in the state of Pennsylvania, to see what these judges are and what they are to be.

We have in each county of the state, four courts; two of which are criminal and two civil. We have the court of oyer and terminer which is to be held by two judges, the president being one; that is to say, the president and one associate, or the president and two associates may hold the court; but the president judge must be one.

There is a propriety which, I think, few men will be inclined to question, in requiring the concurrence of two judges—one being an associate and the other a president judge—in passing sentence upon life, or upon long confinement.

The next court of criminal jurisdistion is the court of quarter sessions. And here two judges are also required; but any two of the judges of the court of common pleas may hold the court of quarter sessions;—that is to say, either two associates alone, or the president and one associate. This court has also charge of the granting of tavern licences, and has cognizance of all local matters through the several townships;—all which, we know, requires a personal and exact knowledge of men and localities. Our districts as they are at present organized, consist of various counties; some of three, some of four, and some of five. A president judge who resides in one of these counties, cannot have the knowledge of local matters, which is necessary to the transaction of that kind of business which is put upon the court of quarter sessions. Hence the wisdom of requiring the concurrent judgment of an associate. Such is the organization of the courts of quarter session.

Then we have the orphans' court which has charge of minors, of the the accounts of executors, and of other matters of that kind which are local in their character. And the very same reason which operates in requiring an associate judge to aid in the transaction of the business of the court of quarter sessions, operates also in requiring the aid of an associate in the orphans' court. Thus we see, that in these two courts —that is to say, the court of quarter sessions and the orphans' court— having charge of all local subjects—and which must depend, for their due and proper transaction, upon local knowledge of men and interests in that community—I say, in these two courts, you have already provided in your constitution for associate judges to sit upon the bench along with the president. Sir, it is a wise and a necessary provision; and I, for one, would never consent to dispense with these judges from our courts —since their presence there is necessary for these important purposes.

You have, then, the remaining court of common pleas, which is a court of civil jurisdiction. Have gentlemen considered that, under the constitution and laws of the state of Pennsylvania, as they now exist,

and always have existed, the presence of the associate judges in the court of common pleas never has been required—*never has been required.* It is not necessary; I say, it is not *necessary.* Now, the president judge must be there. These courts may all sit in the same house, and may transact business in the same house. But, while no business can be transacted in the orphans' court or in the court of oyer and terminer without the presence of an associate judge, the whole business of the court of common pleas may be transacted without an associate being there. Such is your law and your constitution at the present time. When, therefore, gentlemen ask me to insert in this new constitution a provision by which the associate judges shall be required to sit with the president, I say that it is asking me to introduce a new provision—a novelty which never has yet been introduced, and should not now be so. It is true, there are some local purposes in reference to which the presence of the associate judges in the courts of common pleas, is necessary; as, for instance, in the case of insolvent debtors—the discharge of insolvent debtors—the appointment of trustees, &c.—matters, which partake something of the same character as the business brought before the court of quarter sessions. There is sometimes, therefore, a necessity that the associate judges should be present in the courts of common pleas. Hence the necessity of permitting them to come upon the bench when there is occasion that they should be there—whenever the interests of the people require it.

But, so far as concerns the trial of causes and the ordinary transactions of the courts of common pleas, there is not any necessity, as I have stated, for the presence of associate judges at the present time; and I am not willing to introduce any words into the amendment I have offerd, which would create such a necessity. The reason must be obvious, at least to the mind of every lawyer in this body, if it is not equally apparent to the mind of every other delegate; for every lawyer knows that in an excitement, a case involving nice questions of evidence, may be better tried before a single judge, he being an intelligent man and a good lawyer, than it can be before any number of judges, with a jury, however learned they may be. And I must say, that the idea which has been expressed by the gentleman from Beaver, (Mr. Dickey) of bringing a cause for trial before three judges—that is to say, before a law judge and two judges not learned in the law is, to my mind, perfectly ridiculous. No, sir;—try your cases before one judge. Reverse his judgment, if it be wrong; affirm it, if it be right. And you will then have a better trial than you can possibly have before any tribunal consituted in any other way.

Such being the present organization of the courts in the state of Pennsylvania, it is the object of this second branch of my amendment simply to provide that the president judges of the several districts shall be required to hold the courts of common pleas alternately and interchangeably. With the associate judges, am I asked? I answer, certainly—if they come and sit upon the bench of the court of common pleas They have undoubtedly a right to sit there. In some instances they do; in some instances they do not. The amendment leaves the judiciary exactly as it is at the present time—without increasing or diminishing the number of judges, or their salary; without making any alteration, but simply

providing for the establishment of this rotary principle. Dispense with the associate judges in Pennsylvania! Never will I consent to such a proposition, while there are so many local matters, which must be attended to by some court or other, and which no court can be competent to transact in the absence of a full and ample knowledge of the local interests which are to be affected. Nothing can be further from my intention, nothing further from my wish, than to introduce any provision having such an object in view, or which, directly or indirectly, might tend to its accomplishment. But let us not err on the other side. And if you introduce a provision requiring the president judges to hold the courts of common pleas with the assistance of the associate judges, you will introduce an entire new system in Pennsylvania; you will require that which never yet has been required—which has not been thought necessary—which the people themselves have never asked for; and, finally, you do that which every man who has paid any attention to the subject, well knows to be prejudicial to the interests of the people. I have already said, that I look upon the idea of having one law judge and two judges not learned in the law to sit on the trial of these causes, as perfectly ridiculous; an idea not to be entertained for a moment. I, for one, am not willing to give my sanction to such a provision; and I am greatly mistaken in the opinion I entertain of the intelligence and the judgment of the members of this body, if they shall be found voting in favor of introducing such an anomaly into the system, by which that favourite branch of our government—the judiciary of Pennsylvania—is to be regulated for the time to come. I have no apprehensions of this kind. Why should it be so? Is there any necessity for circulating these associate judges through their districts? What are we to expect from such an arrangement? Will the people derive any benefit from it? Will their interests be prejudicially affected by the absence of such an arrangement? I can not see in what manner. We have all of us one common interest in view—that is, to have a just, faithful and upright administration of the laws of the land. And the question for us to consider and to decide is, how shall that object be attained. A majority of the members of this body, have believed that that object would be promoted by the establishment of a limited tenure of the judicial office, in the plan of the tenure during good behaviour, which existed under the constitution of 1790; and they have acted accordingly. Now I ask, whether this great object will not further be promoted by bringing into your county courts, for the trial of causes, judges who are comparatively strangers to the people, and who are free from all those attachments or prejudices, which will always adhere to an individual in any one fixed locality?

Take a judge—take a powerful and influential man, in a small community, as your president judge, who has resided there for years; who has, like many of your judges, begun as the chief speculator of the country, and acquired an extensive business with the business portions of the community. And suppose a man of business to have a case tried before that judge, who may be regarded as a man of integrity and honor, and he should happen to decide in favor of the man with whom he has been accustomed to associate, yet I will ask if the people will have confidence in that judge—in his administration of the law? Is there no danger of his being influenced by improper and impure motives? When the judi-

ciary loses the faith and confidence it should always have in the affections of the people, it becomes valueless—not worth a cent. To make a judiciary independent, is to let it have the confidence of the people—to secure to it the confidence of the people, and then it will dare to be honest, to be upright, and to be independent. How is it to be done? Why, by overcoming, so far as you can do so, local feelings and local relations. And the amendment I have offered is intended to effect those objects. Your cause is to be tried by a stranger—by a man who is brought from another, and perhaps, distant county—who knows little or nothing about you, or your affairs—who has no residence in your county—who has no relatives in the jury-box. No friends, and no enemies are before him in any capacity whatever. Before such a man—before such a judge, I am sure the people would be more satisfied to have their causes disposed of, than one who had been a long time in office. Sir, a judge—to borrow the language of the learned judge near me, (Mr. Hopkinson)—should know nothing of the parties, except from the record—except from the testimony. That is the rule laid down. I believe it is a sound one. And, sir, if it were possible to envelope a judge in Egyptian darkness, I believe he might try causes more justly between man and man, than if he saw the parties before him. I care not how perfect a stranger he is in the land—let him know nothing but the law of the land—let him have no improper feelings with respect to the parties, and he will do justice. He will acquire the confidence of the community. He will not only be entitled to the respect and confidence of all who know him, but he will be entirely above their suspicion; and your judiciary will acquire credit with the people—a depth, and solidity, and foundation. If, then, my amendment shall accomplish these objects, great benefit will be conferred on the people. And I cannot foresee that the amendment will be attended with one evil consequence.

Another of the advantages that will result from the amendment is this: it will keep the judge employed. I know of no greater evil than that judges should be unemployed. They require to be kept constantly employed, that they shall not have time on their hands to draw off their minds from the duties of the office in which they have been placed. They should be devoted to that office, and to the transaction of the duties of it; and their salaries should be so raised as that they would not be tempted to withdraw their attention from their duties to attend to any business. They should keep their minds and hands fully employed in discharging their professional duties. And thus would the character of the judiciary be improved.

Now, sir, what are the objections to the amendment I have proposed? The main objection to it is, that it will dispense with the associate judges.

Mr. W. proceeded to notice and reply to the objections urged by the delegate from Chester, (Mr. Bell) to his amendment. It was but a few years since a proposition was made for changing the districts, and the legislature decided that they had not the power, and that the judges could hold their places in the district, and that you could not require a judge to go into an adjoining district—into an entire, separate, and distinct community. Whether the legislature were right or wrong in their decision, he would not undertake to say. All he had to say was, that this was their deliberate opinion, after a full examination of the fact. Mr.

W. explained the effect and operation of his amendment. It had been already decided by the legislature of Pennsylvania that they cannot circulate the judges, and adopt this amendment; and there would be an additional argument that this convention have determined to deny them the power to rotate the judges. Now, this would be the effect of the amendment. He contended that there was nothing in the argument of the gentleman from Chester. The legislature cannot exercise the power, and so gentlemen would find. If it was an object worthy of consideration, what objection could there be to this convention saying to the legislature, you may have the power to circulate these president judges—you are not required, but if the people say so, you shall do it. He would not have it said by the legislature, "we can not do it for want of constitutional power." What objection, he (Mr. W.) asked, could there be to giving the legislature this power? He had heard but two objections. The gentleman from Beaver, (Mr. Dickey) said that he did not like the amendment, but gave no reason why he did not. He (Mr. W.) did not deny the gentleman the right to oppose it. Gentlemen have a right to vote for it, with, or without reason. He stated nothing in regard to the principle of the amendment going to show that it ought not to be adopted. The only objection of the gentleman from Chester (Mr. Bell) was, that the legislature have the power already, and therefore it was not necessary, he said, that this convention should now grant them any. If the amendment should be negatived, the impression would then go abroad that the legislature had not the power, and this would furnish an opportunity to the people to rotate their president judge. He trusted that the representatives of those parts of the state who have no interest in this matter, would vote for the amendment. The cities of Philadelphia, Lancaster, and Pittsburg were already provided with the choice of their courts of justice. The people of Pennsylvania in general, had no such choice. Their trials must be brought before particular men and courts, or they would not be heard at all. What was the consequence? Arbitration must be resorted to. He would ask the delegates representing the city of Philadelphia, to give those resident in the country as efficient an administration of justice as their own people enjoy here.

With regard to the terms of the amendment, he desired to say that they had been drawn with great care. He was indebted to a distinguished gentleman from the city of Philadelphia, and the colleague of the gentleman from Beaver himself, for their suggestions as to the terms in which the amendment should bu put.

He wished to fix the mode without any interference of the legislature, in order to circulate the president judges. However, gentlemen might attempt to alarm the fears of the people, by saying that this was a covert attack on the associate judges, he felt satisfied in the consciousness that he had performed his duty.

Mr. HOPKINSON asked if the tendency of this provision would not be to increase the duties and the expenses of the presiding judges? The president judge in Northampton County had refused to go to the circuit.

Mr. FLEMING, of Lycoming, agreed with the gentleman from Luzerne, that if this amendment were adopted, the associate judges could not be

dispensed with. He had not understood, nor had the gentleman from Luzerne shewn the necessity for a part of the amendment. It provides that until otherwise provided for by law, the judicial districts shall remain as they are. The gentleman from Luzerne had not shewn that it was not competent for the legislature at any time, to make any arrangement for district courts, or the rotation of judges, which they might think proper. The part of the amendment which had been adopted, read thus: "until otherwise directed by law, the courts of common pleas shall continue as at present established. Not more than five counties shall at any time be included in one judicial district, organized for said courts."

This leaves the whole matter open to the legislature to arrange the districts and judges as they may think proper. If the legislature have now the authority to do this, why are we required to carry it out, and to make an absolute provision for the districting of the circuits and judges. He was for a system with comparatively small expense. He had never yet seen or felt the vast importance of the circuit court system; at all times he preferred a local judge. Where was the difficulty of arriving at justice, if the power were vested in a competent man, whether he was a citizen of the county or a stranger? Was it to be supposed that a judge must take sides with every suitor? Must causes be tried in grog-shops before they come to a jury? If such were the fact, and the juries suffer their minds to be prejudiced, and are disposed to do injustice, and violate the obligations of their oath, it would be necessary that the presiding judge should have such local knowledge as would enable him to counteract such effects. Take a judge from Philadelphia, and place him on the bench at Luzerne; and set him to try a case of ejectment in Luzerne, what justice would he be likely to render to the squatter, or to the interests of the commonwealth, however intelligent he may be? Yet we are told the circuit court system is the only one to do justice. Twice it had been tried in Pennsylvania, and it had twice failed; and should we now make provision in the commonwealth that the circuit court system shall be established?

Mr. F. went on to shew the disadvantages, as he believed them to be, of the system. Carry out the principle, and send the Pittsburgh judges into the interior, or send the interior judges to Pittsburgh, and what a state of things—what disorder and confusion would ensue! He had never seen any of those beautiful signs of equitable administration of justice, so much dwelt upon and eulogized by the advocates of the circuit court system. He agreed that a judge who was well prepared by education, and his habits and standing, might try a cause as well alone, as with associates, in the courts of common pleas. But was this all? In the courts of the districts there is a great difference. Certain rules of court are adopted, which in each district are different. These rules vary and differ in almost every district in the commonwealth. Yet we were asked to send a judge out of a district where he had been for years, and with the practice of which he was familiar, and transfer him to a district where the rules of practice were different. We were to call on this man to take his seat on the bench, and decide according to rules with which he is not acquainted; to send him away from his own district, into a district of the rules of which he knows nothing. His decisions may be wrong because he is not able to decide right, being unacquainted with

those rules of court on which decisions are grounded, and without the knowledge of which he cannot arrive at the justice of a cause; and yet we are told that a man residing in the city of Philadelphia, governed by the rules here of the circuit court, or of the supreme court—having his whole attention drawn to these rules—being accustomed to have his issues made upon these particular rules, and being accustomed to all the minutæ belonging to trial under them; we are told that such a man is to be sent to another county, where the rules are entirely different. You place the rights of a party in jeopardy, there is no certainty; a judge will adhere to the old rules under which he has practiced, without reference to the new ones in the place where he may thus be called to practice.

But, sir, I rose mainly for the purpose of saying that, under the provision which has been adopted by the convention, as proposed by the gentleman from Susquehanna, (Mr. Read) it seems to me that the legislature has full and ample power to act in this matter; that the whole thing is thrown open to them, and that they may, at any time, adopt any system of this kind which they may think proper. Submit the matter, therefore, to the legislature—submit it to the people; and I will take upon me to say that the people will never give their sanction to a system which will bring among them, for the trial of their causes, a judge about whom they know nothing at all;—to whom they are entire strangers. Gentlemen talk about prejudices;—of the attachments and prejudices which adhere to men residing in a place for any length of time, and the fear that these prejudices and attachments will turn a judge aside from the straight forward path of his duty. Sir, I can not agree with gentlemen who are thus apprehensive. I lay down the principle, that a man who is so incompetent to discharge the high duties of a judge, as to suffer his prejudices to govern his decision, or to warp his judgment at one place, will be equally liable to do so in another—wherever that may be. It is a natural defect in the composition of the man, from which he will not be able to relieve himself by any change of place or circumstances. He can not "change his nature with his place;" and the only conclusion, therefore, at which you can arrive in regard to such a man is, that he is unfit to be a judge. And yet we are told that, notwithstanding this natural infirmity, which has been with him through life;—which has "grown with his growth and strengthened with his strength," we are told that if we send him to a place in which he has never before resided, this infirmity—this natural defect in the constitution of the man, will all at once leave him; that it will be a real panacea, and that it will cure every man whose nature is such as to render necessary a resort to its healing properties. Yes, sir, it will effect all this when "the Ethiopian changes his skin, or the Leopard his spots;" and not before then. If it were so, if the simple change of location were capable of working such mighty changes in the natures of men, it would be a good thing to adopt this principle in reference to others as well as to judges of courts.

Let us begin at home; I say let this alternating principle, which is to relieve us in so wonderful a manner from our human infirmaties, commence its operations at home. But, sir, I fear the hope is vain. So far as my experience of the human character enables me to form a judgment, I aver that there is nothing in this principle of rotation, by which you can remedy such infirmities. It is in vain to hope that, by compelling a man

who thus proves himself to be naturally incompetent to hold the office of judge, and who never ought to have been placed upon the bench, to leave the district in which he has resided and to cross over into another county; it is vain to hope that you will accomplish any beneficial purpose, so far as his qualifications to discharge the duties of the judicial office are to be affected by the removal. You will find him the same man in one district as in another. Send him where you please, you will effect no change; in "Barca's heat, or Zembla's cold," he will be the same man.

If his prejudices operate at all in the performance of his judicial functions in one place, they will operate also in another. They will be found to operate among strangers with whom he may become acquained, as they have done among the people whom he has left; and it is probable, indeed, that the effect of them will be tenfold more injurious among strangers than it would be among those with whom he might have lived a long time, and to whom his failings might be known. Let a strange judge, who suffers his prejudices to govern his decision, preside in a strange county, where the peculiar infirmity of his nature is not known, and that strange judge will have a greater influence upon the minds of a jury when he first presides, than he will at any subsequent period of his administration, and when he will have become better known, so far as my own experience goes in the matter of circuit courts, that is to say, in trying causes before judges who were entire strangers to the suitors, it has been such as to give me an aversion to it. I do not believe that it is the true way to get at the justice of a cause. I do not make this assertion from any personal feeling, or because I have ever been ill treated by any judge presiding on the bench. Not at all. I have, on the contrary, been treated at all times with the utmost respect; yet it is not possible, for me to shut my eyes against what I know to be the truth; and I say that, from the little evidence which I have had of the administration of justice under the circuit court system, I am opposed to any such rotation as is here proposed. If a judge, located in any particular district, is competent to the discharge of the duties of his office, this is all that can be asked; if he is not competent, the people have a remedy provided by the constitution; let them resort to it. They can have him removed by the adoption of the constitutional means;—let them do so. If the confidence of the people in a judge located in any particular disiriet, is gone, I say, let them have him removed. This is surely a sufficient reason for his removal. If a judge has once lost the confidence of the people, he can not administer justice to their satisfaction. No matter how pure—no matter how firm—no matter how competent for the discharge of the duties of his station he may be—if he has once lost the confidence of the people, it is time that he should resign his seat and leave the bench.

Entertaining these views in relation to the circuit court system—and this would be a matter of the same kind—entertaining these opinions, believing that there is danger in it—and believing also that injustice would be done in the trial of many causes for the want of proper local information, I for one will, in this convention and out of it, now and at all times, set my face against the introduction of such a system as a part of the constitution and laws of the state of Pennsylvania, and my vote will be governed accordingly.

Mr. DICKEY, of Beaver, said that he was opposed to the amendment of

the gentleman from Luzerne, (Mr. Woodward) and that he was entirely opposed to the principle of rotation, for the reasons which had been so ably advanced by the gentleman who had just taken his seat, (Mr. Fleming.)

I am also of opinion, said Mr. D., that if the amendment should be adopted, it will to all intents and purposes dispense with the associate judges of Pennsylvania, as they are now established. And although this may not have been, and, I doubt not, was not the design of the gentleman from Luzerne, because he declares that it was not—yet I must beg leave to call the attention of the convention to a few facts as they stand on record.

The judiciary committee to whom was referred the fifth article, made a report that the fourth section of the constitution of 1790 should be stricken out. The committee of the whole agreed to that report; and, accordingly the fourth section of the existing constitution was stricken out.

Now, by that fourth section, it is provided that "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." It is here to be observed that the first branch of the amendment of the gentleman from Luzerne, and which was adopted this morning, does not require that the judges should be appointed in the county, nor that they shall reside in the county in which they may be appointed. It simply declares that "until otherwise directed by law, the courts of common pleas shall continue as at present established. Not more than five counties shall at any time be included in one judicial district, organized for said courts." Beyond this, nothing is said; whereas by the fourth section, which was struck out in committee, the associate judges were required, as I have stated, to be appointed in each county, and to reside therein.

Again, sir, under the same provision of the constitution of 1790, the president judge is required to be a resident of the circuit in which he might be appointed to preside; and it is declared that "the president and judges, any two of whom shall be a quorum, shall compose the respective courts of common pleas." All this, I say, is struck out, and every thing that we have got in the place of it is the simple declaration contained in the first branch of the amendment of the gentleman from Luzerne, that until otherwise directed by law, the courts of common pleas shall continue as at present established.

I ask the gentleman from Luzerne, whether it may not thus be in the power of the legislature, to dispense altogether with the associate judges? I ask him whether there is any thing in the constitution, as it stands amended at the present time, in reference to these judges, save that provision which requires the governor, by and with the advice and consent of the senate, to appoint them;—whether there is any thing which requires them to be residents of the county in which they may be appointed? The delegate from Luzerne has offered absolutely nothing to supply the place of the fourth section, and I declare it as my deliberate opinion that if the article is allowed to stand as it is at present, there will be no provision in the constitution by which the legislature will be restrained from dispensing with the associate judges. And let me ask gentlemen to examine closely the latter part of the amendment of the gentleman from Luzerne, and to

say whether it does not actually look to these judges being dispensed with. What are its terms?

"Two or more districts may be united in one circuit, and the president judges of the respective districts so united, be required to hold the courts of common pleas in every county within the circuit, in such order and rotation as may be prescribed." Suppose, then, that we determine to adopt this part of the amendment. When the legislature shall come to act upon the provision, and find that there is nothing requiring the associate judges to reside in the county in which they may be appointed—and that there is nothing requiring the president judges to reside in their judicial districts, will it not be regarded as a direction to the legislature, to unite these judicial districts into circuits, and to dispense with the associate judges? Does it not look, I again ask, to dispensing with these judges altogether. I am inclined to think that, not very long since, the influence of the bar, in the legislature of Pennsylvania, would have dispensed with them, had it not been for that clause in the constitution which compels them to reside in the county in which they may have been appointed; and that this very principle of rotation, which is embodied in the latter branch of the proposition of the gentleman from Luzerne, would ere this have been established but for the provision of the fourth section of the constitution, requiring the president judges to reside in their judicial districts. For my own part, I am not willing to introduce any amendment which even looks like a direction to the legislature at any time, or under any circumstances, to dispense with the associate judges; and, disguise it as we may, all the arguments which have been brought forward by the gentleman from Luzerne, against local feelings and local attachments are, to my view so many direct arguments on his part against the continuance of the associate judges in Pennsylvania. He would dispense with this local knowledge, or attachment, or feeling—or whatever it may be called—and he would have the judges come from a distance to try causes. This will not do for me. I am not in favor of the alternating or rotary principle; for the whole tendency of it is ultimately to dispense with the associate judges.

If the amendment of the gentleman from Luzerne is negatived—and I hope it will be—I shall then offer an amendment for the purpose of supplying the place of the fourth section of the constitution of 1790, which was struck out by the vote of the committee of the whole.

A motion was made by Mr. GRENELL, of Wayne,

To amend the said second division by adding thereto the words following, viz:

"Provided that nothing herein contained shall be construed to dispense with the appointment of associate judges in each county."

Which amendment was agreed to.

And the question then recurring,

Will the convention agree to the said second division as amended?

The yeas and nays were required by Mr. DICKEY and Mr. GRENELL, and are as follow, viz:

YEAS—Messrs. Agnew, Ayres, Banks, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Clapp, Clarke, of Indiana, Cleavinger, Cline, Crain, Cummin, Darrah, Donnelly, Earle, Foulkrod, Fry, Fuller, Gamble, Gilmore, Grennell, Hastings, Hayhurst, Helffenstein, Hiester, High, Houpt, Hyde, Ingersoll, Jenks, Keim, Krebs, Lyons, Maclay, Magee, Martin, M'Cahen, M'Donnel, Meredith, Merrill, Nevin, Purviance, Read, Riter, Ritter, Rogers, Scott, Shellito, Stickel, Sturdevant, Taggart, Weaver, White, Woodward—56.

NAYS—Messrs. Baldwin, Barclay, Barndollar, Barnitz, Bell, Biddle, Brown, of Lancaster, Chambers, Chandler, of Philadelphia, Clarke, of Beaver, Clark, of Dauphin, Cochran, Cope, Cox, Crawford, Crum, Cunningham, Curll, Darlington, Denny, Dickey, Dickerson, Donagan, Dunlop, Fleming, Harris, Hays, Henderson of Allegheny, Henderson, of Dauphin, Hopkinson, Kennedy, Kerr, Konigmacher, Long, Mann, M'Sherry, Merkel, Miller, Montgomery, Overfield, Pennypacker, Pollock, Porter, of Northampton, Reigart, Russel, Seager, Scheetz, Sellers, Seltzer, Sill, Smith, of Columbia, Smyth, of Centre, Snivley, Sterigere, Todd, Weidman, Young, Sergeant, *President*—58.

So the amendment as amended, was not agreed to.

A motion was made by Mr. DICKEY,

To amend the amendment by adding thereto the following, viz:

"The governor shall nominate, and by and with the advice and consent of the senate, appoint two associate judges in each county, who, during their continuance in office, shall reside in the county. A president judge shall be nominated, and by and with the advice and consent of the senate, be appointed in each judicial district, who, during his continuance in office, shall reside therein. The president and associate judges, any two of whom shall be a quorum, shall compose the respective courts of common pleas."

Mr. DICKEY said, he would merely observe to the convention that the amendment he had now proposed was part of the fourth section of the old constitution, which was struck out in committee of the whole—so far as concerned the appointment of the associate judges and their residence in the county in which they may be appointed, and so far as concerned the appointment of the judge for each judicial district, and his residence therein. The amendment also, like the fourth section, made it imperative for the president and judges or any two of them to be a quorum, to compose the courts of common pleas; thus qualifying the amendment which has been adopted, and which left this matter discretionary with the legislature.

It appears to me to be necessary that we should re-enact the provision, requiring that the associate judges should reside in the counties, and the president judges in the judicial districts for which they shall have been appointed; and also that the presidents and associate judges should be a quorum to compose the courts of common pleas.

A motion was then made by Mr. BELL,

That the convention do now adjourn.

Which motion was agreed to.

And the convention adjourned until half past three o'clock this afternoon.

TUESDAY AFTERNOON, JANUARY 30, 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 on the motion of Mr. DICKEY, of Beaver, to amend the amendment by adding thereto the following, viz:—

"There shall be two associate judges appointed for each county, and one president judge for each judicial district, who shall, during their continuance in office, reside in the counties and districts respectively for which they shall have been appointed. The president and associate judges, any two of whom shall be a quorum, shall compose the respective courts of common pleas."

Mr. DICKEY, asked for the yeas and nays on his amendment, and they were ordered.

Mr. READ, of Susquehanna, said, he did not discover any thing which was objectionable in the amendment, except that it contained a repetition of half of what was already in the fifth article. It seemed to him, that it would be proper to leave out all that related to the manner of appointment. This was all the change that was necessary. It was objectionable to repeat what had already formed a part of the article.

Mr. DICKEY had no particular objection to modify the amendment. But he was desirous that there should be no misconstruction, and he was not aware that any injury could result from repetition. Under the old constitution, the appointments were made by the governor. He had substituted that the governor should be the nominating power, and the senate the confirming power. He had no objection, however, to any modification, if the principle were retained. The first principle was that the associate judges should reside in the county: the second, that the president judges should reside in the district: and the third, fixing the number of associate judges.

Mr. HIESTER, of Lancaster, was in favor of the two first principles, and he was also in favor of fixing the number of associate judges. It was provided by the old constitution, that the governor shall appoint the judges. Here, that provision is repealed so far as relates to the appointing power. He saw, therefore, no necessity for repeating the language of the old provision. And he would suggest the propriety of so modifying the amendment, as to obviate this objection.

He thought it important, that the judges of the courts of common pleas, should reside in the county. In the orphans' court, and the court of quarter sessions, the associate judges ought to be present. But when civil suits are on trial there is no necessity for their presence. He intended, therefore, to move to strike out the latter clause.

Mr. DICKEY, expressed his willingness to accept this amendment as a modification to the first part of his proposition, but he could not consent to strike out the last part. The gentleman from Lancaster might call for a division.

Mr. HIESTER, then moved to amend the amendment, by striking therefrom all the words, after the word "appointed," where it l st occurs, viz:

"The president and associate judges, any two of whom shall be a quorum, shall compose the respective courts of common pleas."

Mr. DICKEY expressed a hope that these words would not be stricken out. He was anxious to test the principle, whether the president judge could be permitted to sit alone, without the aid of one of the associate judges.

Mr. PORTER, of Northampton, said, he would like to know why the gentleman wants the associate judges on the bench to decide on questions of law. When we want a coat, we go to a tailor. When we want boots, we go to a boot-maker. When we want questions of law decided, we do not want to go to judges who use the broad-axe.

Mr. HIESTER suggested the propriety of increasing the salaries of judges. There were persons of respectibility who were now ready to bring their services on the bench. If not, let the salaries be increased. He saw no advantage likely to arise from the concluding clause, and he hoped it would be stricken out.

Mr. M'DOWELL, of Bucks, regarded this as a very important matter. He liked the proposition of the gentleman from Beaver. But, in order to carry out the beauty of the system, it would be proper to have an associate judge on each side of the president judge, or there would be danger of his becoming lopsided. There ought, therefore, to be two associates, to keep up the balance of power.

Mr. DICKEY said, he would readily accept the suggestion: and would say that it was always the policy of Pennsylvania, to surround her judges with common sense, so that those about the judge might infuse into him some of those plain principles of equity which he might not otherwise be able to discern through the obscurity of law. Sometimes, men not so learned in the law, had overruled a president judge learned in the law, and in the court of errors their decisions were suffered to overrule. In case of disagreement, he would leave the president judge the power to call in the aid of another man of common sense to aid the learned in the law. He believed it was the policy of lawyers to clear the bench of men not learned in the law, and to place there men learned only in abstractions.

Mr. CHAMBERS, of Franklin, said that he had been in the habit of attending the courts of law for many years, and he had always thought, that the holding of the court of common pleas by the president judges, was not only a convenience to the public, but to the associate judges themselves. We know, that generally, the associate judges resided in remote parts of a county, and that they had frequently to attend court for the trial of issues, and to argue questions of law also. It was desirable that the court should be held with as little inconvenience as possible to

the judges. And, as it happened, that the president judges lived in county towns, it was to the convenience of suitors that they should attend to their business. This arrangement was also for the convenience of the associate judges, otherwise they would be required to attend court. He had never heard it complained of as an abuse, or an encroachment upon the rights of other judges.

Mr. C. referred to the act of Assembly, of 14th April, 1834, authorizing the president judge to hold the court of common pleas, which was adopted as a part of the Revised Code, which had under a previous legislative enactment, been the law of the state for many years. There was no complaint against this provision, which operated to the convenience of suitors, and the judges, and without injury to the public. He was opposed to the proposed change that two judges shall compose a court, and thought it would be better to adhere to the present arrangement until the legislature should think proper to change it. He hoped the amendment would not be agreed to.

Mr. BANKS, of Mifflin, said that if the amendment as modified by the gentleman from Franklin (Mr. Chambers) prevailed, we should not be able to have justice administered by men of common sense or any other sense. There would be an entire failure of justice in many instances. And, he would tell gentlemen why.

We have associates of good common sense, as well as in the county of Beaver, or elsewhere, but they were engaged in other pursuits, and do not devote themselves entirely to reading law and dispensing justice. They did not always attend the courts, being engaged in carrying on their business as connected, perhaps, with the canals, or rail-roads, &c. unless it suited their convenience. They would not give their services for a small sum, when they could make ten times as much other ways. His opinion was, that we ought to leave it to the legislature, to say, whether the president judges shall reside in the district, and the associate judges reside in the county.

Mr. FLEMING said, that he could not see the necessity for the adoption of the amendment, proposed by the gentleman from Beaver, (Mr. Dickey) when he looked to the character of the section adopted as proposed by the gentleman from Susquehanna. That section provides, that until otherwise directed by law, the court of common pleas shall continue as at present established. Now, the gentleman wished to make it obligatory on the associate judges to be present at all times. If the president judge was holding a court of common pleas, he (Mr. F.) would ask, —for now was the time to bring the matter fairly to issue—a matter upon which he had so much set his heart—whether it was necessary, or not, in order to the attainment of justice, that the associate judges should be on the bench with him?

This was a question which he would leave to the judgment of this body. He believed, that no man acquainted with law, would say it was of any use their being present. This he knew to have been the universal sentiment of the bar, for years past. And we all know, that for very many years past, there had been an express legislative provision, setting forth that the president judge should be authorized to hold his court alone, without the assistance of his associates. This had been the decision of the

legislature, which was required by the people, and it had since been universally acquiesced in. Subsequently there had been no complaint—no demand that the law should be repealed, and that the associate members should be present. He maintained that a president judge was sufficient in a court of common pleas, without the assistance of associate judges. Universal acquiescence had shown, that the people did not desire the insertion of a clause requiring that the associate judges should be present at the holding of the court of common pleas.

Mr. PORTER, of Northampton, said, that he thought the amendment which the gentleman from Beaver had offered, was a most singular one, viz: that there should be two associate judges always on the bench—one on each side of the president judge in order to keep him straight, and to assist him in deciding questions of law. The provision which the gentleman from Luzerne, (Mr Woodward) had proposed was entirely different: it ran in these words: "Until otherwise directed by law, the courts of common pleas shall continue as at present established. Not more then five counties shall at any time be included in one judicial district, organized for said courts."

Although the president judges of the common pleas for thirty years past had been in the practice of sitting alone, where, he asked, had there been any complaint of injury having been done, or that the system had not worked well. For more then thirty years had it been in force in accordance with a law, passed by the legislature of Pennsylvania. And, why should there be this change?

The gentleman from Beaver remarked, that it was as well to have a little common sense to overbalance the common law. Now, that delegate possessed common sense, but whether he knew as much of common law, was a matter of doubt. He, Mr. P., confessed, that if he wanted a canal made, or any legislation of an intricate character done, he would consult that gentleman as soon as any body he knew. But, with regard to matters of law, he would go somewhere else for it. He would rather go to those who had been in the practice of law all their lives—who had had much experience. Where—he repeated the question—had there been any complaint that the system had not worked well? Who was it that had asked us to make this change? What, he would inquire, did the amendment of the delegate from Beaver and that of the gentleman from Lancaster (Mr. Hiester) amount to? Why it amounted to nothing, but was so much verbiage added to the section. The provision we had already adopted was as follows:

"Until otherwise directed by law, the courts of common pleas shall continue as at present established. Not more than five counties shall at any time be included in one judicial district, organized for said courts."

Now, to wish to add to this all the details that were proposed was something like the desire which animated the New England man, who would have the whole world and half of Nantucket besides. Here we had got all at the beginning, and yet gentlemen wanted something more to it. The gentleman from Beaver (Mr. Dickey) had triumphantly maintained that there had not been an instance, where the associate judges had overruled the opinion of a president judge, but what their decision had been sustained in the court of errors. It had also been said, that

where you find a peach, you find an acorn. It, however, did not follow in his, Mr. P's. humble judgment, that men who had never studied law at all and knew nothing about it, should be more competent, or equally as much so as those who studied it all their lives. Carry out the principle and you had better abolish the office of president judge altogether. Carry out the system, and you assert the doctrine, that an ignorant man is more competent to decide questions of law, than another who has made the science the study of his life. He, Mr. P., did not mean to say, that associate judges might not be of service on the bench, when acting in relation to local cases. On that point he had nothing to say against them. But, so far as they had undertaken to interfere in questions of a different character they had brought nothing but mischief. The city and county of Philadelphia had a system of their own. But, under the existing constitution, the associate judges are abolished in other parts of the state, and the system had been found to work well.

If the proposition of the gentleman should be adopted, then there must be a re-organization of the courts; and we should have two lawyers in every court, where five dollars and thirty-four cents were at issue. He would ask, if gentlemen were prepared to overthrow a system which experience had clearly proved had worked harmoniously, and against which, not a whisper of complaint had been made to this convention.

The delegate from Beaver, in offering his proposed alterations, had not given one single reason in their behalf. It did not appear that the associate judges were always competent to transact the business of the various courts in which they sat. The experience of Pennsylvania had been that of common sense; and it had been proved, that the associate judges had not sufficient of it, and were not competent to decide upon the little matters which came before the orphans' court. He, Mr. P., disliked this changing—changing, when the people had not asked for it. Who had ever asked for this change? And, who had objected to the law judges deciding alone? If it was supposed that they had committed any errors, their opinions could be reviewed by the supreme court, and if they had done wrong, the mistake would be corrected. No difficulty had ever arisen, and they who would make this change in the system, knew very little, if any thing, of the practice of the courts.

Mr. Dickey said that the amendment he had proposed, contained no new principle—that it was nearly an exact transcript of the fourth section, which some how or another, was negatived in committee of the whole, on the recommendation of the committee on the judiciary. He felt inclined to restore that section. He did not know why it was necessary that the associate judges appointed, should live in the district. He would repeat that he asked only a restoration of the principle contained in the fourth section. Common law was but common sense. The position assumed by the gentleman from Northampton, as to the non-necessity of having associate judges to assist the president judges, learned in the law, brought to his, (Mr. D's.) recollection, an eastern allegory that he had once read. There were four travellers in India, three of whom were learned, and the other a mere common-sense fellow. They met, an apparently dead lion, which the two learned travellers proposed restoring to life; the other objected; but when he found his learned associates

were determined to persevere in their design, he asked them to pause for one minute. That minute he employed in climbing an adjacent tree; after which his learned friends restored the lion to life, which forthwith turned round and devoured them, and then went off, leaving the common-sense man safe in the tree. This was mere learning in contrast with mere common sense.

Mr. AGNEW, of Beaver, said that some men seemed to think that lawyers could make black appear white; and his friend and colleague, (Mr. Dickey) seemed to suppose that this was one of the requisites of a lawyer. He fully concurred in the opinion expressed by him, that common sense was a very necessary qualification for a judge; but yet that was not all that was required. He freely admitted that without the exercise of common sense, the judiciary could not discharge their duties to the advantage and satisfaction of the people. That system which would but subserve the public interest, was the one that ought to be adopted; no matter whether it proceeded from a body of lawyers, or common sense men. The court of common pleas had been organized as it now was, for the last thirty years, and more. The last legislative enactment in relation to it, was dated on the 14th April, 1834, and the following are some of the sections of it:

SECTION 18. There shall be holden and kept in every of the counties of the commonwealth a court aforesaid, the name and style whereof shall be the court of common pleas of the respective county.

SECTION 19. The court of common pleas of the several counties of this commonwealth, except the county of Philadelphia, are hereby declared to consist of a president judge, and two associate judges.

SECTION 20. The president and associate judges of the court of common pleas, or any two of them; and the presiding judge, in the absence of his associates, shall have power to hold said courts, and to hear and determine all causes, &c."

Now, all this was very proper, as every gentleman would admit, who was conversant with the proceedings of a court of justice; for there was a certain portion of the business that could only be performed by the president alone; and the act of assembly was simply to enable the associates to retire when at liberty.

They are always at liberty to be there. The provision which the gentleman from Beaver, (Mr. Dickey) proposes to introduce, will not keep them upon the bench more than they would be there in the absence of it. There is nothing in this proposition which declares that the provision of the associate judges is not necessary, but simply permitting the president judge, at certain periods, to hold the court of common pleas by himself. Every thing that relates to questions of law is always decided by the president judge, and not by the associate. This is as it ought to be. I have only known of two instances, in the course of my experience, wherein the associate judges have overruled the presidents, and in these two instances the decisions went to the supreme court, and were reversed. One of them, however, had the effect of unsettling all the land claims north and west of the Ohio and Allegheny. And this is one of the results which is to be expected from the decisions on points of law, of

judges not learned in the law. I hope that the motion to strike out will prevail, because all experience has shown us that a certain course of practice is beneficial to the interests of the people—to society in general; and to provide this, I apprehend, is all that is to be asked for, either at the hands of a convention of Pennsylvania, or of any other body of men, wherever they may be. I hope that the members of this convention will not suffer themselves to be misled by the attack which has been made upon their prejudices by my colleague, (Mr. Dickey.) I hope that they will not allow these attacks to subvert their own common sense, and to prevent them from acting as their own common sense will dictate.

Mr. HIESTER said, that while he concurred with the gentleman who had just taken his seat, (Mr. Agnew) as to striking out the portion of the amendment which had been indicated, he dissented entirely from all which that gentleman had said in relation to another part of the amendment of the delegate from Beaver. What, said Mr. H., is the amendment? The first branch of it contains three propositions. It provides in the first place, that the associate judges shall be appointed in each county; secondly, that they shall reside in the counties for which they shall have been appointed; and thirdly, that there shall be one president judge for each judicial district, who shall also reside in the district for which he shall have been appointed.

Now, the gentleman from Northampton, (Mr. Porter) has told us that all this is provided for elsewhese. I would be obliged to him if he would point out where, or in what part of the amended constitution it is provided that the associate judges shall reside in the counties for which they shall have been appointed; or the president judges in the judicial district for which they shall have been appointed Let the gentlemen shew us this, if he can. He has referred us to a part of the amendment which has been adopted on the motion of the gentleman from Luzerne, (Mr. Woodward) and which is in the following words:—

"Until otherwise directed by law, the courts of common pleas shall continue as at present established."

This is all right enough; but is not the legislature at liberty, from the section immediately following, to pass a law saying that there shall be any indefinite number of judges appointed? I ask the gentleman from Northampton to put his finger upon any restrictive provision, as the constitution now stands amended. I believe he cannot do so. Here, then, is a very important principle which ought to be retained, but which has been struck out with the fourth section of the old constitution.

But again, sir, is there any provision in the law itself, that the associate judges shall be required to reside in the counties in which they may be appointed? I answer, no, because it has been heretofore a constitutional provision, and was not required to be mentioned in any act of assembly.

Again, as to the president judges, where is it said that they shall reside in the respective judicial districts for which they shall have been appointed? Why, in the fourth section of the constitution of 1790, which was struck out by the vote of the committee of the whole. Let the gentlemen from Northampton, in the depth of his legal acumen, shew me where else this restriction is to be found. If he will do that, I will then

say that this portion of the amendment of the gentleman from Beaver, (Mr. Dickey) is nugatory and useless. I say that there are in that amendment three distinct propositions, all of an important character, and which are not provided for in any other manner.

Mr. PORTER, of Northampton, said that he should not find any difficulty in answering the interrogatories of the gentleman from Lancaster, (Mr. Hiester) and that he would be able to do so by the simple aid of common sense, without the necessity of an appeal to that legal acumen, the aid of which the gentleman from Lancaster had very unnecessarily invoked in this matter.

If, continued Mr. P., I give a man my plantation situated in such a township, I need not say that it consists of a house and garden, &c. There is no necessity to enter into such minute particulars. And if this convention adopts an amendment to the constitution, declaring that the courts of the state of Pennsylvania shall continue as at present organized, until the legislature shall provide otherwise, there is no necessity that I should repeat the manner and all other particulars.

This is precisely the case before us. In adopting the amendment of the gentleman from Luzerne, (Mr. Woodward) we have provided that "until otherwise directed by law, the courts of common pleas shall continue as at present established." These are the express words of the provision. Now, the gentleman from Lancaster is desirous that we should go on and recite the manner in which these courts are established at the present time. To do so, would, in my judgment, be adding verbiage without meaning. This is the reason why I am opposed to it.

Mr. HIESTER begged leave to call the attention of the gentleman from Northampton, (Mr. Porter) to the phraseology of the amendment which had been adopted, as it was important in settling this question. The words were—"until otherwise directed by law, the courts of common pleas shall continue as at present established." "Until otherwise directed by law." Now, Mr. H. would inquire how long these words would bind the legislature?

Mr. PORTER, of Northampton, said that the words "until otherwise directed by law," would bind the legislature until such time as they saw occasion to alter the organization of the courts of common pleas. And the gentleman from Lancaster, said Mr. P., may pile paragraph upon paragraph, and section upon section, if he pleases, but so long as these words "until otherwise directed by law" shall remain, all his labor will be nugatory, if the legilsature chooses to make any changes.

Mr. FULLER, of Fayette, said that the proposition of the gentleman from Beaver, (Mr. Dickey) was an important one, and that it deserved to be well weighed by this body.

What answer, said Mr. F., has the gentleman from Northampton, (Mr. Porter) given to the inquiry of the gentleman from Lancaster (Mr. Hiester)? Why he has told us what the amendment of the gentleman from Luzerne (Mr. Woodward) tells us, and no more:—that is to say, "that until otherwise directed by law, the courts of common pleas shall continue as at present established." We understand this. But what is wanted here is, that there shall be a provision in the fundamental law of

the land that the legislature shall not so change the organization of the courts of common pleas as to dispense with the associate judges. But the proposition of the gentleman from Luzerne, which we have adopted and incorporated into this article, leaves the matter in the discretion of the legislature. I want a definite provision to be inserted in the constitution, making it imperative that the associate judges shall be retained, and leaving no discretion to the legislature, express or implied, to dispense with them. And with any thing less than this, I, for one, shall not be satisfied. I believe that no change in this respect is desired by the people; but, on the contrary, I believe, that they want a constitutional provision by which the legislature shall be prohibited from making any change of the kind.

I do not think that there is any weight in the remarks of the gentleman from Northampton (Mr. Porter;) and, much as I appreciate gentlemen of the bar, I am inclined to the belief, that the expressions, which he has made use of about associate judges and about men of common sense, will not meet with the approbation of the people of Pennsylvania. He may take his broad-axe and hew out decisions as he pleases; but I believe it to be right and in accordance with the wishes and the interests of the people, that every law judge should be well braced on each side with men of sterling honesty and sound common sense; not meaning, however, as I certainly do not, to speak with any disrespect of judges learned in the law. This, I say, is what the people want; and this is the object, which the gentleman from Beaver (Mr. Dickey) and the gentleman from Lancaster (Mr. Hiester) are desirous to accomplish. I am decidedly in favor of the amendment of the gentleman from Beaver, and shall vote for its adoption.

Mr. EARLE, of Philadelphia county, said that he agreed with the gentleman from Fayette (Mr. Fuller) in thinking, that it was well to have upon the judicial bench, not only men learned in the law, but men who, possessing no extraordinary learning, were eminent for their common sense. But nevertheless, said Mr. E., I hope that the motion of the gentleman from Lancaster (Mr. Hiester) to strike out this portion of the amendment of the gentleman from Beaver, will be agreed to; because I think that we may safely suffer the legislature to allow a court to be held by a single person, whenever necessity may require it.

The gentleman from Beaver, (Mr. Dickey) has shown himself willing to trust the legislature with the power to grant irredeemable privileges for any indefinite length of time; he has shown himself willing to give them the power to grant particular privileges which are to endure forever —and yet he is afraid to trust them with the matter of organizing a county court.

Now, I am of opinion, that a gentleman who has evinced, beyond the possibility of doubt, that he is willing to trust the legislature in matters of such vital import as those to which I have referred, need not manifest any apprehensions as to trusting them in minor matters such as are now before us.

Trust this question to the legislature; and if it should happen that one legislature should do that which is not in accordance with the wishes of the people, a subsequent legislature can easily remedy the evil.

Mr. MERRILL, of Union, said that this question seemed to him to resolve itself into a question of common sense and common honesty. It was also a question of considerable importance; and if an associate judge must, of necessity, sit on the bench of the court of common pleas, why, the court must adjourn if he should not happen to be there, and thus great inconvenience might be the result.

What, said Mr. M., is the history of thts matter in Pennsylvania, since the year 1809? There have been abundant instances of president judges holding these courts by themselves. And, let me ask, have there ever been any complaints made on the subject either to the legislature, or to this convention? Have there been any public meetings held in relation to it? Has any one offered any complaint? Some years ago, a complaint was made that there were not courts enough, and the district courts were appointed with one judge. Since that time, the number has been increased to three judges, but each of these judges can hold a court.

The district court which is held in Lancaster county, formerly had two judges, but is now held by a single judge. And such also is the fact in Allegheny county. Who has complained of this? If, then, we have the experience of thirty years before us during which the legislature has constantly been carrying on the system in this way, I ask why is it thought necessary at this time that we should insert a provision in the constitution declaring that a single judge shall not sit alone on the trial of cases?

But gentlemen tell us, that there must be some common sense on the bench of these courts, as well as sound legal acquirements. Be it so. I have no objection to that;—but what must the associate judges do in the trial of a cause? Does the gentleman from Beaver county (Mr. Dickey) expect them to charge the jury, and to lay down the law different to what the president judge does? Does the gentleman expect that there are to be two charges—one being one way, and the other another. There must be such instructions given by the court as can be inquired into by a higher court, if either party should think proper to carry the case up. But if there are to be two instructions, which is to be the subject of the writ of error? Which can you over-haul in the higher court?

What then does the gentleman wish? Does he desire that the associate judges should be compelled to sit upon the bench, to hold a sort of chit chat with the president judges, to enter into details as to the characters and pursuits of the witnesses and parties engaged—and to make known to them the friendships or the enmities which may exist in that neighborhood? If so, I think a little reflection cannot fail to satisfy him that such officers are not necessary.

Take the matter in any point of view in which it can be placed, I ask what is the use of the associate judges on the bench of the court of common pleas? If his opinion on the trial of any cause, should differ from that of the president, it is not liable to be over-hauled, unless there are two of them; and if his opinion coincides with that of the president, it adds nothing to it. So that suitors are put in greater jeopardy when associate judges are present than when they are not.

I believe that the judicial history of the state of Pennsylvania shows that the system heretofore pursued has been satisfactory to the people;

and surely, if it had not been so, it never would have been agreed to by successive legislatures for a space of more than thirty years. If the people of Lancaster or Allegheny county did not like this system, they would have petitioned the legislature for its alteration. They, however, have been silent; so far as I know, there have not been any complaints made, and I believe that the people there are quite contented.

Mr. SCOTT said, he was afraid he should feel himself compelled to vote against the amendment of the gentleman from Beaver, (Mr. Dickey). And, said Mr. S., I will state in a few words the reasons why I shall be obliged to do so.

In the first place, let me call the attention of the convention to the terms of the amendment, in order that we may see what construction they are capable of receiving. It says:

"The governor shall nominate, and by and with the advice and consent of the senate, appoint two associate judges in each county who, during their continuance in office, shall reside in the county. A president judge shall be nominated, and by and with the advice and consent of the senate, be appointed in each judicial district who, during his continuance in office, shall reside therein. The president and associate judges, any two of whom shall be a quorum, shall compose the respective courts of common pleas."

Here, the language is imperative. The governor *shall* do all this. Well, sir, this is the present organization of your courts of common pleas. You have a president judge in each judicial district, and you have two associate judges. I am not sure whether the adoption of the amendment would not at once involve the constitutional legislation out of office of the existing president and associate judges; because if, by your schedule or in any other way, you leave any of your existing president and associate judges in office, then it is clear that this constitutional amendment can not be complied with by the governor. The language of it, as you will perceive, is absolute and peremptory. The governor *shall*, &c.

Now, you can not have these appointments made, unless you get rid, in the first place, of every president and every associate judge in the commonwealth. If it is the object of the gentleman from Beaver to preserve the associate principle, he should alter the language of the amendment, and he should say something like this:—

"That at all times hereafter two associate judges shall be preserved on the bench of the commonwealth."

Our votes are claimed in favor of this amendment on the ground, that if we adopt the amendment of the gentleman from Luzerne (Mr. Woodward) without this addition, it will intimate a wish that the associate judges should hereafter be dispensed with. For my own part, I do not think that this result will follow; because, in that particular, the amendment of the gentleman from Luzerne, is precisely the same thing as the fourth section of the fifth article of the constitution of 1790, which was struck out on first reading in committee of the whole. Under that fourth section, it was competent for the legislature either to dispense with the associate judges or to increase the number;—to make them either learned or unlearned, and to do with them exactly as they might think proper.

"Until otherwise directed by law," says the section, "the several courts of common pleas shall be established in following manner"—and

then it goes on to state the organization. Under the language of this section, therefore, all the power which I have reference to, was clearly given; and yet for the period of fifty years, the legislature of Pennsylvania has not been found inclined to dispense with the associate judges; although in some parts of the commonwealth where it has been thought necessary, the system has been improved upon by requiring the associate judges to be learned in the law.

I, for one, think it would be better to leave this matter to be acted upon in the report of the committee on the schedule. At all events, I must vote against the amendment of the gentleman from Beaver at this time, notwithstanding the ability with which he has pressed its adoption.

And the question was then taken.

And on the question,

Will the convention agree to amend the amendment by striking therefrom all after the word "appointed," where it last occurs?

The yeas and nays were required by Mr. DICKEY and Mr. CLARKE, of Beaver, and are as follows, viz:

YEAS—Messrs. Agnew, Ayres, Banks, Barclay, Bedford, Bell, Biddle, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Chandler, of Philadelphia, Clarke, of Indiana, Cline, Cochran, Cope, Cox, Crain, Crawford, Crum, Cummin, Curll, Darlington, Darrah, Denny, Dickerson, Donagan, Doran, Earle, Farrelly, Fleming, Foulkrod, Fry, Gamble, Gearhart, Grenell, Hastings, Hayhurst, Hays, Henderson, of Dauphin, Hiester, High, Hopkinson, Ingersoll, Jenks, Keim, Kennedy, Konigmacher, Krebs, Magee, Mann, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Miller, Pennypacker, Porter, of Northampton, Purviance, Read, Riter, Ritter, Rogers, Royer, Russell, Scheets, Scott, Sellers, Seltzer, Serrill, Shellito, Sill, Snively, Sterigere, Stickel, Sturdevant, Thomas, Todd, White, Woodward, Sergeant, *President*—85.

NAYS—Messrs. Baldwin, Barndollar, Barnitz, Clapp, Clarke, of Beaver, Clark, of Dauphin, Dickey, Donnell, Forward, Fuller, Gilmore, Harris, Henderson, of Allegheny, Houpt, Hyde, Kerr, Long, Lyons, Maclay, M'Cahen, Montgomery, Overfield, Pollock, Reigart, Saeger, Smith, of Columbia, Smyth, of Centre, Taggart, Weidman, Young—30.

So the amendment to the amendment was agreed to.

And on the question,

Will the convention agree to the amendment as amended?

The yeas and nays were required by Mr. DICKEY and Mr. GEARHART, and are as follows, viz:

YEAS—Messrs. Barnitz, Bigelow, Bonham, Clarke, of Beaver, Clarke, of Dauphin, Cochran, Crawford, Crum, Cummin, Curll, Denny, Dickey, Dickerson, Donnell, Fuller, Gearhart, Gilmore, Grenell, Hastings, Hays, Hiseter, Keim, Kerr, Konigmacher, Krebs, Magee, Mann, M'Sherry, Meredith, Merkel, Miller, Montgomery, Overfield, Pollock, Ritter, Royer, Saeger, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sergeant, *President*—44.

NAYS—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Bedford, Bell, Biddle, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Indiana, Cleavinger, Cline, Cope, Cox, Crain, Darlington, Darrah, Donagan, Doran, Earle, Farrelly, Fleming, Forward, Foulkrod, Fry, Gamble, Harris, Hayhurst, Henderson, of Allegheny, Henderson, of Dauphin, High, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Kennedy, Long, Lyons, Maclay, M'Cahen, M'Dowell, Merrill, Nevin, Payne, Pennypacker, Porter, of Northampton, Purviance, Reigart, Read, Riter, Rogers, Russell, Scheetz, Scott, Sellers, Serrill, Sill, Sterigere, Sturdevant, Taggart, Thomas, Todd, Weidman, White, Woodward, Young—74.

So the question was determined in the negative.

And the question then recurring,

Will the convention agree to the amendment as amended?

It was determined in the affirmative without a division.

So the section as amended, was agreed to.

A motion was made by Mr. FORWARD, of Allegheny,

To amend the report of the committee by inserting the following new section, viz:

"No judge of any court of record shall be eligible to any other office in this commonwealth, until after the expiration of one year from and after the time when he shall have ceased to hold the said office."

Mr. FORWARD said, that when this article was under discussion in committee of the whole at Harrisburg, he had brought to notice the proposition which he had now offered. It was not his intention to repeat any part of the remarks he made at that time, in favor of the adoption of such an amendment to the constitution. He would simply ask that the years and nays might be called, so that he might have an opportunity of recording his name.

A motion was made by Mr. PORTER of Northampton,

To amend the section by striking therefrom the words "after the expiration of one year from and after the time when."

Which said motion was rejected.

And the question then recurring,

Will the convention agree to the said section?

The yeas and nays were required by Mr. FORWARD and Mr. MARTIN, and are as follow, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Barclay, Barndollar, Biddle, Brown, of Lancaster, Brown, of Northampton, Carey, Chambers, Clarke, of Beaver, Clark, of Dauphin, Cline, Cochran, Cope, Cox, Darlington, Darrah, Denny, Dickerson, Farrelly, Forward, Harris, Hays, Henderson, of Dauphin, Ingersoll, Kerr, Konigmacher, Long, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Purviance, Read, Riter, Rogers, Royer, Russell, Scott, Serrill, Sill, Snively, Thomas, Todd, White, Woodward, Young, Sergeant, *President*—53.

NAYS—Messrs. Banks, Barnitz, Bedford, Bell, Bigelow, Bondham, Brown, of Philadelphia, Chandler, of Philadelphia, Clapp, Clarke, of Indiana, Cleavinger, Crain, Crawford, Crum, Cummin, Curll, Dickey, Donagan, Donnell, Doran, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Henderson, of Allegheny, Hiester, High, Hopkinson, Houpt, Hyde, Jenks, Keim, Kennedy, Krebs, Lyons, Maclay, Magee, Mann, Martin, M'Cahen, Miller, Nevin, Overfield, Payne, Porter, of Northampton, Reigart, Ritter, Seager, Scheetz, Sellers, Seltzer, Shellito, Smyth, of Columbia, Smith, of Centre, Sterigere, Stickel, Sturdevant, Taggart, Weidman—66

So the amendment was rejected.

A motion was made by Mr. FORWARD.

To amend the said report by inserting the following new section, viz: "The legislature shall provide by law for the appointment of commissioners to take the depositions of witnesses in cases of complaints made against any of the judges of the supreme court or inferior courts, and the depositions of witnesses thus taken may be read on the trial of the party accused, or on the investigation of complaints made to the legisla-

ture against him, unless he shall specially demand the personal attendance of such witnesses."

Mr. FORWARD said, he wished to say a very few words on the subject of this amendment.

While, continued Mr. F., I would adopt every necessary measure to preserve the independence of the judiciary, I would also make them acceptable to the people; so that in case a judge should prove incompetent for his duties, or should misbehave himself either in or out of office, every facility, which the public interests might demand, for inquiry into any complaints that might be made, may be afforded.

By this amendment commissioners are to be appointed to take the depositions of witnesses, who might otherwise be called to the seat of government to testify against the accused. By this means a judge would have the opportunity to cross examine witnesses at home. The amendment secures to him the privilege of calling for the attendance of witnesses at the seat of government, if he should think that it is requisite for him to do so. It secures to him the privilege either of confronting at home the witnesses who may be brought against him, or of requiring their personal attendance at the seat of government, as he may choose. No injury can result to the accused party by the adoption of a provision of this nature, while great inconvenience as well as public expense would be saved.

Mr. MERRILL, of Union, said he would suggest to the gentleman from Allegheny, (Mr. Forward) that a provision making it dependent on the will of the judge, whether the witnesses should attend at the seat of government or not, would be entirely unavailing. If any amendment of the kind is inserted in the constitution, said Mr. M., it should provide that for reasonable cause shown, the attendance of the witnesses should be required. Of course, it will not be the interest of the judge to afford any facility for carrying on a prosecution against him, which may be attended with very serious results. I say, therefore, that there ought to be reasonable cause shewn; and that, otherwise, the amendment will be unavailing.

Mr. FORWARD said, he believed that those gentlemen who had been in the legislature when these investigations into the characters of judges had been carried on, would bear witness that, in nine cases out of ten, the depositions of witnesses might as well be taken at home as at Harrisburg. The amandment, said Mr. F., provides that the depositions shall be taken at home where the judge can cross-examine the witnesses. The testimony will be taken there; but if he requires their attendance, they may be brought to the seat of government. But I do not think that, under such a provision, any man would dare, from mere caprice, to bring a man to the seat of government simply for the purpose of proving the same facts, which might be as well and as satisfactorily proved at home; and, indeed, the very exhibition of such a caprice on the part of the judge would have a tendency to alienate the feelings of the legislature, and to create a spirit unfavorable to him in the very body whose duty it would be to pass judgment upon him.

Mr. HOPKINSON, of Philadelphia, said this appeared to be an amendment, striking at one of the most important principles in the law of evi-

dence. It provided for testimony being taken at home. The judge against whom complaint is made, may be at Pittsburg, at Harrisburg, or at Lancaster. He must follow these commissioners about from place to place, or have the evidence taken in his absence. But this was not the most important consideration. If there be a great principle to be sacredly guarded it is this, that evidence should be given before judges. Is it possible that a judge complained of, is to be degraded so low that he is not even to be allowed the privilege of a man accused of a common assault and battery? Judges are thus to be crippled by piece meal, until, at last, it will become dangerous to be a judge. No man now, under the law, can be brought before a court of justice, without being allowed to have the witnesses against him examined before a judge. But any thing seems to be fair against a judge. Any course may be pursued against him although at variance with common law. Let your judges at least have the privileges of common citizens. But if a judge is to be compelled to follow his accuser about, and then take the chance of cross-examination, this is creating an invidious distinction. He hoped that on reflection, his friend from Allegheny, who was always as sound in his principles as in his law, would withdraw this amendment.

Mr. Bell of Chester, stated that he observed a disposition on the part of this body to legislate. They were inclined to usurp legislative powers, and on every topic there were gentlemen so ingenious as to find some defect in the existing constitution which authorized legislative action here.

This amendment gives no power beyond what the legislature already possesses. The legislature may drag witnesses from every part of the state to give evidence. They may do this now, and does the gentleman from Allegheny wish to usurp legislative functions? Ought we to exercise these functions, if we have the power? In his amendment, the gentleman has put the judge below the level of the meanest criminal. His reputation and his bread are to be both put in peril, and he is to be subjected to a form of trial from which the meanest citizen is exempt. In ordinary cases, a court will not hear depositions when a witness is not able to attend from sickness, yet you introduce that practice here. Would you destroy the common rule of proceeding? No man can estimate written testimony as correctly as he can oral evidence. In a case of property, or of a criminal offence, could you permit a party to introduce secondary evidence, when that of a primary character was within reach? Would you do this in no case except that of a judge who on conviction, would be subjected to the highest punishment which can be inflicted?

Mr. Biddle, of Philadelphia, asked the attention of the convention for a short time. There was nothing of higher importance than that your judges should not only be pure but free from the suspicion of impurity. Every thing calculated to injure the judicial character, must injure the whole country. Now it was proposed in every county, to establish a body of officers to take testimony against a judge, on any charge which may be laid to his prejudice. These are to be perpetual officers. What respectable man would take his seat on the bench, if he was thus to be placed at the mercy of a body of men appointed to take testimony against him?

The gentlemen from Philadelphia, (Mr. Hopkinson) and Chester, (Mr. Bell) had put their opposition to the amendment on the ground that the meanest criminal, in all cases, has a right to be confronted with his accusers. Would you place citizens selected for the highest judicial office, on the low level of men whose sole object is to take testimony? We have been long accustomed to read of the abuses committed by the chief magistrate in the exercise of the veto power. Let us not subject the judicial branch to a similar odium. Let them remain on that basis of respectability which will continue to secure to them the respect of the community.

Mr. STERIGERE, of Montgomery, was of opinion that as these officers are liable to impeachment, and as they could now be subjected to a direct responsibility by the abolition of the tenure of good behaviour, the necessity for such an amendment was lessened. The situation of the judges was very different now from what it was under the old constitution.

Mr. FORWARD, would say one word in reply. He was not certain that the power does exist in the legislature; and it was that uncertainty which led him to offer the proposition which he had the honor of submitting. He was inclined to think that the views taken by the learned judge, (Mr. Hopkinson) even if the legislature had the power, would deter them from the exercise of it, as they might be fearful of alarming the country. He (Mr. F.) knew that the legislature had not the power, or it was doubtful whether they possessed it. He insisted on it that the provision could not in the slightest degree, do harm, but it might do good. A judge is not brought before the legislature as a criminal, or for having committed a misdemeanor in office. He is brought there for conscience sake—for want of ability to discharge the duties of his office. He saw no injustice in a proceeding of that kind. But that apart: the meanest criminal court of quarter sessions possesses the right of confronting a witness. And he asked, was it proposed to take away this right from a judge? Was it proposed to impair that right? Why no, that was not the object of the amendment; but, it was to save the trouble and embarrassment incident to the prosecution of judicial officers before the legislature at a great distance from those who might be required as witnesses. It was perfectly well known in practice, and he was confident that every gentleman present who had been in the legislature, would bear him out in the assertion, that in three cases out of four, the evidence might have been as well taken at home, and the evidence, perhaps, would not have been required by the judge. If he demanded and required their attendance, why he might have it.

But why should there be all this difficulty and trouble unnecessarily, when it was conceded that the testimony might be as well taken at the home of the witness, without summoning him to attend here. Now, if a judge had any complaint to make of injustice, all that he had to do was to demand the attendance of witnesses at the seat of government. Witnesses might be brought there at very great inconvenience, and kept there while the inquiries were going on in the winter season. There might be cases of gross injustice where complaints would be withheld from the very fact of there being very great inconvenience in relation to

the prosecution. And, while we guard the judges from oppression or the slightest injury, why should not every convenience and facility be given to the plaintiff? The judge was in no danger. The amendment could do no harm, but might do much good.

Mr. EARLE, of Philadelphia county, said that this amendment was objected to from analogies drawn from courts of justice. And, it was said, with much truth, that that rule which would be improper and unjust in a court of justice, would be equally so in regard to judges charged with misdemeanor and felony. Now, the question arose—would such a rule be improper in courts of justice: He had been of the opinion, for years past, that the adoption of a rule of the character proposed by the delegate from Allegheny, (Mr. Forward) would be of great importance, and would make the courts such as they ought to be, greatly to the advantage of the defendants. The rule was one that should be applied in all civil cases. It was only right that a defendant should have his choice as to whether, or not, he would have the personal attendance of witnesses.

It would save time and expense and prevent the law's delay; and it would place the testimony of the witnesses in clear language, read over and corrected before signing. Every honest judge that was brought before the legislature, would prefer that the evidence of a witness of good character should be reduced to writing. But if the witness was a person of bad character, the judge might require his attendance, if he thought proper. He (Mr. E.) did not entertain the opinion that a term of fifteen years was not too long. On the contrary, he thought it monstrous.

Mr. BIDDLE, of Philadelphia, said that on this, as on every other occasion, whenever his friend from Allegheny introduced a proposition—and there was no member of this body whom he held in higher esteem—no one to whose judgment he would rather defer, and no one whose acuteness he more admired—he found it exceedingly difficult to take an unfavorable view of it. He, however, felt himself bound in the present instance to regard the amendment now before the convention in that light.

The gentleman has said there is no analogy between a judge on his trial and a common offender. I say, may not that judge be removed by the senate and be pronounced incapable of holding any description of office whatever? And, if this be so, I ask whether this provision is calculated to secure to him as fair a trial, and an equal opportunity of detecting error, and bringing false charges to light by the examination of witnesses, as the common offender? I ask if the judge ought not to be placed on the same terms as the common offender? But my friend has said that he would take away no right. I would remind that gentleman of his own language, yet almost fresh in his ear. He has asked, would a judge against whom a deposition had been taken dare to bring forward a witness, before the legislature? Why, the gentleman himself, in the remarks he has made, has furnished the best refutation of the soundness of that position.

Mr. FORWARD, in explanation said—The gentleman from the city, (Mr. Biddle) misunderstood me: I did not say that a judge against whom a deposition had been taken, would not dare to call a witness, but that

where no possible advantage could be gained by the attendance of the witness, it was not likely that it would be required, inasmuch as a requisition made from mere caprice, and productive of nothing but trouble and expense, must result in disadvantage to the party making it.

Mr. BIDDLE said, that all experience had taught us the great value of oral testimony over written. For when a witness presented himself on the stand, an opportunity offered of looking him in the face, of observing his manner, and of judging what faith might be given to his testimony. These things had been looked to as the safe-guard in every case—in all cases. He trusted that that panoply which had heretofore been thrown around the judicial officers would not be taken away, and that they would not be left exposed to the pelting of the pitiless storm. But the judges in that situation and the community at large would not be safe. A blow aimed at the judges is a blow aimed at the security of the people. They ought always to have an opportunity of confronting their accusers, where prejudice and passion only might, in many instances, have induced them to become so.

Mr. FORWARD and Mr. FOULKROD, asked for the yeas and nays which were ordered.

And the question being taken on agreeing to the proposed section, it was decided in the negative—yeas 12—nays 96, as follow:

YEAS—Messrs. Brown, of Lancaster, Cox, Denny, Dickey, Earle, Forward, Hays, Henderson, of Allegheny, Montgomery, Pollock, Royer, Russell—12.

NAYS—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Bedford, Bell, Biddle, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Cochran, Cope, Crain, Crawford, Crum, Cummin, Curll, Darlington, Darrah, Dickerson, Donagan, Donnell, Doran, Fleming, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Keim, Kennedy, Konigmacher, Krebs, Long, Lyons, Maclay, Magee, Mann, Martin, M'Cahen, M'Sherry, Meredith, Merkel, Miller, Nevin, Overfield, Payne, Pennypacker Porter, of Northampton, Purviance, Reigart, Read, Ritter, Rogers, Scheetz, Scott, Sellers, Seltzer, Serrill, Shellito, Sill, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Thomas, Todd, White, Woodward—96.

The third section of the said report, postponed on the 25th instant, and which is 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,"

Was then taken up, considered, and no amendment was offered thereto.

And it was thereupon,

Ordered, That the amendments to the said article be referred to the committee to report, prepare and engross them for a third reading.

A motion was made by Mr. GRENELL,

That the convention now adjourn.

Which was agreed to.

And the convention adjourned until half past nine o'clock to-morrow morning.

WEDNESDAY, JANUARY 31, 1838.

Mr. EARLE, of Philadelphia, presented a memorial from a number of citizens of the city and county of Philadelphia, praying that an amendment may be introduced into the constution of this commonwealth, making provision for a more effectual security of freedom of speech, of the press, and of peaceably assembling for 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: which was laid on the table.

Mr. KERR, of Washington, submited the following resolution, viz:

Resolved, That the committee appointed to superintend the printing of the Debates of this Convention, be instructed to make such arrangements as will hereafter prevent the insertion of reports and documents not intimately connected with the debates of this body, or amendments proposed to the constitution.

Mr. KERR moved that the convention do now proceed to the second reading and consideration of this resolution, which was decided in the negative—ayes 28.

Mr. COCHRAN, of Lancaster, moved that the convention do now re-consider the vote given on yesterday, agreeing to the resolution relative to the report of the committee appointed to prepare, engross or report the amendments made to the constitution, for the third reading, in the words following, viz:

"*Resolved*, That the report be recommitted to the committee, with instructions to that committee to suggest existing incongruities, and to recommend such verbal alterations in the amendments as will more clearly express the object of said amendments, without changing the meaning, and that the committee report specially to the convention any contradiction which they may discover between the amendments proposed and the existing constitution.

The motion to reconsider this vote being under consideration:

Mr. COCHRAN explained that it would not be in the power of the committee to come to any agreement as to the phraseology of the articles. It would be necessary to have a committee of a smaller number, that the business may be taken up, and disposed of. The selection of a smaller committee will have the effect of accelerating their labors. In view of this consideration that it would have the effect of expediting the business of the convention, he would ask for the yeas and nays on his motion.

The call being sustained, the yeas and nays were ordered.

Mr. PORTER, of Northampton said as he had no opportunity yesterday, being in the chair, to make a reply which he intended to make to some observations, he would now take occasion to say a single word. He knew not on what ground any gentleman could undertake to say that the committee could not perform the task assigned to them. He had no idea of a vote of indirect censure being cast upon a body which was faithfully doing its duty. A report yesterday of the difference of opinion in the committee was properly and modestly submitted to the convention. Yester-

day the powers of the committee were defined, and was it just, at this time, to discharge the committee? No other committee could better perform the duty. He knew of nothing to prevent them from discharging the duty. There may be discordances. But they might appoint a subcommittee. He would make no reply to the happy simile of the gentleman from Beaver touching Jim Crow, because he was not so much of an abolitionist as that gentleman. It may be that some of the members of the committee had changed their minds, but these may be gentlemen who have the reputation of being practiced in summersets.

Mr. MEREDITH, of Philadelphia, vindicated himself from the charge of a design to pass censure on the committee. The motion had been made at the request of some of the members of the committee, who were desirous that the subject should be again brought up for the action of the convention.

Mr. HAYHURST, of Columbia, said he was ready to vote in favor of the motion for re-consideration, if he could be convinced of the fact, that the majority of the committee had no right to make a report. In the committee to which he belonged, he was sometimes in a minority, but as their secretary, he always carried into effect the views of the committee. Let the majority make a report, and the convention, if they see fit, can reverse it. The minority are bound to let the majority make a report, with the full privilege of having it reversed.

Mr. DENNY, of Allegheny, thought that a mistaken impression existed as to what had happened in the committee. Nothing had occurred there which was either discordant or unfriendly. The only question was whether the committee were possessed of certain powers, and as the committee had not been able to settle down on this question, it was refered to the convention. Nothing had occurred in the committee more than that they could not settle down unanimously as to the extent of their powers, and therefore it became necessary to apply to the convention on the subject. Whatever committee should be appointed, they must have sufficient powers to enable them to discharge the duty referred to them.

Mr. COCHRAN disclaimed any intention to cast censure on the committee. When the question was up yesterday, a motion was made to discharge the existing committee, and to appoint a smaller one. If the business could be placed in a position in which it could be got along with, without difficulty and delay, he would be satisfied. This committee was constructed on an aristocratic basis. There was a chairman, and there was a committee of captains. They were all certainly well qualified, but officers will not work well in line. He knew nothing about what had taken place in the committee.

Mr. BELL, of Chester, said that every one must acknowledge how important it is that we should expedite our labors; yet, he would not vote for this motion, had not members of the committee expressed a wish to be discharged from the further consideration of the subject. He would not go into matters which took place in the committee, but the passage of arms which he witnessed yesterday, shewed that we were not likely to come to any agreement. Again, an objection was made that the committee was too large. With the conflicting ideas and opinions which prevail there, the present committee could not act speedily. For these

reasons and to have a suitable committee—some of the same gentlemen, if the Chair should think proper—he would vote for the motion.

Mr. HOPKINSON, of Philadelphia, hoped that the motion would prevail, and that a smaller committee would be appointed. He had no feeling of hostility to any of the proceedings, but he thought that the committee was too large. When other committees were composed of a large number, the object was to secure a beneficial interchange of opinions. But this was a ministerial committee, and the smaller it was the better. Where principles were involved, the committee ought to be large; but this committee had no power to reject or alter the principles which had been adopted. This was too large a committee. It would be better if it consisted of three members or even of one member only. There were but three engaged in the formation of the federal constitution, and the work was performed by one of these. It was impossible for this committee to proceed with unanimity or expedition. From what had passed on this floor, it was clear that there were differences of opinion, as to the true meaning of the constitution. The experiment had not been succesful, and for the purpose of having the business well and quickly done, he desired to see a smaller committee. Should the present motion be unsuccessful, he intended to ask to be discharged from serving on the committee. The gentleman from Susquehanna had said, that those who were opposed to all fundamental changes should not be trusted with the work of revision. I (said Mr. H.) only am liable to the charge, and therefore I hope I shall be excused from serving on this committee.

Mr. CHAMBERS, of Franklin, as a member of the committee, rose to express again his hope that the committee would be discharged. As now constructed, it was too large for prompt action on the business which had been referred. Matters cannot be acted on without too much delay. The committee ought to consist of such a number as can be brought together in a few minutes. The business to be done is of a nature to require the action of a smaller body. There was a variety of opinions, and the discussions consequent on that diversity consumes much time. In regard to despatch, therefore, the number ought to be diminished. There had been nothing in the proceedings of the committee which ought to bring down any reflections on the character of that body. There were differences of opinion entertained, but they were expressed respectfully towards each other. There had accurred nothing worthy of censure; and as to any scene indecorous or unbecoming he knew nothing of any such, yet he attended all the meetings. Believing, however, that it would be better, that the committee should consist of a reduced number, he hoped the motion would prevail.

Mr. HIESTER, of Lancastee, expressed some regret that this subject had been again brought before the convention. Its discussion was likely to consume the whole of the morning. It appears that nothing had disturbed the labors of the committee beyond the usual differences which prevailed in the opinions of individuals. If nothing more than this had occurred, it did not appear to him that this could be considered a good reason for discharging the committee. If nine persons could not agree how was it likely that a hundred and thirty-three could? He did not see that the business would be despatched better if the committee were discharged. The only real difficulty in his opinion, had relation to the extent

of the powers of the committee, and these powers were sufficiently defined in the discussion which took place yesterday. If the whole nine members of the committee could not agree, five of them ought to make a report, and the remaining four might make another report. He began to believe that the reference of the subject to a committee had a tendency to retard the despatch of business.

If this committee (said Mr. H.) is to be discharged, only in order that we may appoint a similar one, it would be better that we should discharge it not for that purpose, but altogether. Experience has shown us that reports of committees, where there may have been a want of harmony among the members composing them, have no weight at all with the convention, and that, instead of advancing and expediting our business, they are calculated to retard it. If we can not get along harmoniously with a committee of this kind, I say that the best course we can adopt is to discharge it altogether. But, inasmuch as this committee is now in possession of specific instructions as to the duties which it is expected they will perform, I apprehend we might make one more experiment, and see if they can not get along agreeably to those instructions. It would be desirable, if possible, that they should do so. For these reasons, I hope that the motion to re-consider will not prevail.

Mr. FULLER, of Fayette, said that h hoped the motion to re-consider would be agreed to, and that the committee would be discharged.

From the first moment at which the committee was appointed, continued Mr. F., I foresaw that they would have difficulty in arranging the various amendments made to the constitution, although, to my view, it is at the best but a small matter to arrange those amendments under the appropriate heads, and to make the necessary alterations in the phraseology without altering the substance. I should suppose it to be a matter which any gentleman in this body might dispose of in three hours. Indeed, I have no doubt of the fact. But a committee composed of nine members is altogether too large to answer the purpose we have in view, and a majority of the committee have frankly told the convention that in all probability, they could not arrange things satisfactorily. I think that a committee composed of three members is fully as large as ought to be appointed in this instance, and I care not whether they are all conservatives or radicals. To me it is a matter of perfect indifference. The powers given to the committee are, even in their utmost latitude, confined and limited; and I take it for granted that no three gentlemen in this body would take upon themselves the responsibility of attempting to change any single principle which the convention has adopted.

This does not fall within the sphere of the duties assigned to them. Their only prerogative is to arrange things under their different heads, and to correct and regulate the phraseology; and I see no reason why the committee of nine should not be discharged. They made a report yesterday as to their powers; additional power was granted to them, and yet several of the members have told you this morning that it was not probable they could agree. As our time is short, and as all these arrangements as to phraseology and otherwise must be made, it is necessary that the committee should act promptly, and that they should not be trammelled with a number of members so large as to retard the progress of their business.

I, therefore, hope that the committee of nine will be discharged, and that a committee of three will be appointed in their place. I am perfectly willing, however, that the committee of three should be taken out of the number composing the committee of nine. And, as I have said, I care not whether they are conservatives or radicals.

Mr. SMYTH, of Centre, said that one reason why he did not wish to discharge the present committee of nine was that, to do so, would look very much like passing a vote of censure upon them. And I am not willing, said Mr. S., to do any thing of the kind.

When the matter was under discussion yesterday, I thought that power enough had been given to the committee, under the resolution of the gentleman from Luzerne, (Mr. Woodward) to enable them to act harmoniously and to present a satisfactory report to the convention. I should like to be informed by some member of the committee whether they held a meeting last night, and whether difficulty of any kind still exists to annoy them. I was strongly in hopes that they would have been able to get along without further embarrassment. Why should we appoint a smaller number? They can appoint a sub-committee, and the report of the sub-committee can be submitted to the whole committee of nine; before it is brought up for the approbation or rejection of the convention. These are the reasons which induce me to feel a doubt as to the propriety of discharging the committee; for it would seem to say to them, that we consider they are not able to perform the business put upon them. It does not appear, from what we have heard, that any unfriendly feelings exist between the members of the committee. We have now got through several articles of the constitution. Why not divide those articles among the committees—every two or three members of it forming a sub-committee, and making their reports to the general committee, before the reports come to be acted upon in convention. I cannot perceive what difficulty there can be in pursuing this course.

Mr. PORTER, of Northampton, said he had not a doubt that if this committee had been called together last evening, they would have made their report to the convention this morning on the first article of the constitution; for he did not believe that there was any difference of opinion among them in relation to that article, except so far as concerned the incongruities existing between the fourth and the fifth section.

Mr. EARLE, of Philadelphia county, said that he hoped the committee would not be discharged, inasmuch as he did not consider that any of the reasons which had been urged were sufficiently strong to require the convention to adopt that course. It has been said, continued Mr. E., that the committee differ about the nature and extent of their power; but every difficulty on that score was obviated by the power which was yesterday conferred under the resolution of the gentleman from Luzerne, (Mr. Woodward.)

It has been also said, that the committee differ about the phraseology. For that very reason I should desire to have two reports, in order that we may come to a right understanding on the matters involved, that we may have all the views presented, and that we may then take our choice between them.

It has been said that a committee composed of nine members is too large for the satisfactory accomplishment of the objects which the convention had in view in appointing it. I do not concur in this opinion.—I prefer that the committee should consist of a number of members, so that if any thing escapes the observation of one, another will see it.

We have been told also, that this is a conservative committee. I prefer, for my own part, that this should be the case. If they have any objections to raise, they will thus be bound to raise them before the final action of the convention is had upon the amendments; and I, for one, am desrous that they should say frankly whether there is any thing imperfect, and whether they want any, and what corrections. I have no doubt, as the gentleman from Northampton, (Mr. Porter) has stated, that if the committee had met last evening, we should have had a report from them this morning.

Mr. REIGART, of Lancaster, said that he hoped this committee of nine would be discharged. Several of the gentlemen composing it, continued Mr. R., have requested that they might be discharged; and I can not take the view expressed by the gentleman from Centre, (Mr. Smyth) that there would be any censure, expressed or implied, if we were to do that which, as I have said, several of the members of the committee are themselves desirous that we should do. The gentleman from Susquehanna, (Mr. Read) told us when the subject was before the convention yesterday, that he thought it would be impossible for this committee to come to any conclusion. The delegate from Franklin, (Mr. Chambers) said the same thing. The committee was appointed at an early day; they have had several weeks to deliberate, and they have as yet come to no conclusion. They told us yesterday, that they had not been able to come to a conclusion, because, in the language of their report, "the committee had not, in their judgment, the power to make changes." We then gave them the power, under the resolution of the gentleman from Luzerne, "to suggest existing incongruities, and to recommend such verbal alterations in the amendments as will more clearly express the object of said amendments, without changing their meaning." And also "to report specially to the convention any contradiction which they may discover between the amendments proposed and the existing constitution." And what have we gained by this? Nothing;—for the committee now tell us that they cannot come to a satisfactory conclusion.

The gentleman from the county of Philadelphia, (Mr. Earle) says that he wishes to have a counter report, so that the views of all the members of the committee may be laid before the convention, and that we may take our choice between them. I dissent entirely from the opinion of that gentleman. I want a unanimous report; and we know that where a committee consists of so large a number, it is almost impossible for them to agree. A smaller committee can agree, where a larger cannot. For my own part, I draw no party lines. The committee have no power to interfere in any way with any thing which this convention has done as a principle. I want them to act as a unit, and to have a unanimous report, whatever they may be. To secure this desirable object, and being fully satisfied that it can not be secured by any other means, I am in favor of discharging this committee, and of appointing in its place a committee consisting of a much smaller number.

Mr. DENNY, of Allegheny, said that the gentleman from Lancaster, (Mr. Reigart) was mistaken in some important particulars as to the organization of this committee. The gentleman has told us, said Mr. D., that the committee had been appointed at an early day, that they had had several weeks to deliberate; but that they had not been able to do any thing in consequence of the differences of opinion existing among them. I beg leave to correct the gentleman in this statement.

When the committee first met, the proceedings of the convention were not in such order as to enable the committee to consider them. They were obliged to direct the journal to be printed, and to be laid on their table in a corrected form. This process took some days, and after this had been done, the committee assembled. I believe we met the first day after the journal in a corrected form, with the amendments made on second reading, had been laid on our tables. We had two meetings since; and in consequence of the varieties of opinion in reference to the power conferred upon the committee, we yesterday made the report which was submitted by the chairman, (Mr. Hopkinson.) Such has been the state of things since the appointment of the committee. Nothing—and I am anxious that the convention should distinctly understand, that nothing of a disagreeable or unfriendly nature occurred in the committee. We have gone on in the consideration of the subject matters referred to us, in the same manner as all other committees proceed with their business. We have reasoned together. Differences of opinion, it is true, have existed among us, but none of a disagreeable kind. Since the adoption yesterday, of the resolution introduced by the gentleman from Luzerne, (Mr. Woodward) giving and defining our powers, the committee has not held a meeting. We have not been called together since that time. I feel anxious that the committee should be placed before the convention in a proper point of view. So far as I am concerned—and I believe the remark is applicable to the other members of the committee—I am desirous to be discharged. I believe that a committee of three, will perform the business assigned to them quite as expeditiously as a committee of nine, probably much more so.

Some gentlemen seem to be under the impression that, to discharge the committee at this time, will be to cast censure upon the members composing it. I thank gentlemen for the considerate regard which they exhibit for our feelings in this particular: but I do not think it is necessary. For my own part, I say in all sincerity, I shall not look upon the matter in that light, however other gentlemen may be disposed to do so. And I repeat that so far as my own individual wishes are concerned, I should prefer to be discharged.

Mr. BIDDLE said, that as he did not think any good object could be attained by protracting this debate beyond the extent to which it had been already carried, he would ask for the immediate question.

Which said motion was seconded, by twenty-nine other delegates rising in their places.

And the question being taken.

Shall the question be now put?

It was determined in the affirmative.

And on the question,

Will the convention agree to reconsider the said vote?

The yeas and nays were required by Mr. M'DOWELL and Mr. OVERFIELD, and are as follow, viz:

YEAS—Messrs. Ayres, Baldwin, Barclay, Barnitz, Bedford, Bell, Biddle, Carey, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Indiana, Cleavinger, Cline, Cochran, Cope, Cox, Craig, Crum, Cunningham, Curll, Darrah, Denny, Dickey, Donnell, Fleming, Forward, Fry, Fuller, Hastings, Henderson, of Dauphin, High, Hopkinson, Hyde, Ingersoll, Keim, Kerr, Long, Lyons, Maclay, Martin, M'Cahen, M'Dowell, M'Sherry, Merrill, Montgomery, Nevin, Overfield, Pollock, Purviance, Reigart, Read, Ritter, Royer, Russell, Saeger, Scott, Seltzer, Serrill, Snively, Taggart, Todd, Weaver, White, Young—65.

NAYS—Messrs. Banks, Barndollar, Bigelow, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Beaver, Clark, of Dauphin, Crain, Crawford, Cummin, Darlington, Dickerson, Doran, Earle, Foulkrod, Gamble, Gearhart, Gilmore, Grenell, Harris, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Hiester, Houpt, Kennedy, Konigmacher, Krebs, Magee, Mann, Merkel, Miller, Payne, Pennypacker, Porter, of Northampton, Riter, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Sturdevant, Thomas, Woodward—48.

So the vote was re-considered.

A motion was then made by Mr. BIDDLE, seconded by Mr. FLEMING.

That the convention re-consider the vote given on the 30th instant, on the amendment to the said resolution, as follows, viz:—

By striking therefrom after the word "that," the words "the report be re-committed to the committee, and inserting in lieu thereof, the following, viz: "said committee be discharged, and that said report be referred to a select committee of three."

Which motion was agreed to.

And the said amendment was again considered and agreed to.

And the resolution, as amended, was agreed to; and,

Ordered, That Messrs. Cochran, Banks and Bell be a committee for the purposes expressed in said resolution as amended.

Mr. COPE, from the committee on accounts, reported the following resolution, viz:

Resolved, That the President draw his warrant on the State Treasurer in favor of Samuel Shoch, for the sum of two thousand dollars, to be accounted for in the settlement of his accounts.

And on motion,

The said resolution was read the second time, considered and adopted.

On motion of Mr. M'SHERRY,

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

The first section of the said report being under consideration, in the words as follow, viz:

"SECT. 1. The legislature shall continue to provide by law for the establishment of common schools throughout the state, so that the benefits of education may be extended to all persons in the commonwealth."

A motion was made by Mr. BIGELOW, of Westmoreland, to amend the said section by inserting after the word "state," where it occurs in the third line, the words as follow, viz: "which shall be taught in such languages as may be deemed necessary."

Mr. FLEMING rose to inquire of the gentleman from Westmoreland, (Mr. Bigelow) what was the particular object he had in view in desiring that the words indicated in his amendment, should be added to this section? and was it not in the power of the legislature, under the report of the committee of the whole, to make provision that the people of the commonwealth should be taught in such language as they might think proper?

Mr. BIGELOW said he would reply very briefly to the inquiry of the gentleman from Lycoming, (Mr. Fleming.)

It is a fact, continued Mr. B., within the knowledge of every member of this convention, that a very considerable portion of the inhabitants of the state of Pennsylvania are of a German descent, and that many of them are very partial to the language of their ancestors. Their clergymen in many instances urge upon them the propriety and necessity of their acquiring a portion of German education; and they deem it their imperative duty to conform to such instructions.

Under the present system of common school education, it is provided that the several townships and boroughs in the several counties in the state shall compose a school district; each district shall be divided into as many sub-districts as may be deemed necessary; and that one school be provided for in each sub-district. This one school will be under the superintendence of the school directors, who are chosen by the citizens of the township; and who will direct the establishment of such schools as may suit the convenience of a majority of the citizens. There will, therefore, be no opportunity afforded for receiving education in any but one language in the same district. We know that there are some districts in which a German school will be preferred; but in others English schools will be adopted to the entire exclusion of the German.

For these reasons, I think that a general provision should be made—and I believe that it ought to be a constitutional provision, in order to prevent any innovation on the part of the legislature,—declaring that a plurality of schools may be established when it is necessary; so that persons desiring to be taught either in the English or German language may be equally provided for. I have, therefore, offered this amendment, and hope it may be adopted. I will not trespass further on the time of the convention.

And the question on the said amendment was then taken, and decided in the negative, without a division.

So the amendment was rejected.

A motion was made by Mr. BEDFORD, of Luzerne, to amend the said section by striking therefrom the words following, viz:—

"So that the benefits of education may be extended to all persons in the commonwealth."

Mr. FULLER, of Fayette, said he hoped that the amendment might be agreed to. Although, continued Mr. F., the subject underwent consid-

erable discussion in committee of the whole, at Harrisburg, and although the section as it now stands, is the final result of that discussion; still I am inclined to the opinion that the part proposed to be stricken out by the amendment of the gentleman from Luzerne, might, if it should be permitted to remain, endanger all the amendments we may make to the constitution. It appears to me that there are objections to the amendment of the committee of the whole. The words "so that the benefits of education may be extended to all persons in the commonwealth," are too extended, in my judgment, to meet with the approbation of a majority of the people. I think that they may lead to difficulty, and that they may tend to retard the progress of the system of education which is now in such successful operation throughout the commonwealth. The legislature, I think, will have sufficient power in the absence of words so extensive in their import; and I shall, therefore, vote in favor of the motion to strike them out.

Mr. DICKEY, of Beaver, said that he should not oppose the amendment of the gentleman from Luzerne. For his own part, he should prefer that the report of the committee of the whole should be negatived altogether, and that the provision of the constitution of 1790, should be suffered to remain as it was. I should like, continued Mr. D., that all persons should be educated, and I do not like to strike out that part which declares that they shall be educated. But if it is to be stricken out, I would at least desire that a provision should remain declaring that the poor shall be educated gratis.

I am not satisfied with that part of the amendment of the committee of the whole, which declares "that the legislature shall continue to provide by law for the establishment of common schools throughout the commonwealth," because I believe that it will have a tendency to retard the progress of education, and to interfere with those laws which are now in operation, and which are winning upon the affections of the people. At all events, I desire that the constitutional guaranty should remain that the poor shall be educated gratis, but at the same time, I do not object to extend it so that *all* shall be educated.

He would much prefer that the report of the committee should be negatived, and that the section should remain as in the language of the old constitution. In committee of the whole the subject was gravely discussed, and at one period of it the principle which he had contended for prevailed by a large majority. But afterwards, with a view of getting rid of the amendments altogether, he had voted for that proposed by the gentleman from Franklin. Looking at the subject in every point of view, he had come to the conclusion that it was better to leave the constitutional provision unchanged, and let the legislature carry out the system.

Mr. DARLINGTON, of Chester, said that if he had been present at the time the subject was brought before the committee, he would have opposed any of the proposed changes. It seemed to him that not one of the changes which gentlemen now proposed making, was demanded by the people of the commonwealth at the time when they voted for calling this convention together. Experience, certainly had not proved that any inconvenience was felt in regard to the subject of education. On the con-

trary, the legislature, whenever they had found it expedient to establish a system of common schools, had met with no constitutional impediments carrying their design into effect. He disliked the report of the committee of the whole. In his humble opinion, the provision of the constitution of 1790 was all that the people of the state of Pennsylvania ever asked for, or desired, or even would ask for, or desire. That was to say, the first section of the constitution, "that the legislature shall, as soon as conveniently may be, provide, by law, for the establishment of schools throughout the state, in such manner that the poor may be taught gratis."

The people of Pennsylvania had thought proper to establish a system of common schools, which had proved generally popular throughout the state. And, far was it from his intention to say any thing against it, although it was unpopular in some particular portions of the county which he had the honor to represent—not being suited to the peculiar views of some of his constituents. He knew that the system had met with the general approbation of the people of the commonwealth. He repeated that it was far from his wish to throw any obstacle in the way of impeding the progress of the common school system, which had been found to work well in most parts of the state; but he did not like to compel the legislature to enforce it in many portions of the commonwealth where perhaps the condition, or inclination of the citizens neither required nor wished its introduction. He did not approve of its being imposed upon those whose sentiments were unfavorable to it. In many parts of the county of Chester, the people would rather not adopt the system, because they have had for many years past, in operation, what they deem, a better one. They had heretofore refused to adopt the common school system. He (Mr. D.) was of the opinion, that it was better to leave it to the legislature to adopt the system in those parts of the state where the people desire it. It seemed to him, in view of all these considerations, that the convention did not act wisely in making a change which was not asked for, and which might work injuriously to those portions of the state where the present system did not operate.

He desired to record his vote against the report of the committee of the whole. He cared nothing about the amendment of the gentleman from Luzerne, which was equally objectionable to him; it was, that the legislature shall provide by law, for the establishment of schools throughout the state. He did not like a constitutional provision having reference to laws as they exist, and which may be changed from day to day. It appeared to him like making the laws of the land dependent on the will of the legislature.

With regard to that clause of the section, which is in these words: "so that the benefits of education may be extended to all persons in the commonwealth,"—he would not vote against it. He was not opposed to the principle contained in the clause. He was not against extending to all the people a commonwealth education. If it was necessary to have any provision at all in the constitution in relation to education, he preferred the one we already had to any other. And, he did think it was proper that every government should take care that the poor should be educated. He approved that provision should be made by the legislature for the education of the poor gratis.

Mr. HIESTER, of Lancaster, said he coincided with the gentleman from

Beaver, (Mr, Dickey) and the gentleman from Chester, (Mr. Darlington) that it would be better to negative the report of the committee and leave the constitution as it stands. The common school system was working well now; but he was much afraid that gentlemen in their zeal to accelerate it would destroy it. There was no subject respecting which the people were more sensitive than the common school system. As far as his constituents were concerned, he was satisfied the less that was said on the subject, the better. He thought it would be as well for the convention not to change the existing provision of the constitution in reference to the providing for the education of the poor gratis. If we adopt the first part of the amendment, it made it obligatory to provide for a common school system throughout the state. He was afraid that if we attempted to make any change, the people would take the alarm, and much excitement would be created, which might be avoided. He believed that all agreed as to the benefits of extending education throughout the commonwealth. All agreed as to the principle, but not the policy. The only difference of opinion was as to the means by which the object was to be accomplished. He thought it would be better to leave the subject to the disposition of the legislature. As he had already remarked, it was better to let the work go on progressing; it was doing very well—going on rapidly, considering the short time the system had been in operation. He would vote for the amendment of the delegate from Luzerne, viz: to strike out the clause "so that the benefits of education may be extended to all persons in the commonwealth." He (Mr. H.) knew that that was right in the abstract, but, then, he was perfectly aware that it was one of the principal objections to the school law—for, he had heard it said over and over again—that it was too general in its character, in regard to ages;—that all the larger children would crowd out the smaller ones.

If the convention adopted this amendment it would meet opposition on that ground, because it says that the schools shall be kept open to all persons. He would, in conclusion, say, that we had better leave the whole matter in the hands of the legislature. It was better to leave well enough alone.

Mr. Bedford moved to modify by striking out all after the word "state" in the amendment of the committee of the whole.

Mr. B. then withdrew his motion.

Mr. Fleming, of Lycoming, said he hoped that the committee of the whole would be sustained. He thought that no injury would result from the adoption of the alteration proposed by the committee. The convention had now been asked to strike out the amendment of the committee of the whole; and, he would inquire for what reason? We had been told by the delegate from Chester, (Mr. Darlington) that this was a subject which might not be acted upon by this body. Now, if that gentleman would make inquiries, he would find that this subject had agitated the public mind as much as any other had done. It has been talked of, certainly, as frequently as any other of a public nature. And, yet the gentleman from Chester had spoken of it as if it was something new. A little investigation would have convinced the delegate that the school system had been agitated in every part of the commonwealth of Pennsylvania. Had the gentleman given his presence when this subject was under discussion in

committee of the whole, he would have learnt how universally it had been agitated in the state. The report of the committee had been sustained in committee of the whole by a vote of eighty to thirty-eight. And, now we were asked to strike out this liberal and humane provision. In what respect did the provision differ from that contained in the constitution of 1790? The first division of the section, as reported by the committee of the whole, merely altered about two words—to adapt the phraseology to the present state of things—"the legislature shall continue to provide" &c. The subject had been so fully and elaborately discussed in committee of the whole that, he imagined the eighty delegates who voted affirmatively, would not desire to hear any thing in relation to it. The word "common" was then considered the best phrase that could be used. What followed? Why, the introduction of the words "so that the benefits of education may be extended to all persons in the commonwealth." And, after a full and deliberate discussion, the committee came to the conclusion to, and did, insert the old phrase "that the poor may be taught gratis." Now, this ought in justice to have been stricken out of the constitution. The odious distinction implied by it should have been done away. There ought to be none of these little trifling distictions between the rich and the poor, and that no opportunity should be afforded the rich man's boy to tell the poor man's boy that he was educated at the public expense, while his father paid for his Had the gentleman from Chester been present he would have heard the remarks that were urged in favor of striking out the words "that the poor shall be taught gratis." One, among those given was—that then the children of the rich and poor would be put on an equal footing. And now a phrase was used in lieu of that.

Why, he asked, was the amendment required? Because of the universal establishment of common schools. Were they the children of the poor only who attended these schools? Do the rich need no education? Shall we make distinction? The provision was general—it contemplated universal education. Those schools shall be for the education of the children of the rich as well as of the poor, and be established wherever they are needed. He would ask why these schools, to be established under the direction of the legislature of Pennsylvania, were to be called "common," when this odious distinction was preserved—"that the poor shall be taught gratis," when both classes are taught on the same terms—the rich and poor, and the high and low? The expenses were to be paid out of one common fund. Why, then, should there be this odious distinction. He would ask if there was any distinction when pay-day came? Did not the provision direct how and when education should be carried on? If the system of 1834 was to be adopted, he hoped that it would be common to all and that odious distinctions would not be carried out, and introduced into the schools to create squabbles, and thus frustrate the object of the system.

He trusted that the report of the committee of the whole would be agreed to, and that the convention would not be driven to preserve the odious distinction contained in the first section of the seventh article of the constitution of 1790.

The question was called for by Mr. MILLER and twenty-nine others rising in their places.

And on the question,

Shall the question be now put?

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

YEAS—Messrs. Banks, Barclay, Barndoller, Barnitz, Bedford, Bell, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Craig, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dickey, Dickerson, Donagan, Donnell, Doran, Earle, Fry, Fuller, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Henderson of Allegheny, Hiester, High, Houpt, Hyde, Keim, Kennedy, Kerr, Krebs, Long, Lyons, Magee, Mann, Martin, M'Dowell, Merkel, Miller, Montgomery, Nevin, Overfield, Payne, Pollock, Purviance, Reigart, Read, Riter, Ritter, Rogers, Royer, Russell, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Thomas, Todd, Weaver, White, Woodward, Young, Sergeant, *President*—83.

NAYS—Messrs. Agnew, Ayres, Baldwin, Biddle, Bigelow, Carey, Chambers, Chandler, of Philadelphia, Clapp, Cline, Chochran, Cope, Cox, Cunningham, Darlington, Dunlop, Farrelly, Fleming, Foulkrod, Gamble, Helffenstein, Hopkinson, Ingersoll, Jenks, Konigmacher, M'Cahen, M'Sherry, Merrell, Pennypacker, Porter, of Northampton, Scott, Serrill—32.

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, so far as relates to the first section of the said article?

The yeas and nays were required by Mr. DARLINGTON and Mr. DICKEY, and are as follow, viz:

YEAS—Messrs. Ayres, Baldwin, Banks, Bell, Biddle, Bigelow, Brown, of Northampton, Brown, of Philadelphia, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clarke, of Indiana, Cline, Cochran, Cope, Craig, Crain, Crum, Cummin, Curll, Denny, Doran, Farrelly, Fleming, Foulkrod, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hays, Helffenstein, Henderson, of Dauphin, Hopkinson, Houpt, Hyde, Ingersoll, Kennedy, Kerr, Lyons, Magee, Martin, M'Cahen, M'Sherry, Merrill, Montgomery, Payne, Pennypacker, Pollock, Porter, of Northampton, Rogers, Russell, Scott, Serrill, Shellito, Taggart, Thomas, Todd, Sergeant, *President*—60.

NAYS—Messrs. Agnew, Barclay, Brown, of Lancaster, Carey, Clark, of Dauphin, Cleavenger, Cox, Crawford, Cunningham, Darlington, Darrah, Dickey, Dickerson, Donagan, Donnel, Dunlop, Earle, Fry, Fuller, Harris, Hayhurst, Henderson, of Allegheny, Hiester, High, Jenks, Keim, Konigmacher, Kerbs, Long, Maclay, Mann, M'Dowell, Merkel, Miller, Nevin, Overfield, Purviance, Reigart, Read, Riter, Ritter, Saeger, Scheetz, Sellers, Seltzer, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevani, Weaver, Weidman, White, Woodward, Young—60.

So the question was determined in the negative.

Mr. FULLER asked the leave of the convention to change his vote.

Mr. DICKEY inquired of the Chiar whether a change of the vote of the gentleman from Fayette, would be the means of effecting a change in the result?

The CHAIR said, that the rule applicable to the point—rule number thirty-six—simply provided that—

"On the call of the yeas and nays, one of the secretaries shall read the names of the delegates after they have been called, and no delegate shall be permitted to change his vote, unless he at that time declares that he voted under a mistake of the question."

Beyond this, the CHAIR said, there was no provision made.

Mr. FULLER said, that he certainly had voted under a mistake, but that as he had no desire to force this change of vote, he would withdraw his request.

The CHAIR then announced the vote be yeas 60—nays 60.

So the report of the committee of the whole, so far as relates to the first section of the second article, was not agreed to.

A motion was made by Mr. M'CAHEN,

To amend the first section of the said article, by striking therefrom all after the words "section 1," and inserting in lieu thereof the words as follows, viz: "The legislature shall continue to provide by law for the establishment of schools throughout the state, so that the benefits of education may be extended to all the children in this commonwealth."

And the said amendment being under consideration,

Mr. M'CAHEN said, that this amendment contained the same principle as that embodied in the report of the committee of the whole, with the exception of the word "persons" for which he had here substituted the word "children," inasmuch as the former phrase appeared to him to be objectionable.

I hope, contined Mr. M'C., that this matter will receive all the consideration which its importance demands, and that the members of this convention will not suffer their right feelings to be carried away by prejudice. Sir, I trust that the time has gone by in the commonwealth of Pennsylvania, never to return—when the prejudices of the people were such as to deprive the children of the commonwealth of the benefits of a system of education which may be beneficial to all.

In the constitution of 1790, there is a provision on this subject, which I look upon as altogether odious. It provides that the poor shall be taught gratis. As my friend from Lycoming (Mr. Fleming) has observed, the sons of the rich man may jeer the poor man's children, from the fact that the father of the former has paid taxes for the education of the latter. I hope that the time has arrived in Pennsylvania, when the rich and the poor may meet upon the same footing; when the schools may be opened alike to all the children of the commonwealth. And this is the aim and object of my amendment.

I will venture to assert, that if the legislature had heretofore felt themselves in possession of the power to provide for such a system, we should not now here those objections raised which, I am sorry to say, still continue to pervade some parts of the commonwealth on the subject of education.

When the present system of education was first introduced, it was objected to in a great many of the counties, and yet, in the course of a few years, these objections and prejudices have been found to be greatly diminished, although, as I have said, they still continue to pervade some parts of the commonwealth. I hope that in an assembly of this kind, representing, as we ought to do, the feelings and the wishes of the people, there will be found some who are willing to yield up their own high feelings to the prejudices of any part of the community. I believe that a large majority

of the people of Pennsylvania, will be found to approve the principle of the amendment which I have introduced. It will afford ample power to the legislature to open the schools throughout the state.

I trust that full consideration will be given to this amendment, and that it will receive the support of a majority of the members of this body, and I hope that no gentleman will endeavor to spring the previous question upon us, before the convention has had a fair chance to investigate the merits of the proposition.

Mr. DARLINGTON, of Chester, siad, that lest he should hereafter be cut off by harvest—alluding to the remark of the gentleman from Fayette, (Mr. Miller—he would take this opportunity of replying to some of the arguments which had been urged in relation to this subject of education.

The arguments which we have heard, continued Mr. D., whether they are the same which were urged in committee of the whole or not, are nothing more nor less than a repetition of the arguments with which the newspapers have for years been filled, of a political character, dishonorable to those who use them—that is to say, arguments based upon the principle of the rich against the poor. This is courting the poor for popularity sake,—it is nothing more nor less—and because you would abolish all distinctions between the rich and the poor, therefore you are to make this important change in the fundamental law of the land. And, what, I will ask, is to be the effect of this change? Is it to benefit the poor in whose behalf the gentleman from Lycoming, (Mr. Fleming) and the gentleman from the county of Philadelphia, (Mr. M'Cahen) express so much sympathy, and who believe themselves to be the exclusive friends of this portion of our citizens? Is it, I say, to benefit the poor? All I ask of gentlemen is to reflect that, under the common school system as it now exists—that is to say, under the new law by which it is regulated—the poor will be worse off under this amendment, if it should be adopted, than they were under the old constitution. And why is this so? Because the taxes, onerous as they are, are not sufficient to keep the schools open for the poor and the rich together, for more than four or six months in each year. Under the provision of the old constitution by which the poor are to be taught gratis, the schools are open for a much longer period. Where then is the force of the argument which would render it imperative to educate all alike, when the result will be that the poor will be deprived of the benefits which they now enjoy.

I ask gentlemen to look at the result of the system, and then to say whether, upon those results we should found an argument which is to make it imperative upon the legislature to establish a system, which is to work injury to the poor? I prefer for my own part, that the constitution of 1790, should remain as it is in this particular. If it had been my good fortune to have been present at Harrisburg when this matter was under discussion in committee of the whole, and to have heard the eloquence of the gentleman from Lycoming, (Mr. Fleming) and the gentleman from the county of Philadelphia, (Mr. M'Cahen) in behalf of the poor of this commonwealth, I should most probably have been induced at that time to have availed myself of the right I possessed, to express my opinion as to what I believe will be the results of the new system proposed. But I was

not present, and as this is the first opportunity which has been presented to me to express my views, I have embraced it; and I now ask the members of this convention to pause and reflect before they inflict any injury upon a portion of our citizens who are entitled to our sympathy and to the benefits of education at our hands, before they compel the legislature to carry out a system fraught with such injustice to this class of people, whom they are so anxious to protect and benefit.

It is partly in view of these reasons, and partly because there has been no call for a change in this particular, that I am opposed to the amendment of the gentleman from the county of Philadelphia. I hope it will be negatived, and that we shall still go on, as we have done heretofore, under the provision of the constitution of 1790. And whenever it is found the common school system works well, let it be extended to every district.—But let it be left discretionary with the legislature to establish the system only in those districts where they are desirous to have it, and not to force it upon those in which the people have a system of their own with which they are better satisfied.

Mr. M'CAHEN then modified his amendment by inserting before the word "schools," where it occurs in the second line, the word "common."

Mr. CHANDLER, of Philadelphia county, rose and said;

Mr. President. The modification which the gentleman from the county of Philadelphia, (Mr. M'Cahen) has made, meets my views, and adds to my desire that the amendment should be agreed to.

I little thought, a few weeks ago, that I should stand here to advocate any change in the constitution of 1790. At all events, I little thought that I should hear upon this floor a decision that the amendment proposed by the committee of which I was a member (although my signature does not appear to the report,) should be voted down here, when at Harrisburg it was adopted, after a debate, by a vote of 80 yeas to 38 noes. But, sir, a change has come over us, and we must meet it as best we can. If the fathers call so loud for bread from the harvest field, we, at least, ought not to turn round and give their children a stone.

It is said that the constitution as it now stands with reference to this subject of education, works well. It does not work at all; there is scarcely a school in the commonwealth that is not in violation of the constitution. They are far beyond the provisions of the constitution. The overseers of the poor do indeed whip the little urchins into some corner of the city, until the parents come for them. But we have built school-houses of sizes to accommodate the children of our citizens, and there they are congregated altogether; where the son of the laborer, the child of the mechanic, and the son and daughter of the school director himself receive the same education, and becomes the recipient of that learning which was formerly locked up in store for the rich alone.

It is said that there has been no call for this change; that the people have not asked it at our hands. Sir, about twenty years ago, a solitary voice went up at one corner of the state, and a solitary answer was heard in another. At length another voice was heard. Petitions began to be presented; and these petitions and memorials went before the legislature

every year, gaining numbers and strength, until at length something was done on the subject of education. Was all this done without a call!

Mr. DARLINGTON, of Chester, asked leave to explain. The gentleman from the city, (Mr. Chandler) had not correctly apprehended the purport of the remark which he (Mr. D.) had made. I did not say, continued Mr. D., that there had been no call for a system of common school education. What I said was, that there had been no call made upon this convention for a change in the provision of the constitution of 1790.

Mr. CHANDLER resumed.

The people called for a change, and the constitution prohibited that change; and as I understand it, the people have sent us here to make such changes as are necessary, to open the doors of their school-houses that they may receive all who are disposed to enter them.

I understand, then, that there is a change called for—that the voice of the people asks for it. We have seen political parties call for a change, as that under which they would act; and probably that consideration may have had such an influence upon us as to induce us to change our votes.

It has been said, that we are about to open the doors of our schools too wide. Can the doors be opened too wide to the children of the commonwealth, when we recollect that the governor of our state, only three years ago, told us thet there were in Pennsylvania three hundred and seventy thousand children, who did not know the letters of their alphabet—who could neither read, nor write. And yet a fear is manifested that we open the doors of our schools too wide; that evil is to be apprehended from the mighty influx of scholars, who may flow in so soon as the doors are thrown open to them. I trust in God that the current may set so strongly in, that all the children in the commonwealth may be educated, and that we shall never again hear a report from our governor, the details of which may cast such a disgrace on the people of this great commonwealth.

The education of the poor is dwelt upon. Certain gentlemen in this convention feel a particular anxiety in their behalf. Sir, we are not sent here to legislate for the poor. We are not here as a convocation of the overseers of the poor—nor to levy poor taxes, nor to bestow eleemosynary aid. We are here to legislate for the whole state, and for nothing but the whole state; and we are here, upon this very question, to provide the means of education prayed for in all the petitions which have been heard. We are here in short, to provide for the wants of the people. Shall we go back to the old constitution, and erect behind some fence, or within the partitions of some prison domain, a hovel for the poor to be educated in? Shall we continue to keep alive this distinction between the various classes of our citizens? Is this the course of policy we are to adopt in the present enlightened age of the would? If there is any place where all men should be equal it is in the school-house and the grave. If we go back to the constitution of 1790, we shall check every step that has been taken in the progress of our system of education.

If we return to the old constitution, we shall revive all the sectarian schools that have started up in different parts of the state—the Jew in the synagogue—the Catholic in his place of worship. And the boys in the streets will renew the old crusade which we witnessed years ago, when here and there a child received a little education.

Mr. President, I was much astonished to hear the allusions made by the gentleman from Chester, on my right, (Mr. Darlington) to the agitation papers in the state. I thank God that, so far as the subject has been agitated, the public prints have done the credit to themselves and the justice to the public, to agitate this question until we shall not be able to get clear of it. As to the charge which has been made that the advocates of this system are courting popularity in the arguments they have made, I must say that I did not expect to hear an enlightened representative from Chester county—the Athens almost of our own state—I say, I did not expect to hear such a gentleman say, that a man who had the boldness to stand up as the advocate of public schools and of general education, was courting popularity. I could if I chose—though I will not wrong myself by doing so—but I might if I chose, find motives in the position which the gentleman from Chester occupies at this time, which might lead others to suppose that he was courting popularity in his own district. I think better of him, however, and know that he would be the last to resort to such means to obtain personal objects.

But, I will ask that gentleman, what should we court from the poor? Surely, not their favor and support. They, probably, might court those in the convention who are rich, but we can acquire nothing from them. It is probable, however, that we may incur the dislike of the rich for the course we are pursuing. I desire to court the public, when I court at all, by advocating means of promoting the public good and adding to the public happiness. I care not whether they are rich or poor. I care not whether I acquire the esteem of one class or of another, so that the public in general is satisfied; and I shall be perfectly content if any popularity which it may be in my power to acquire, comes from the lighting up in the countenances of the poor man a smile of intelligence :—from giving to him and to every man the power to read the constitution of the state in which he lives, that he may look to it as his light and guide of his steps in his political life, and enabling him to read the word of God, which is to be the light and guide of his steps in all things relating to the life which is to come. I court this more than any empty honor which I might obtain by trying to separate the poor and the rich—by again awaking that principle which once existed here among us—and which now I hear exists in different parts of the commonwealth—sending the poor to poor schools, and the tendency of this system to make the rich good and the poor bad. I ask nothing for the poor alone : but I stand here as the advocate of the commonwealth. I ask that all, all may be educated —and that all may be able to claim the benefits which are now extended only to a few.

Mr. Fuller, of Fayette, said that he was in favor of the amendment of the gentleman from the county of Philadelphia, (Mr. M'Cahen.) The section as it was amended in committee of the whole, (said Mr. F.) was open to one objection, as I stated when I addressed the convention this morning—I allude to the words "all persons." These words make the

provision altogether too indefinite, and are calculated in my opinion to alarm the fears of those who entertain prejudices against the general features of a system of education, and this was the sole reason why I was opposed to the report of the committee of the whole. The motion of the gentleman from Luzerne, (Mr. Bedford) to strike out all after the word "state" would, if it had prevailed, have struck out that part which I conceived to be objectionable. But the gentleman withdrew his proposition.

The provision of the constitution of 1790 has, in my opinion, been violated by the legislature of Pennsylvania, in adopting a law providing for a general system of education. That law has not provided for the education of the poor *gratis*; because the poor are taxed in proportion to their property.

The amendment of the gentleman from the county of Philadelphia, (Mr. M'Cahen) brings the matter, I think, more in conformity with what the legislature and the people may have had in view;—it appears to cover the whole ground, that is to say, that the children of the commonwealth, without regard to rich or poor, shall receive the benefits of education. The difficulty which will be experienced if we re-enact the provision of the constitution of 1790, will arise from the latter clause. In different parts of the state, it has been raised as an objection to the law made under the provision of the old constitution, that it is a violation of that provision. If that section is suffered to remain as a part of the amended constitution, the same objection will still be urged; and I think that gentlemen must perceive that the law now existing is at variance with the constitution. The amendment of the gentleman from the county of Philadelphia, will remedy all this—will make the provision acceptable, and I have no doubt will meet the views of the people.

This subject has been discussed in committee of the whole at Harrisburg; and it is not necessary now to enter into any discussion as to the propriety of a general system of education.

Mr. Dickey, of Beaver, said that he supposed there was not a single member of the convention who was not in favor of educating every child in the commonwealth, or who was opposed to extending the benefits and the blessings of education to every person in it.

But, continued Mr. D., though this may be the universal feeling of the convention—as I do not doubt that it is—still there may be some question as to the expediency of adopting the amendment of the gentleman from the county of Philadelphia, which is similar in character to the report of the committee of the whole which was negatived this morning, with the exception that the word "children" in the former, is inserted in the place of the word "persons" in the latter.

Mr. President, I do not stand here to declare myself the advocate of the common school system in Pennsylvania; because it is known not only that I am its professed advocate, but that I have shown myself ready in the legislature to support and sustain that system, even at the hazard of popularity. I voted for the bill of 1833-4—known as the common school bill. I was one of the number who resisted its repeal—and which repeal would have taken place, as I have at a former time, when this sub-

ject was before us, taken occasion to remark, but for the noble and patriotic course of the gentleman from Adams, (Mr. Stevens) who came to the rescue and saved it.

I am the friend of that system, here and every where; and so anxious am I that the benefits of education should be diffused, that I am not willing to do any thing calculated to agitate the subject—to array against each other the advocates of the school system and those who are opposed to it; when the result of such a state of things may be that you will not even have your "poor" educated at all.

Mr. President, we should do in this instance as we are compelled to do in many others. We must take things as we find them. We should act upon this important subject of education, according to the circumstances in which we find the commonwealth placed in regard to it. Is it not known to every gentleman within the sound of my voice, that the provision in the constitution of 1790, which declares simply that "the legislature shall as soon as conveniently may be, provide by law, for the establishment of schools throughout the state, in such manner that the poor may be taught gratis," remained a dead letter, so far as concerned the children of the commonwealth generally, until the establishment of the common school system under the act of 1833–4. There was a provision that the poor should be educated gratis, but that did not become a law until the year 1809. And under that act of 1809, many of the poor children of this commonwealth, have received the benefits of education. In Montgomery county, the funds for that purpose were equal to four or five thousand dollars. Such also was the case in Chester and other counties.

It is not to be forgotten, that in reference to the common school system in this state, we are met by many serious prejudices. Of this fact, the members of this body are as well aware as myself. They know that those prejudices exist, and they know that the common school system, as now established by law, is not of an imperative character. The law leaves the matter to the voluntary action of the people; and at the same time, as a means of leading the people to its acceptance, the law holds out inducements for that object in the shape of appropriations of money from the public treasury. The result is, that an amount of money has been distributed for the advancement of this great project, which has induced a large portion of the people to adopt it. In addition to these appropriations, a certain sum has been added by way of tax; and we learn by the report of the superintendant of common schools of the last year, that, out of about one thousand districts, upwards of seven hundred have accepted the law; thus leaving between two and three hundred districts, of the most dense population, who have not accepted it—but who still resist, and set themselves in array against it.

Looking at these facts, I ask the friends of education in this convention, whether, by any unguarded or precipitate action here, they are willing to run the risk of destroying this system which is gaining thus surely upon the affections of the people, and which is adding district to district year after year? Are they willing to array three hundred non-accepting districts against the system—adding to them the force of that powerful minority which is known to exist in all the accepting districts? Are they willing to endanger the great principle which every gentleman has at

heart—that is to say, the education of those who are emphatically the children of the commonwealth?

There is in the constitution of 1790 a guaranty, important in its character, and which ought not, in any amended constitution which we may send forth, to be left to chance,—that is to say, that the poor shall at all times be provided for—that they, at all events, should be taken care of, that they should be educated, whether the rich should accept the law or not.

Sir, the common school system of Pennsylvania is working well. The governor in his annual message, although we have not as yet received the report of the superintendant of common schools, says that the system is still gaining in the affections of the people, and that more of the non-accepting districts had now accepted the law.

We know that every three years, the sense of the people is required to be taken whether the system shall continue or not. In the year 1840, this question must again be put to the people, and preceding this, we are about to mix up with the settlement of that question a constitutional amendment. And what is the character of that amendment?

He was for letting the system work its way, as it had been established by law, and as it will do unless we unnecessarily disturb and agitate it. The rich would not be willing to contribute so largely. When they are compelled to pay two hundred or three hundred dollars, it will be done with great reluctance, and they would be found in every part of the commonwealth, endeavoring to get rid of the system. And then what security would the poor have that they would be educated at all? If we leave the system to operate as it is now operating, the time will come when every child in the state will be educated, but if we adopt the views of the minority, the whole system will be cut down.

Mr. MARTIN, of Philadelphia county, said, if the amendment was voted down, we shall in all probability see the section of the constitution of 1790 restored. Should that section be again engrafted in the amended constitution, what are we to expect to be the benefits which the people will receive from the remodeling of the constitution?

For eight and forty years that the constitution has been in operation, it has been a day of hindrance to the education of the children of the commonwealth. It is well known that Pennsylvania has been behind the other states of the north, perhaps behind every other state of the Union, owing to this unfortunate section; and the constitution, if left in its present form, will establish among us the the pauper system to the very letter. He hoped the convention was not prepared for this, and he thought the gentlemen who had taken this ground had not sufficiently examined the history of Pennsylvania.

If we turn back to the proceedings of the legislature for the last twenty or thirty years, we shall find it established that the legislature have no right to impose a tax for the education of the children of the wealthy. While the constitution has operated as a hindrance to the cause of education generally, by the system which has been adopted in the first school district, Philadelphia had gone beyond the system of the legislature. For many years they had been laboring to promote education under the acts of the legislature, and the schools are in a poor condition.

The acts of the legislature, in reference to the first school district, carried out the constitution which provided for the education of the poor and the indigent. It was the practice to set down the name and circumstances of the parent, the rent he paid, &c. A poor school it has been, and will be under the provision of the present constitution.

In 1835 and 1836 the legislature stepped beyond the powers given by the constitution, and repealed some of the most objectionable portions of the law; and ever since the constitution had been violated by this act, the people had felt the advantage of the change; and since the pauper system has been eradicated, more improvement in the system of education has been effected, than had been witnessed for all the year before. He trusted we should never return to that system again. He was not prepared to pronounce any one a poor child who is in possession of his intellect. No danger could result from the adoption of the amendment, and no one need to have any fears on that account.

He wished to see every child admitted to the advantages of education in such a manner as that no one should be subjected to be stamped and stigmatized on account of his poverty. He trusted that the amendment would be adopted, and that our system would be placed on as good a footing as that on which it stood in the eastern states.

Mr PAYNE, of M'Kean, said that he would make a few remarks, but not with a view to enlighten his constituents on the subject, for they needed no information in regard to it, being already fully acquainted with the character of the system, and the manner in which it had worked. He had voted under a misapprehension, for retaining the section as reported by the committee of the whole.

It was his intention now to vote for the amendment of the gentleman from the county of Philadelphia, (Mr. M'Cahen) although he confessed that he did not see what necessity there was for retaining the word "common." He, for one, felt glad to get rid of the last sentence in the section of the old constitution, which was in these words: "in such manner that the poor may be taught gratis." And, with respect to the gentleman's amendment he would say that he could perceive no necessity for adopting the last sentence of it, viz: "so that the benefits of education may be extended to all the children in this commonwealth." But, nevertheless, he would give the amendment his support because he regarded it as better than the provision in the constitution.

The people of his district seemed to have been regarded by some as heathens, but they were not any thing of the sort. They well understood the school system, and were in favor of education.

With regard to the provision in the old constitution, he had had ample opportunities of ascertaining its operation and its effect on the poorer classes of the community. The universal objection among the people, let them be ever so poor, was to the word "poor." They dislike to be put down as "poor," because they looked upon it as a stain or stigma upon them. Every school boy, in his district, that read the constitution, viewed the term "poor," as a blot on the escutcheon of Pennsylvania.

He could not believe, that in this enlightened period, the representatives of the people of the commonwealth of Pennsylvania, in convention assem-

bled, to revise their fundamental law, would pass by unnoticed so important a branch of it as this, and neglect to make it obligatory on the legislature to continue to provide for the establishment and continuance of, not only the common school system but schools generally; so that the high-minded people of Pennsylvania might be placed on the same footing as those of other states, which in other respects are inferior to us.

He objected, as he had already said, to retaining the word "common,' although the gentleman from Lycoming, (Mr. Fleming) had observed that the matter had been discussed and considered in committee of the whole, and they decided to insert it. He (Mr. Paine) was not present at the time. He would conclude by saying that it would give him much pleasure to vote for the amendment of the delegate from the county of Philadelphia.

Mr. M'CAHEN, of Philadelpha county, claimed the attention of the convention while he noticed some of the objections urged by seveaal gentlemen in regard to his amendment. The gentleman who had just taken his seat did not approve of the insertion of the word "common." He (Mr. M'C.) inserted it with a view of meeting the approbation of the members of the convention generally; and he thought it did. What, he asked, were the objections to the word? They appeared to be based upon policy. Although he might differ from many of his best friends on this question, he could not permit policy to enter into it. He did not believe that his constituents would suffer policy to interfere with their feelings. He hoped delegates would not yield to prejudices; but that they would bear in mind that the march of knowledge and public opinion was onward.

Antiquity holds out vast lessons of practical wisdom. And let us not in the year 1838, be behind by-gone times. Lycurgus the great lawgiver, taught a system in such a manner and with such success in his day that might be well and safely adopted by the present generation. Public opinion had demonstrated itself in favor of a general system of education. The governor could not oppose it, for it would decide the fate of his election. And when gentlemen talked of the people being opposed in some counties to the school system, he (MR. M'C.) thought it was attributable to prejudice and the want of information in regard to it. The prejudices however, existing, were fast being wiped away.

When he said what he was about to say, it certainly was not with a view to obtain popularity, and that was, that he did not wish to array the poor against the rich, but he maintained that the whole community should stand on the broad principles of equality. Every member of it should be placed on an equal footing. No such distinction as the word "poor" should be known. He hoped that the amendment would be adopted, and that we would show the people of the commonwealth that we had no desire to surrender our feelings to prejudices.

Mr. PORTER, of Northampton, said he hoped that some little regard would be paid as to the correctness of the diction of the language to be inserted in the constitution. And he would ask gentlemen to look at the old constitution, and see how the provision there reads.

This is the language of it:

"The legislature shall, as soon as conveniently may be, provide by law

for the establishment of schools throughout the state, in such manner that the poor may be taught gratis."

Now we all know that the legislature had enacted a law on the subject of education. And the reason why they had done so was, because the education of the people was a prominent matter, and the only object of the section was that it served as an injunction on the legislature.

Now, if the legislature had already made provision that the poor should be taught gratis, where, he asked, was the necessity of saying, "the legislature shall, as soon as conveniently may be," &c.? It behoves us not to use the words, "as soon as conveniently may be." The constitutional injunction ought to be that the legislature shall continue to do what they are doing.

He would ask if it was not a little singular, that we should keep in the constitution a provision that the legislature shall do what they are now doing? The injunction had been complied with. It was necessary only to say that the work shall be continued. He would call upon every delegate upon this floor to lay down his prejudices on the altar of the commonwealth, and to go on with the work of education. Let us not tell the legislature that instead of going onward they must retrograde.

If there was one subject which he regarded as of more importance than any other, as connected with the liberties of the country, it was that of education. He considered it a foul blot on the escutcheon of the commonmonwealth, that its constitution should contain a provision, making a distinction between the rich and the poor.

This injunction on the legislature, they had at length grown superior to, seeing that it involved a distinction—that it made one class of citizens paupers, and left upon them a stain which would accompany them through life. What was the consequence of the old pauper system? If a poor boy wanted to acquire some education, he had to go a humble suppliant to the assessor, to have his name recorded in the assessor's book; then he had to go to the office of the county commissioners, in order to have the necessary arrangements made, preparatory to his being sent to school. And, perhaps, having been there four terms,—and to be regarded all his life time thereafter as a pauper—he had not been taught even to write his own name.

It is a foul libel on the state of Pennsylvania, to say that she has done nothing for the advancement of the cause of education. I have before stated, (said Mr. P.) and I now repeat, that the commonwealth has given a great deal of money for the purposes of education, and that she would have spent much more, had not her constitutional provision been, not for her citizens, but only for the poor. And although the legislative provision might not have been a violation of the constitution as it existed, because the general power of legislation authorized them to enact the necessary laws even if there were no constitutional provision, still the legislature were measurably tied down so as to prevent, for years, action upon the subject. It is known to those who have looked to the course of education in the state of Pennsylvania, that such was the discordance of opinion which existed, that it was only in the year 1809 that the first act was passed. Thus, our constitution had been in operation for the

space of nineteen years, before any system was adopted, and the miserable pauper system was all then that was eked out. Public opinion had gone abroad, and some of the very children, who from an honest, though, probably, a mistaken pride, were debarred from availing themselves of the benefits of the system, have since extended to others the benefits in which they themselves were not able to participate.

Sir, the school system is a proud monument to the men who have achieved it, and no man has gained a more honorable distinction in the cause than the gentleman from Adams. I think, as I differ from him on many matters, I must say that the proud stand which he took in behalf of the cause of education, and in the darkest moments of the common school cause—when those who were really its friends were fearful lest it might be borne down by the prejudice of a few, and the cowardice of others, will give him immortal honor, and will cover a multitude of his political sins. And I must further say that if any man is entitled to unqualified praise in relation to this subject, it is the late Governor Wolf. He was the first governor who dared to recommend taxation for school purposes, and the creation of a school fund. At the time the gentleman from Adams took his stand in the house of representatives, when much prejudice was excited against the common school law, and when many of the political friends of Governor Wolf, quailing under it, were about to vote for its repeal; the governor also took his stand, and declared with more than Roman firmness, "Do it, if you dare; but if you do, I will *veto* the bill and throw myself on the people of Pennsylvania upon the common school question." Thus, sir, were the hands of coward politicians stayed, and the result was that the system was retained. Sir, had it not been for the stand which these two gentlemen took at that time—antipodes as they were in politics—we should not now have been enjoying the benefits of the common school law. I am willing to give "honor to whom honor is due;" and I abhor the base and truckling spirit which would prevent men from doing that which they know to be right. I have seen gentlemen going about this hall, privately electioneering for votes on a particular question, for fear of the effect which certain amendments to the constitution might have on the popular vote, and as to the same amendments which they profess to have much at heart. I envy not the spirit that can do it. "*Fiat justitia—ruat cœlum.*" This, I trust, is the motto which will animate the bosom of every true-hearted Pennsylvanian, and our commonwealth will then be no longer behind her neighbours.

Mr. Dickey, of Beaver, said that it was always a source of much delight to him to listen to the eloquence of the gentleman from Northampton, (Mr. Porter) and especially so upon a subject in which the eloquence of the human mind might with propriety be exhibited in its greatest power.

It may be possible, (continued Mr. D.) as the gentleman from Northampton has stated, that Governor Wolf did determine to veto the bill repealing the common school law, if that bill had received the sanction of the legislature. I am well aware that Governor Wolf has identified himself with the common school system, but he has not recommended it to the affections and acceptance of the people in stronger terms than other gentlemen who have preceded him in the gubernatorial chair of this

state; because recommendations of that kind will be found in the messages of all the governors since the formation of the constitution of 1790, until the system was carried into operation. I say it may have been the intention of Governor Wolf to veto the bill, if it passed the legislative body. I do not deny that it was so. But I do know that the gentleman from Adams, (Mr. Stevens) is entitled to the credit of defeating the repeal of that bill in the senate, and of sending back to that body the supplementary act of 1834-5. I am not less the friend of education than the gentleman from Northampton. I have upon every occasion voted with the friends of the common school system; and I have also taken the responsibility of procuring funds, a step which I much doubt whether the gentlemen from Northampton, if he had held a seat in the senate of Pennsylvania, would have had the courage to take, notwithstanding his eloquence, and notwithstanding the pathetic appeals which he has made to our feelings here. No, sir, that gentleman would have feared his party too much to assume so independent a position. I am afraid also that he would not even have dared to vote for the charter of the United States Bank of Pennsylvania, although that charter was coupled with an appropriation of a heavy amount of money, to be applied to the purposes of education. I say, I doubt whether the gentleman would have had the courage to have voted for that charter.

Mr. PORTER, of Northampton, rose to explain. He had, he said, no concealments as to the matter alluded to by the gentleman from Beaver, (Mr. Dickey.) So far from it, continued Mr. P., that I now declare in my place, that if I had held a seat in the legislature, I never should have voted for the passage of that charter.

Mr. DICKEY resumed—

I thought so. I have said, Mr. President, that I am the friend of this system of education. I am anxious to see it perfected and carried out, and I do not oppose the amendment of the gentleman from the county of Philadelphia, on account of any considerations connected with the ultimate fate of the amendments which we may make to the constitution, but because I sincerely and conscientiously believe that it will be a retrograde movement—that it will be an entering wedge to the destruction of the common school system in this state. The system, as I said when I was up before, is working well; but throw this amendment out among the people at this time, and it will agitate your commonwealth from one end to the other. I know it is a popular theme; and, probably, it is not going too far to say that gentlemen here may desire to cultivate the popular feeling, by trying to do away with the distinction of rich and poor. I am as desirous to do away with that distinction as any member of this body; and I believe that nothing will more effectually tend to do away with it than education, because if the poor are educated, they may become rich, and the rich, without education, may become poor. The poor of this generation are rich, if they are honest and industrious, because we live in a land where honesty and industry bring the sure reward of riches with them. I am anxious that the poor should be educated, and I am not willing to risk this constitutional guaranty that they shall be educated.

We know that those who come under the denomination of poor have

not often the means of education. I would extend the means to them; and under the provision of the constitution of 1790, they are expressly extended to them. Ought not this to be so? and will the inserting of the amendment proposed by the gentleman from the county of Philadelphia, add any thing to the perfection of the system? Not at all. Is the legislature prepared to carry out the requisition contained in this amendment? How is it to be done? Is it to be done by taxation? Is it to be done by money drawn from the treasury? I believe that there is not a delegate on this floor who is not in favor of educating every child in the commonwealth. But the desires, the wishes, or the feelings of the members of this body, do not constitute the standard by which we are to judge of what our action here ought to be. This amendment is a question of policy and expediency. I, for one, though I am as much the friend of general education as any man can be, have strong doubts of the policy of adopting the amendment, because I believe that it will tend to endanger the stability and the existence of the whole system. Where is the necessity for this change? Cannot all that is now in progress be accomplished without such a change? It can be accomplished—and it will be accomplished. The gentleman from the county of Philadelphia, (Mr. M'Cahen) assures us that the march of knowledge is onward. I am afraid it is not always so. I have seen efforts which would lead to a contrary inference.

On motion of Mr. REIGART.

The convention adjourned to meet at half past three o'clock this afternoon.

WEDNESDAY AFTERNOON, JANUARY 31, 1838.

SEVENTH ARTICLE.

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

The question being on the motion of Mr. M'CAHEN, of Philadelphia county, to amend the first section of the said article, by striking therefrom all after the words "section 1," and inserting in lieu thereof, the words as follows, viz:

"The legislature shall continue to provide by law for the establishment of common schools throughout the state, so that the benefits of education may be extended to all the children in this commonwealth;"

Mr. REIGART, of Lancaster, moved to amend the amendment by striking therefrom all after the word "state," and inserting, in lieu thereof, the

words following, viz :—"in such manner that all children in the commonwealth may be taught therein."

Mr. REIGART said, his reason for this motion was to make the amended clause read as nearly the same as the old constitution as possible—after getting rid of the original words "as soon as conveniently may be" and also "that the poor may be taught gratis." With this change, the meaning of the constitution would be clear.

Mr. BELL, of Chester, said that the principle and language of this proposition are almost the same as those of the amendment. Inquiry would be perplexed to find any difference. He would therefore ask the mover for some further explanation.

Mr. HIESTER, of Lancaster, asked for the yeas aad nays.

Mr. REIGART replied that his amendment made provision for all—that all the children should be taught therein. The language of the original amendment appeared to him to be liable, in some degree, to the charge of ambiguity.

Mr. HIESTER professed himself at loss to discover any difference. He would therefore withdraw his call for the yeas and nays. Between the two propositions, there existed what lawyers call a distinction without a difference. The gentleman objects to the words "that the benefits of education may be extended." All of us suppose that some benefits will result from education. He wished to know wherein consisted the difference between the two amendments. The principle was exactly the same in both and in the phraseology there seemed to be no material difference.

Mr. REIGART renewed the call for the yeas and nays, and they were ordered.

Mr. M'CAHEN expressed his intention to vote against the amendment, not because he did not approve of the amendment, but because he considered it to be unnecessary. For this cause, he would vote against the motion.

Mr. REIGART repeated that the difference between his amendment and that of the gentleman from Philadelphia county, consisted in this: The amendment he (Mr. R.) had offered, made provision that "all the children of the commonwealth may be taught therein." The language of the original amendment was, "that the benefits of education may be extended to all the children of the commonwealth." The change would make the meaning more plain.

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

YEAS—Messrs. Biddle, Brown, of Lancaster, Chandler, of Philadelphia, Clarke, of Beaver, Clarke, of Dauphin, Coates, Cochran, Crum, Dickerson, Farrelly, Gamble, Harris, Henderson, of Dauphin, Kerr, M'Sherry, Meredith, Merkel, Montgomery, Overfield, Pollock, Reigart, Russell, Scheetz, Serrill, Smyth, of Centre, Snively, Todd, Sergeant, *President*—28.

NAYS—Messrs. Ayres, Barclay, Bedford, Bell, Bigelow, Brown, of Northampton, Carey, Clapp, Clarke, of Indiana, Cleavinger, Cline, Crain, Crawford, Cummin, Cunningham, Curll, Darlington, Darrah, Denny, Dickey, Donnell, Doran, Earle, Foulkrod, Fuller,

Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Hiester, High, Houpt, Hyde, Ingersoll, Jenks, Keim, Kennedy, Konigmacher, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, M'Dowell, Miller, Payne, Pennypacker, Purviance, Riter, Ritter, Saeger, Scott, Sellers, Seltzer, Shellito, Smith, of Columbia, Steckel, Taggart, Thomas, Weaver, White—65.

The question recurring, on the amendment offered by Mr. M'CAHEN—

Mr. EARLE, of Philadelphia county, rose to ask the attention of gentlemen for a few moments to a view of the subject which he believed had not yet been taken. It was proper that we should take into consideration whether the convention has the power to touch this subject; and, if so, whether there was any thing which they ought to do in relation to it.

The convention had been called together to do what the people could not do without a convention. In consequence of their inability to do certain things in any other way, they had called this convention together.

There was a secondary object, which was to control the legislature, *first*, by commanding them to do that which the people desire that they should do, and *secondly*, by prohibiting them from doing that which the people do not desire them to do. He believed that on this point, the people possessed as ample and as full powers as any human device could confer upon them. They were not restrained by the constitution further than to conform to the provision concerning education inserted in that instrument; not further, therefore, by the law than the framers of the constitution desired. The legislature only established common schools, and before they were established, the system could not be considered as carried out. But it had been said that they had not been established, and that the provision was intended to give the legislature the power to establish them. Where is the evidence that the legislature does not possess the power or has not exercised it?

He could not believe that the governors of this state, and the members of the legislature, for the last fifty years, have violated their oaths to preserve the constitution of the state, or had not understood what it meant, if they had not done so. One or the other must be the case, and it was impossible for him to assume such facts. There was not a good lawyer in the commonwealth who doubted that the legislature had the power. Had any judge so decided? The act of the legislature was not resisted on account of unconstitutionality? No such course had ever been recommended. The constitution, then it may be infered, had given all the power which was required. Was it necessary to give any additional power?

Well, sir. Is it necessary then to resort to that other kind of provision, to compel the legislature to do that which they would not do without our interference? I admit that it is proper on some occasions to interfere with the legislature by the constitution, when they evince a disposition to violate the will of the people—where there is reason to fear that they will not carry out the will of the people.

But is there any thing in the history of this commonwealth to show the necessity for any such a provision? Has not the legislature of our state been disposed at all times to go as far, and in some instances further than the people will tolerate? Has not the education law been opposed so universally that the legislature were compelled by the force of public opinion to repeal it? The legislature, then, and the governors of our

commonwealth, from the commencement of our history down to the present time, have been disposed to go fully as far as the people will bear them out. What more can we ask? What more do we want? Can we doubt that when the feeling of the people in favor of education is so strong and laudable as it is among us, can we, I ask, doubt that the legislature will go so far as it is desirable they should go?

If, however, it is thought desirable to give a positive command to the legislature to do something, what shall we command them to do? Is there any thing of that nature in the amendment? Can any five members of the convention agree what it is. The legislature, it says, "shall continue"—to do what? Why, the meaning is to do that which they are already doing. Then you do not propose by this amendment to extend the system further than it has already been extended; because if it is intended to do more than has been already done, the word "continue" should be stricken out, and they should be told to "provide" by law for the establishment of schools, &c. And if it is the design of this amendment that the legislature should do more than they do at this time, I can not for my life find how it is so.

The legislature are compelled to establish schools throughout the state. But what kind of schools. Are they to be public, or are they to be taught free of expense? If not, why not insert it so? Is it not a fact that at Harrisburg, when this subject was under discussion in committee of the whole, we voted down the principle that these schools should be public and that every child should be taught at the public expense. If we intend this, why shrink from it? And if we do so, is it not because we think that the public mind is not yet ripe for the subject?

The amendment before us, then, is capable of various constructions. It has no definite meaning, as I understand it; or, if it has, I am unable to find out what it is. If we are about to do something, let us do it thoroughly. I, for one, am willing to do it, if we can, in a separate article of the constitution, and if it is understood that each article shall be submitted to the people separately, and shall separately receive their approbation or rejection. I am in favor of the school system; no man is more so. I would go incomparably further than this amendment,—only let us understand, as I have said, that the subject shall be put in a separate article to go before the people.

If we want to do something substantial, let us provide for the establishment of manual labor schools for the children of those who can not educate them in any other manner; let us provide for their education in the higher branches so as to enable them to compete with the children of the rich. Let your system of education go, as far as the system of Prussia. Compel a man by law to provide for the mental culture of his children to a reasonable extent. This is as much necessary as to compel a parent to keep a watchful eye over the morals of his children. And I would go still further. I would provide not only that you should have schools at the public expense, but that you should also provide books at the public expense. Any system that does not provide for all this, is imperfect;—without it the children of the poor cannot obtain education like the children of the rich. Some of the parents will be unprovided—some will be too poor, or too avaricious, to provide books.

Let us not, then, submit any thing to the people which is to be a mere matter of moonshine; a mere matter of fancy.

If we are going to disturb the provision of 1790—if we are going to do any thing at all—let us do something substantial, and let us not place words in the constitution merely that they may please our fancies. If I were allowed to make a constitution myself, I would make it exactly such as would suit my own fancy; but I would not make it such as to endanger all the other amendments we may make, as I am strongly apprehensive that we shall do if we submit to the people an amendment of the character proposed by my colleague, (Mr. M'Cahen.) The amendment amounts to very little more, if any thing, than the present provision of the constitution, and you will gain no strength to your system of education by the insertion of a new provision of this kind, that you would not gain without its being inserted. But will you, on the contrary, lose any votes by its insertion? I believe that you will lose thousands.

We know exactly the condition of the popular mind upon this subject at the present time. We know that the legislature on one occasion had to repeal a law. I have been informed by a gentleman that the people in his county were dissatisfied with the present school system, and were disposed to do away with it. It will not advance faster than the wishes of the people indicate. It seems to me that this amendment is making an innovation in the language—that it is offering that which is liable to mis-construction—and that, taken in connexion with other things, it is a provision which will raise a strong vote against our other amendments, without adding any strength to the cause of reform in the constitution.

Shall we, for the sake of the adoption of this provision, endanger those much more important which have been adopted, such as the reduction of the senatorial term to three years—the election of the justices of the peace—the limitation of the judicial tenure, &c.?

It has been said, that the provision of the constitution of 1790, has been violated by the legislature. I do not think that any counsellor has given his opinion that the school law was unconstitutional. And will it be said that we must go like madmen and offer every thing, whether the people desire it or not, merely for the sake of gratifying our own fancy? that we must ask them to take that which they do not want, as well as that which they do want? This is indeed a strange code of morality, and how it is to be defended I know not. We cannot fight without ammunition, or without soldiers.

We have already inserted an amendment in relation to the right of suffrage;—there will be many votes against it as well as for it. I have been told that that was got up for the express purpose of raising prejudices against our amendments. It will certainly have one effect in one quarter and another in another.

As to this amendment, I say there is no good in it—that it amounts to nothing at all, and that the people have not expressed any wish for it. I hope that it will not be adopted, but that we shall leave it to the legislature to regulate future amendments as they may think proper, and in such a manner as the wants and the wishes of the people may from time to time require.

A motion was made by Mr. DORAN,

To amend the said amendment by striking therefrom all after "section 1," and inserting in lieu thereof the words as follow, viz: "Wisdom and knowledge, as well as virtue diffused generally among the body of the people, being necessary for the preservation of their rights and liberties, and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of the legislature in all future periods of this commonwealth to cherish the interest of literature and the sciences, and all seminaries of them, especially colleges and universities, to establish public and common schools, and to encourage private societies and public institutions by rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures and a natural history of the country."

And the said amendment to the amendment being under consideration,

Mr. DORAN said, he felt it to be his duty to state to the convention that this amendment was not his own. It belonged to the state of Massachusetts, and he had taken the liberty to offer it here. He did not intend to detain the convention with any remarks upon it, but would merely ask that the votes of the members might be recorded.

Mr. CHANDLER, of Philadelphia, said it seemed to him that the amendment proposed by the gentleman from the county of Philadelphia, (Mr. Doran) belonged more properly to another section. We may however. continued Mr. C. give the expression of our sentiments upon the general subject.

When the gentleman from the county of Philadelphia, (Mr. Earle) was on the floor, he undertook to say something about the primary movements which took place towards the call of this convention. I listened to him with attention, because I knew how well acquainted he was with every thing having reference to those movements. I propose therefore, to offer a very few remarks in reply especially to the position which he has assumed, that no lawyer had given his opinion that the common school law was unconstitutional.

It has been said that the legislature is generally, if not always disposed to go in advance of the requirements of the people and that so far as regards the system of common school education in Pennsylvania, they have done so. It is a well known fact that from the year 1790—the date of the formation of the old constitution—to the year 1809, no step of the kind was taken; or, if any, it was so small as not to claim notice. But there came "a tide in the affairs" of your state which, combined with some other notions, gave us a spur, and led us to the establishment of something like a system.

But the remarks of the gentleman from Northampton, (Mr. Porter) and others who have made observations of a similar tenor, must have convinced us how intimately connected with this subject, were the hopes and fears of some rising or falling politicians. And since this has been the case, who shall say that the time may not hereafter come, when, notwithstanding the impetus which this great flood has given to education, this system may be in its ebb and may be all left high and dry? And

whenever such a state of things shall arrive, the constitution will not support us, because the constitution was not more than fulfilled through any action on the part of the legislature.

The gentleman from the county of Philadelphia, (Mr. Earle) has talked of extending the legislation. Sir, this is the great error of this kind of legislation. No one is content to do enough. They want either to do nothing, or to go so far in the contrary extreme as to defeat the friends of education.

The gentleman from Beaver, (Mr. Dickey) in the argument which he addressed to the convention this morning, made a strong appeal to the fears of the friends of education, because there had been an appeal made, only a few moments before, in another quarter, to other motives of action. The gentleman from the county of Philadelphia, (Mr. Earle) wished to have this measure defeated. I heard the cry, if you dare to incorporate such a general provision into your constitutisn, the people will not accept those other provisions which I have labored for a dozen years to make part of the fundamental law of the land.

Mr. President, if I had given my vote in favor of every measure which has been carried here, from the election of justices of the peace to the distruction of the supreme court—and I thank God that I have scarcely voted for any change in the constitution—I declare I would have resigned them all if, by so doing, I could secure the adoption of this provision—I mean the amendment of the gentleman from the county of Philadelphia, (Mr. M'Cahen) as the gentleman from Northampton, (Mr. Porter) said, in relation to the poor, I would do justice in the sight of the Supreme Judge of Heaven, although Heaven itself should fall.

The gentleman from Beaver, (Mr. Dickey) has told us that, if we adopt this amendment, we shall endanger the whole system of education before the people; and, by way of still further alarming our fears, he has told us that three hundred districts have refused to accept the law—and he has appealed to the minority in the accepting districts combined with these three hundred non-accepting districts against us. It would have been more logical in him to have said, that the majority in the nine hundred non-accepting districts, and the minority in the three hundred non-accepting districts would combine to carry this system through in the face of all the opposition that can be made against it.

May we not therefore, confidently appeal to them? To their votes by which they approved it, and ask them to approve the provisions of the constitution establishing that which they have declared and believed to be for the best interests of the state? It has been repeatedly said that certain of the German counties are opposed to it; and the gentleman from Beaver, has spoken of the liberal education which they receive in their own language. I have no doubt of it. Wherever I have come in contact with Germans, I have generally, found them to be men of liberal education.

But, with regard to the German language, there is nothing in the amendment of the gentleman from the county of Philadelphia, (M. M'Cahen) which will probibit it from being taught. It is not the language that pertains to the country. But that, or any other may be attained by those who are disposed to learn it. Every man of education almost speak

that and other languages of Europe; but, in a school system adapted to the people of the state, generally, it is not proper that we should force upon them the German, or any other foreign tongue. The gentleman from Beaver, enforces a portion of his remarks by saying that those now poor, may become rich. That might be. But shall we say that the poor shall not be educated, because that event may come to pass? Is the man who may never arrive at wealth to go uneducated? The principle is monstrous in itself, and never will be acted on. I ought to apologize for having occupied so much of the time of the convention, I would not do so if any other subject than the present were before this body.

But, I regard this provision as superior to all others—as the fountain from which every man among us is to draw—the source of his own respectability—*his own worth, both as a man or citizen, and a christian, and* I have a few words to say in relation to it. Gentlemen have opposed the amendments before us upon the ground of feeling—of feelings of opposition in certain portions of the commonwealth; feelings that are said to exist, but hereafter may be annihilated. Not long since, we legislated on this floor, to the prejudices and upon the prejudices of the people. Scarcely one delegate voted for a particular amendment affirmatively or negatively, that did not confess he voted on prejudices; and numbers declared that they were legislating to the prejudices of the people. I pause not to censure, much less to impugn the motives of any gentleman, because, to do that would be much worse than to censure. But, I will ask if the members of this convention are prepared to go so far as to minister to the prejudices and feelings of the people, and make a law—a fundamental law founded upon ignorance? It appears to me that this would be a new system of legislation. It certainly would be one that I have no desire to know any thing about. My reading of the histories of other countries furnishes me with no account of that kind.

We, sir, by pursuing such a course, would be behind the age; we should be throwing ourselves back, we should be inviting ourselves not to censure—for that may be endured—but we should be inviting the finger of scorn, which is most intolerable to every man of feeling, whether right or wrong.

It may be, though I do not know, that there are certain parts of the commonwealth of Pennsylvania on which there is such darkness—such thick darkness resting, that it would be dangerous to propose to the citizens a law approving general education—in which they would start and claim, as a right, that all these should be blotted from the statute book, for they know not of the matter. Sir, I cannot believe that such would be the case in any portion of the commonwealth. But, it does appear to be the opinion of certain gentlemen who have opposed amendments of this kind. It surely cannot be, and ought not to be supposed to be the case. We ought not to be the representatives of—at least we should not avow ourselves *the representatives of such constituents, if any we* have.

The dark spirit itself presides over all, and rules over all; and let us extinguish, instead of ministering to, and preserving its gloomy influence. It appears to me that we had better learn the temper of our distant brethren, and endeavor to light them up into a flame which burns in a more favored region.

Mr. C. after making two or three remarks, (not distinctly heard) in relation to the establishment of a school of arts, proceeded to say that the school system was, beyond all question, for the benefit of the people at large—that every man who had a voice in the election of a representative in the legislature, should feel that his children have a deep interest in the proper exercise of his franchise. Let men reflect that if these schools are established, their children will be benefited. If there is no common schools, where is the primary education to come from? He would put it to the gentleman from the county, and every friend of education, whether we ought not to give the poorer classes of society every opportunity to enjoy the blessings of education.

Mr. C. next adverted to the false impressions and prejudices which prevailed in some portions of the commonwealth against the common school system. Those, for whose special benefit the system was introduced, were, like ourselves, the slaves of prejudice and passion, and under those influences they had, under mistaken notions, wrought great public injury by the destruction of seminaries of learning, colleges and schools of science. He had given a plain unvarnished statement of facts as they presented themselves to him. He had done nothing more. Let respect be paid to his motives, if not to his words. He would say to the gentleman from Beaver, (Mr. Dickey) to whom he had alluded somewhat pointedly, that he felt, as he (Mr. C.) did, the necessity of educating all. He knew that the gentleman had done much more. The remarks that he had made this morning, must have satisfied every member of the convention that he felt the importance of public education—that he was the fast friend of public education. The delegate had sacrificed much to party on account of it, and every one knew how dear that was to a public man. But he (Mr. C.) must say, that in his opinion, with deference to the gentleman's legislative experience, he errs as to the means of carrying out the system; and those means might destroy the success of education, and the hopes of the poor man who daily toils for his daily bread. Every provision in the constitution should be as free as the air—free as the principles the gentleman proposes. And, unless those principles are of that character, they are not worth boasting of.

Mr. MILLER, of Fayette, moved the previous question, which was sustained.

And on the question,

Shall the main question be now put?

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

YEAS—Messrs. Agnew, Ayres, Baldwin, Banks, Barcley, Barndollar, Barnitz, Bedford, Biddle, Bonham, Brown, of Lancaster, Brown, of Northampton, Carey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cochran, Cope, Craig, Crain, Crawford, Crum, Cunningham, Darrah, Dickey, Dickerson, Donagan, Donnell, Earle, Foulkrod, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Henderson, of Dauphin, Hiester, High, Hyde, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Maclay, Magee, Mann, M'Cahen, M'Dowell, Merkel, Miller, Montgomery, Overfield, Payne, Pollock, Purviance, Reigart, Read, Riter, Ritter, Rogers, Royer, Seager, Sheetz, Sellers, Seltzer, Serrill, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Weaver, White—84.

NAYS—Messrs. Bell, Brown, of Philadelphia, Chambers, Chandler, of Philadelphia. Cline, Coats, Cox, Cummin, Curll, Darlington, Denny, Doran, Dunlop, Farrelly, Fleming, Henderson, of Allegheny, Hopkinson, Houpt, Ingersoll, Martin, M'Sherry, Merrill, Pennypacker, Porter, of Northampton, Russell, Scott, Shellito, Thomas, Todd, Weidman, Young, Sergeant, *President*—32.

So the convention determined that the main question should be now taken.

And on the main question,

Will the convention agree to the amendment, in the words as follow, viz:

"SECTION 1. The legislature shall continue to provide by law for the establishment of common schools throughout the state, so that the benefits of education may be extended to all the children in this commonwealth?"

The yeas and nays were required, by Mr. M'CAHEN and Mr. FOULKROD, and are as follow, viz:

YEAS—Messrs. Baldwin, Banks, Bell, Biddle, Brown, of Northampton, Brown, of Philadelphia, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clarke, of Indiana, Cleavinger, Cline, Cochran, Crain, Crum, Cummin, Curll, Denny, Farrelly, Fleming, Foulkrod, Fuller, Gilmore, Hastings, Hays, Henderson, of Dauphin, Houpt, Hyde, Kennedy, Kerr, Lyons, Magee, Martin, M'Cahen, M'Sherry, Montgomery, Payne, Pennypacker, Pollock, Porter, of Northampton, Riter, Rogers, Royer, Russell, Scott, Serrill, Shellito, Smith, of Columbia, Thomas, Todd, Weaver, Sergeant, *President*—52.

NAYS—Agnew, Ayres, Barclay, Barndollar, Barnitz, Bedford, Bonham, Brown, of Lancaster, Carey, Chambers, Clark, of Dauphin, Coates, Cope, Cox, Craig, Crawford, Cunningham, Darlington, Darrah, Dickey, Dickerson, Donagan, Donnell, Doran, Dunlop, Earle, Fry, Gearhart, Harris, Hayhurst, Henderson, Allegheny, Hiester, High, Hopkinson, Ingersoll, Jenks, Keim, Konigmacher, Krebs, Long, Maclay, Mann, M'Dowell, Merrill, Merkel, Miller, Overfield, Purviance, Reigart, Read, Ritter, Saegar, Sheetz, Sellers, Seltzer, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Weidman, White, Young—63.

So the amendment was rejected.

A motion was then made by Mr. PORTER, of Northampton, to amend the said first section of the seventh article of the constitution, by striking out the words "as soon as conveniently may be," where they occur in lines first and second, and inserting in lieu thereof the words "continue to."

The CHAIR said the motion of the gentleman from Northampton was not in order, the convention having already decided not to strike out the words proposed, nor to insert those proposed as a substitute for them.

A motion was made by Mr. DICKEY,

To postpone the further consideration of the said first section for the present, and that the convention proceed to the consideration of the second section of the report of the committee of the whole to whom was referred the seventh article of the constitution.

Mr. PORTER, of Northampton, said he had seen this day what he confessed had staggered and astonished him. On the 15th of November last he had felt proud that he was a Pennsylvanian. He had then seen a provision adopted by the convention, which extended the benfits of education to all. To-day, with sorrow and pain, he witnessed one half of the delegates, for causes which had been assigned to him, not on this floor, taking a different course. A gentleman from the county had told us that

if we did not adopt this amendment, we should peril the amendments. What sort of an argument was this? It had been said that the election of county officers, and justices of the peace was of a vast deal more importance than the cultivation of the minds of the children of the commonwealth —that reducing the judicial tenure was vastly more important than to educate our children to understand their rights. It was said to be of infinitely more importance to reduce the judicial term to three years.

If we have come to this we are greatly behind all the rest of the Union, and deserve the taunt which has been cast upon us, that we are a Bœatian land. But gentleman have reckoned without their host—the people shall be disabused, and he who risks his popularity to put down education will find that he has reckoned without his host. Has education risen above the mongrel politics of the age, now to be put down by miserable politicians for the purpose of securing some twopenny office?

I (said Mr. P) am ashamed to be called a Pennsylvania if such a spirit is to prevail. It is not doing justice to the German population. I respect the German districts, and I ask you to look at the consequences of the course you are pursuing. I have seen my constituents since this matter was last before the convention, and they told me they were glad to see that such a principle had been adopted by the convention. You have said that education shall be extended to all persons in the commonwealth. We then say the Germans may educate their own children. You ought then to carry out the system, and provide expressly that they may educate their own children. This amendment is an attempt to cut off the whole of the German population. When Penn county was changed, it was those who voted against this, that were the friends of the measure. There was not so much honesty on this floor, in the expression of sentiments as he would wish.

He disclaimed any desire to peril the amendments. Gentlemen ought not to stop midway in their course. The march of intelligence would then be onward, and we should carry out the principle.

You have been spending twenty-five millions in improving the resources of the commonwealth. You have made that system to carry it through. You have made it the great instrument of instructing the people, and have we the ability to stop it? Now, disguise it as you will—the fact is, that this convention is afraid to give their sanction to this system of intellectual improvement. By looking at page 207 of the minutes of the committee of the whole, which sat on the 15th of November last, it will be found that the report of the committee of the whole was adopted by a vote of eighty to thirty-eight—something more than two to one.

Now, if he (Mr. P.) were to use the language of a distinguished Virginian, he might ask, what had made so many "dough faces!" What had made so many right about faces? What had made so many changes? Were some gentlemen afraid to vote for this amendment, lest it should operate against their amendments, and thus endanger their own popularity. Why, the importance and value of this amendment, was worth more than all the two-penny offices in the state.

The gentlemen would have the *thanks* of posterity for crippling education. Thank God his (Mr. P's.) name was not to be found among theirs.

And when he had grown old in years, and ready to lay down his life, he could point out that he had been ready, as he always was ready, to further the cause of education. He could only hope that others were of the same disposition. He hoped, however, that if gentlemen did nothing else, they would at least, put in the constitution such language as they would not be ashamed of. If the amendment of the gentleman from Beaver should not prevail, he would offer an amendment to this effect: "That the legislature shall provide for the establishment of common schools throughout the state, so that the benefits of education may be liberally extended."

Any thing to show that we do not mean to throw any impediment in the way. Pennsylvania had done a great deal to secure the benefits of education among the people. He hoped, therefore, that nothing would now be done to stay the progress of information and improvement—that we would do nothing to arouse an excitement against it—nothing to jeopard the cause of education.

But, he believed as seriously as he believed anything, that the low groveling politician—the man who believed the end justifies the means, would be bold enough to say that the convention ought to vote down this amendment, and we should thus obtain a reputation not to be coveted hereafter. We should deserve the scorn and the contempt of the neighboring states. He thought that the delegate from Beaver would see the propriety of having the provision put in such languge as would accord with the spirit of the times, and in a shape that we would not be ashamed of. He had already spoken of one sentence in the provision, which he thought was a blot on the escutcheon of the commonwealth. He meant that which draws a line between the rich man and the poor man's child. He did not allude to it for the purpose of exciting prejudices. He hoped that nothing would be inserted in the constitution that was calculated to create any invidious distinctions in society. No matter how poor the youth might be, he would raise him as high as his genius would raise him. He trusted that no such term as "poor" would be inserted in the fundamental law of the land. He conceived that an intelligent community had clearly shown their indisposition and unwillingness to tolerate any longer the continuance of any such distinction.

Will you (continued Mr. P.) corrupt the genius of your youth? Will you say to the child of the poor man, you shall be an object for scorn to point its slow unmoving finger at? He (Mr. P.) would rather say that in school the poor and the rich man's child should be on a level, and that they should have an equal chance to become ornaments of their country. He would do every thing to destroy any distinction in schools between the rich and the poor, because its tendency was highly injurious, for it might sometimes keep genius down to the earth, when, perhaps it would have displayed itself in such a form as to reflect honor upon, and redounded to the credit of the commonwealth.

Mr. Reigart, of Lancaster, said it was well to make a rhetorical flourish by assuming facts, which were not stated. The gentleman (Mr. Porter) had said that the legislature had carried out the noble system of education—that it was based on free and liberal principle and that the child of the rich and the poor man rest on a level. And, he (Mr. R.) would ask, had not the legislature the power now to do this? Had the

gentleman put into the mouths of others an argument which they had never used? Did the gentleman really feel ashamed of being a Pennsylvanian? or, was he not rather proud of being one? Pennsylvania had not retrograded. The march of mind was onward, and he wished it would continue to be until we reach perfection. He intimates, at least, that those who are against the amendment are politicians, looking for some paltry, two-penny office. He talked, too, of mongrel politicians. He should be careful how he used language of that sort.—

Mr. PORTER explained. He had said that a mongrel politician might seize upon the provision we adopted, &c. He meant not to allude to any member of this body.

Mr. REIGART said that he had not misunderstood the gentleman, when he said that a man deserved to be taunted for the vote he gave this day. He (Mr. R.) returned the taunt. What has been the result of all our deliberations up to this time? What does the vote shew? Why, that the existing provision of the constitution of 1799, shall stand as it is. And, as has been well said by the gentleman from the county of Philadelphia, (Mr. Earle) is there a lawyer to be found within the state of Pennsylvania, who would advise his client that the school law is unconstitutional? No. And yet although the legislature under the constitution of 1790 possessed the power in the fullest extent to carry out this system, we are told that we are now retrograding—that the vote taken would throw the state of Pennsylvania back full half a century in the march of improvement; and we are told by the gentleman from Northampton, (Mr. Porter) that we deserve to be taunted for the vote we have given.

Sir, I will take upon myself here to say in my place, notwithstanding the indignant rebuke which the gentleman from Northampton has been pleased to bestow upon us, that this vote reflects no dishonor upon Pennsylvania; and I, for one, am not ashamed of the little agency which I have had in determining it.

The provision in the constitution of 1790, is sufficient for all purposes. Under it, as I have said, the legislature had full and ample power. They have carried out the system, and they will still continue to carry it out. Do we, who voted in the negative of the amendment of the gentleman from the county of Philadelphia, (Mr. M'Cahen) propose to place any restriction on a free system of education? Do we propose to arrest its progress? to curb the spirit of intelligence which is so happily spreading itself over the whole length and breadth of our state? Not at all. But we say that the power already given to the legislature is sufficient for every purpose. And, if it is so, why should we go further?

I hear gentlemen say, that we have been sent here for the very purpose of making amendments to the constitution. This is undoubtedly true. But has the amendment here proposed ever been asked for. Let gentlemen show me that any of the people, in any of the counties of this state, have asked for it, and I will at once concede the point; it would be the last wish I should entertain, to throw any obstacle in the way. But, I say, the amendment has not been asked for. Let us, then, amend the constitution in those particulars in which amendments may be required and in which they have been asked; but where nothing is required and nothing

has been asked, let us not interfere. Let us not pull down one fabric, merely for the sake of building up another which may not be as perfect. Let us leave well alone.

The gentleman from Northampton, (Mr. Porter) says, that we shall be thrown back, by the vote we have given, half a century behind our neighbors. How does the gentleman sustain this position? Let him give us the proof —let us have it now—because the allegation and the proof should go together. Our people are going on well under the present system; it is gaining ground; it is winning more and more upon the affections of the people. Will the amendment of the gentleman from Northampton assist it? Suppose that this amendment had been introduced into the constitution of 1790, Does it follow that the constitutional provision would have made the legislature carry out this system sooner than they otherwise would have done? Not at all. Why, then, does the gentleman from Northampton make the allegation, that we shall be cast a century behind our neighbors? It is all very well to draw a figure; but it has neither reason nor fact to support it, and so long as there is an entire absence both of reason and fact, I apprehend that this convention will not be urged on to undue action by mere figures of speech.

It has been said in various parts of this hall, that all the other amendments which we may make to the constitution will be endangered, if we insert this new provision on the subject of education. I do not undertake to say positively how this might be. But let me ask gentlemen whether it would be right, whether it would be an exercise of common prudence, to insert in this amended constitution any provision which is in itself unnecessary, or which, even by remote possibility, might endanger the other amendments which have been yielded to the requirements or the wishes of the people? The arguments against the amendment have not been met, as they ought to have been met, on the grounds of necessity and expediency; and I apprehend that there is intelligence enough in this convention to concede that something more than rhetorical flourishes, such as those with which we have been favored by the gentleman from Northampton, is necessary to induce us to make important changes in the constitution, or to justify us in so doing. Nothing in the shape of a satisfactory reason has been assigned for the change proposed in the present instance, and I apprehend that none such will be, or can be assigned.

The gentleman from Northampton says, that our action here will cut off the German population of Pennsylvania, from the benefits of education.

This is another of those strong and sweeping assumptions which have been stated as matters of fact, without any sort of authority to sustain them. I am a German myself, and I would not on any earthly consideration vote for any measure in this body, or out of it, which could tend in the remotest degree to cut off my dear German brethren from benefits so important to their welfare and their happiness. But the allegation can not be sustained; we cut off no man. The system of education can be carried out under the provision which we now have, as well as under any amendment which we can devise.

Sir, the march of mind is onward; time can not arrest its progress, circumstances can not for any length of time retard its glorious career. Nothing can occur permanently to affect it. The legislature dare not

oppose its progress; the system is gaining in the affections of the people, and it will without doubt, continue to do so.

Mr. PORTER, of Northampton, desired to make an explanation in reference to a remark which he made when previously on the floor, and which had been misapprehended by the gentleman from Lancaster, (Mr. Reigart) I allude, said Mr. P. to the remark attributed to me, that the German population of Pennsylvania would be cut off from the benefits of education, if some amendment was not made in the provisions of the constitution of 1790. What I said was this—that the provision of the existing constitution had received the construction that German schools were not authorized.

To what purpose should we introduce special amendments here which can answer no good purpose in practice? I hope we shall not do so.

Mr. REIGART resumed.

The gentleman from Northampton says, he thanks God that his name is not to be found recorded among those who voted in the negative on the vote which has been taken. Now, this is all nothing, though, as in other instances, it may answer very well as a figure of speech. The question before us is a question of expediency; and as such I have endeavored to treat it—and, so far as concerns the part which I have taken, I do not fear to meet all the responsibility which may attach to the vote I have given.

He would not consume the time of the convention by making any further remarks on the subject.

Mr. DUNLOP, of Franklin, said he was one who had voted in the minority on the proposition to agree to the report of the committee. He did not belong to the dough faces. When the gentleman threw about the stigma concerning dough faces, he should remember there is another kind, called brazen faces. If dough faces were bad, he did not regard brazen faces as much better. He had voted for the school bill in the lower house of the legislature. He did this with reluctance, because he did not think it was going to be the fine thing which had been spoken of. Go to Prussia (said Mr. D.) and see the fine schools established under that government to educate the children of the kingdom. Russia also has her schools, but the people of that empire are as much slaves as any people can be? How many men are there who can work the rule of three? This question of common schools is but an experiment in the country. What advantages are to result from them? Look at the state of Connecticut, with her great school fund. Once she occupied a high position in the Union, but she has dwindled down from her Ellsworths and other great names, to her Niles and Smiths. Look at New Hampshire. She had, to be sure never produced any great men in her prouder days except Daniel Webster.

All her children are educated at common schools, and one of the most grovelling politicians in the United States is to be found in New Hampshire. He was happy to say, however, that from recent indications, there appeared to be some prospect of the regeneration of that state. Here then were two states, in which the common school system had been established, where are to be found the most slavish sycophants of power. Where then he would ask, were the advantages of the system? He would not undertake to say that the system would be found without advantages. It

was yet in its infancy. It was still at work. It was, as yet, but an experiment. He felt some unwillingness to impose on the people that which was, as yet, but a mere experiment. He was not yet satisfied, himself, with it, and he was not going to impose it on the people for no better reason than because the gentleman from Northampton had declared so loudly in its favor. He ought to have told the convention how this system had operated. Those who had voted in the negative were just as well acquainted with this matter, as the gentlemen on the other side. The gentleman had said that the state of Pennsylvania was disgraced by the vote of to-day.

I am glad (said Mr. D.) to say she has not been disgraced by me. He would suggest to the gentleman from Northampton to keep within the pale of courtesy, lest he should provoke a retort upon himself. Has not the gentleman already (said Mr. D.) put himself beyond this pale, as regards myself? I hope I shall not hear it again imputed to those who voted in the negative on the report of the committee that they are mere faces of dough.

I voted for the school bill, because it contained a provision that each township should have a right to accept or reject the system. It was therefore nothing more nor less than a township bill. A great many of the townships had accepted the system, and many others had rejected it. Now the gentleman from Northampton desires to force on the people his democratic notions.

When we see the system in full operation, is it proper that we should disturb it? He voted for the bill for the reason that it left the option with the people of each township to accept its provisions or not, and for that reason alone; and had it contained provisions which were imperative, he would not have given his vote for it.

There are some persons who entertain the opinion that education is injurious to children. If we are endeavoring to adopt a system which will tend to elevate our country, and give her lofty rank among the nations of the earth, it is not to be done by the establishment of common schools. It is in higher schools that the endowments are to be given which will enable us to rise in the scale of communities. There the mind is improved, not by learning A B C, but by a process of education which inculcates sound morals, and elevated ideas of men and things, and not by reading vile and clamorous newspapers.

At present he was not satisfied as to the real advantages of the system. When experience shall have established the fact that it is calculated to produce the great benefits which are anticipated; or when he had become fully satisfied that it would produce them, he would be disposed to take a different course, and to perpetuate the system by an organic provision. At present the legislature have full and ample powers. If the people wish the system to continue, it will continue; and if not it will cease. The legislature have ample power. What mighty power is it they seek?

If the wishes of gentlemen are gratified, the legislature will not be clothed with a particle of power which they have not already.

The old constitution says:

"The legislature shall, as soon as conveniently may be, provide by law for the establishment of schools," &c.

This is imperative on the legislature to a certain extent. But it takes no power from the legislature. The legislature always had, and have now, the power to establish common schools throughout the state, by which every citizen may be educated, and by which the poor shall be taught gratis. Would gentlemen desire to establish any system in opposition to the wishes of the people?

Mr. BROWN, of Philadelphia county, said that he trusted the motion to postpone the further consideration of this section for the present, would be agreed to.

When this subject was under consideration in committee of the whole, at Harrisburg, I did not (continued Mr. B.) deliver my sentiments upon it, and I did not intend to have done so, had it not been for what has subsequently transpired. I hope that this question, deeply important as we all acknowledge it to be, is not to be settled either by the small talk of the gentleman from Franklin, (Mr. Dunlop) or by the denunciations of the gentleman from Northampton, (Mr. Porter.) Although I have on every occasion in this convention, sustained the most liberal course of policy which has been proposed in reference to a general system of education, I yet believe that there are many among the number of those who voted against any change in the existing provisions of the constitution, who are as much the friends of the cause, and as favorable to its progress, as I am myself.

But, Mr. President, when I hear it stated by members of this body, who feel as lively an interest as myself in the cause of education—who know the views of their constituents, and who are not likely to be actuated by any considerations of a trifling character; when, I say, I hear such men declare in their places that any attempt to change the constitutional provision on the subject of education at this time, will expose to jeopardy all the other amendments we may make, I feel it to be my duty to pause in my course, however anxious I may be to carry out the system in its utmost latitude.

Sir, this system of school education, if received at all, is to be received with the consent of the whole people of Pennsylvania; and when I know that a large portion of our people are opposed to it, I desire to be particularly cautious in my movements, lest in the too precipitate attempt to lay up a greater good which we have not, we "miss our ventures" and lose even the lesser good which we now enjoy. Rather than throw any thing into jeopardy, I would prefer to retain the provision of the constitution of 1790; and I should be more content to adopt this course, if its expediency or propriety should be made apparent, because I suppose that it is the intention of this body, before its final separation, to incorporate into the amended constitution a section by which future amendments may be provided for, without the trouble, expense and loss of time attendant on the call of another convention. I should be willing, therefore, to leave the matter, as it now is, in the hands of the legislature, and trusting in them to go steadily on in this great and glorious work of human improvement. That they have already done much can not be denied. Let them still go on; and when they find that they can go no further, and that the wants and the wishes of the people require more than the constitutional provision will allow them to give, I am willing to

leave the matter with the people to bestow on the legislature such further power as may be thought expedient or proper. And when that time arrives, I have no doubt that a constitutional amendment will be adopted, embracing all the more extended powers which may be required.

It has been said by more than one gentleman in the course of this debate, that the march of the mind is onward. I do not doubt that it is so; nor do I doubt that the legislature will feel compelled to go on in the good work. I have no notion that the legislature and the people should be crippled at any time in their onward progress, by a constitutional provision standing between them and the attainment of the great object we have in view. But I fear that there is much danger to be apprehended by an interference with the constitutional provision at this time, when it is known to us that a large portion of the people in various parts of the state, have rejected the school law. And when I see that there is a deep and abiding opposition to this system of education in many parts—and when I am told by gentlemen whose opinions are entitled to respect, that all the amendments which we may introduce into the constitution are in danger of being rejected if we interfere with its provisions in this particular, I repeat that I am disposed to pause, in order that I may reflect well on what may be the results of our action here. I entertain a just respect for the opinions of those gentlemen who tell me that this system will be endangered by our interference, as my sense of duty tells me it ought to do; and I feel no disposition to brand them with the name of "doughfaces," or to use other terms of reproach or opprobrium towards them, simply because they ask me to reflect on what I am about to do. I have no ambition to follow the example which the gentleman from Northampton (Mr Porter) has so eloquently set before us in this particular; I am willing to leave such offices exclusively to him, not doubting that he will discharge them to the life.

Mr. President, I have hesitated much this day in the votes I have given. I have felt much anxiety that the cause of education should be promoted to as great an extent as possible; and, for this reason I have had more difficulty in voting this day than I have ever experienced since I took my seat in this body; and although I have voted for a more extended system of education than that which is now in operation, I am free to confess that I have done so with fear and trembling, so much so that when the subject comes up again, I can not now say what course I may feel inclined to pursue.

We are not assembled here as a legislative body. We are to look to the wishes of the people; we are to look to what they *will* do, not to what they ought to do, or to what may be our own individual opinions as to what they ought to do. I have not a doubt that it is the wish of the members of this convention to give the most liberal education to every child in the commonwealth; but we are not here to force a system of education upon the people, whether they will have it or not. We are only to give them such as they may want, or as they may be willing to take. Beyond this, our duty requires nothing at our hands. Let the people tell us what they want, and let us not force upon them more than they want.

For my own part, I have heard no desire expressed to check the progress of this system. It is a question of a grave character how this

system shall be extended ;—what plan we can devise which will promote its extension, and not, on the contrary, tend to prevent it.

We have been told by the gentleman from Northampton, (Mr. Porter) that the argument of the gentleman from the county of Philadelphia, (Mr. Earle) that, by making a change in the present provisions of the constitution we should endanger all our other amendments, was not a fair argument; and he asks us, is not this question of education of more importance than any amendments we have made in relation to the county officers, to the election of justices of the peace, or in relation to any other matter? The gentleman from Northampton did not always speak so lightly of the other amendments which it was proposed to introduce into the constitution, I well remember that there were some amendments which, at one period he regarded as being of great importance, I will here take leave to read a brief extract from the journal. As early as the tenth of May last, we find the following record:

"A motion was made by Mr. PORTER, of Northampton, and read as follows, viz:

"*Resolved*, That the committee on the first article of the constitution be instructed to inquire into the expediency of so modifying the article, as that

"1. The senatorial term be seduced to three years.

"2. The legislature shall meet on the first Tuesday in January, in each year, unless sooner convened by the governor.

"3. The lieutenant governor shall be president of the senate, and each house shall have the right to select a presiding officer, *pro tempore*, in the absence, or other inability of the presiding officer, to perform the duties of the chair.

"4. The legislature shall have no power to combine or unite in any one bill or act, two distinct subjects or objects of legislation, or any two distinct appropriations, or appropriations to distinct or different objects, except appropriations to works, exclusively belonging to, and carried on by the state, and that the object or subject matter of each bill or act shall be distinctly stated in the title.

"5. The legislature shall have no power to grant a perpetual charter of incorporation for any purpose whatever, except for religious, eleemosynary or literary purposes, nor any bank charter of a longer duration than ten years, nor where the capital shall exceed two millions, five hundred thousand dollars, without the concurrence of two successive legislatures."

Mr. BELL, of Chester, rose, he said, very reluctantly to a point of order. He would inquire of the Chair whether, on a motion to postpone, it was in order to discuss the general merits of a system of education, or to enter into all these extraneous matters having reference to the course pursued by other gentlemen?

The CHAIR said, he was of opinion that it was not in order, on a motion to postpone, to discuss all these topics. Any argument tending to shew that the motion to postpone ought, or ought not to be agreed to, was in order. In the present instance, however, the Chair felt compelled to say, that the gentleman from the county of Philadelphia, (Mr. Brown) was wandering from the question before the convention.

Mr. Brown resumed,

I certainly have no disposition, Mr. President, to transgress the rules of order. I am not, however, as the gentleman from Chester, (Mr. Bell) supposes, about to discuss the merits of the general question. I know that I, no less than every other member of this body, feel deeply interested in, and anxious about, the issue of this question; and I was only desirous to express, as forcibly as I could, the reasons which induce me to hope that the motion to postpone will be agreed to. It can not be forgotten that many members of the convention have been charged with a desire to check the onward progress of the cause of education, and I had supposed that any argument which went to refute that charge would have been perfectly in order.

I was about to shew that the gentleman from Northampton had certain objects very much at heart when he first came into this convention; but amongst the projects which he offered, and which I have brought to the notice of the convention, not a word can I find in relation to the subject of education. I shall not, however, press this matter further at the present time, as the Chair is of opinion that I am not precisely in order.

For myself, I must say that I entered this body with the most enlarged and liberal plans on the subject of education; and my own wishes were made known, in the shape which I submitted, at an early stage of our proceedings. But I find that if we urge a universal system at this time, as I and many others would otherwise be anxious to do, the people will probably vote against all our amendments, and thus that all may be rejected together.

Mr. Dickey, of Beaver, said he desired to say a very few words in explanation of the reasons upon which he had submitted the motion to postpone the further consideration of this section for the present, and that, in so doing, it would be necessary very briefly to refer to the proceedings which took place in committee of the whole at Harrisburg.

On the morning alluded to by the gentleman from Northampton, (Mr. Porter) when this section was under consideration in committee of the whole, a large number of the convention, (continued Mr. D.) thought it would be better to let the provision of the constitution of 1790, remain untouched. But, in the afternoon of the same day, a majority of the convention determined to insert the provision which was at that time inserted, with a view to get on as speedily as possible to second reading. Judging from what I have seen and heard, I should infer that there is at the present time a majority of the members here in favor of retaining the provision of the old constitution; and as the decisions of the Chair failed us in the demand for the previous question, upon the section, I thought the best plan we could adopt would be to postpone its further consideration for the present. And I made the motion accordingly. If the convention will indulge me by agreeing to this motion, as I hope they may, we can go through the second and third sections of the same article without difficulty, and I will then ask that the whole article be engrossed for a third reading.

And I now ask for the immediate question.

Which said motion was sustained by twenty-nine other delegates rising in their places.

And on the question,

Shall the question on the said motion be now put?

It was determined in the affirmative.

And the question,

Will the convention agree to the postponement of the further consideration of the first section for the present?

Was then taken, and decided in the affirmative. Ayes 60; noes not counted.

So the further consideration of the section was postponed for the present.

A motion was made Mr. MERRILL,

That the convention do now adjourn.

Which was disagreed to.

The convention then proceeded to the consideration of the following section:

"SECT. 2. The arts and sciences shall be promoted in one or more seminaries of learning."

Mr. PORTER, of Northampton, moved to amend the said section by adding to the end thereof the words as follow, viz: "And a general system of education by common schools."

Mr. DICKEY, of Beaver, moved the previous question; which was sustained.

And on the question,

Shall the main question be now put?

The yeas and nays were required by Mr. PORTER, of Northampton, and Mr. DARLINGTON, and are as follow, viz:

YEAS—Messrs. Agnew, Ayres, Banks, Barndollar, Barnitz, Bedford, Bigelow, Bonham, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Crawford, Crum, Darlington, Darrah, Dickey, Dickerson, Donagan, Donnell, Earle, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Harris, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Keim, Krebs, Long, Magee, Mann, Merkel, Miller, Pennypacker, Purviance, Reigart, Read, Ritter, Saeger, Scheetz, Sellers, Seltzer, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Thomas, White—55.

NAYS—Messrs. Baldwin, Bell, Biddle Brown of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Clapp, Clarke, of Indiana, Cline, Coates, Cochran, Cope, Cox, Cummin, Cunningham, Curll, Doran, Dunlop, Fleming, Gamble, Hastings Hopkinson, Houpt, Hyde, Ingersoll, Kennedy, Lyons, Maclay, Martin, M'Cahen, M'Dowell, M'Sherry, Merrill, Montgomery, Payne, Pollock, Porter, of Northampton, Royer, Russell, Serrill, Shellito, Smith, of Columbia, Taggart, Todd, Weidman, Sergeant, *President*—48.

So the question was determined in the affirmative.

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. DARLINGTON, and are as follow, viz:

YEAS—Messrs. Baldwin, Bell, Biddle, Bigelow, Brown, of Northampton, Brown, of Philadelphia, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clarke, of Indiana, Cline, Coates, Cochran, Crum, Cunningham, Curll, Doran, Fleming, Fuller, Gearhart,

Gilmore, Hastings, Henderson of Dauphin, Houpt, Hyde, Kennedy, Kerr, Lyons, Magee, Martin, M'Cahen, M'Dowell, M'Sherry, Merril, Montgomery, Payne, Pennypacker, Pollock, Porter, of Northampton, Royer, Russell, Saeger, Scott, Serrill, Shillito, Thomas, Todd, Sergeant *President*—48.

NAYS—Messrs. Agnew, Ayres, Banks, Barndollar, Bedford, Bonham, Brown, of Lancaster, Carey, Chambers, Clark of Dauphin, Cleavinger, Cope, Cox, Crawford, Cummin, Darlington, Darrah, Dickey, Dickerson, Donagan, Donnell, Dunlop, Foulkrod, Fry, Grenell, Harris, Hayhurst, Hays, Henderson, of Allegheny, Hiester, High, Hopkinson, Ingersoll, Keim, Krebs, Long, Maclay, Mann, Merkel, Miller, Overfield, Purviance, Reigart, Read, Ritter, Scheetz, Selters, Seltzer, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Weidman, White, Young—58.

So the amendment was rejected.

A motion was made by Mr. INGERSOLL,

That the convention do now adjourn,

Which was agreed to.

And the convention adjourned until half past 9 o'clock to-morrow morning.

THURSDAY, FEBRUARY 1, 1838.

Mr. CUMMIN, of Juniata, presented a memorial from citizens of Juniata county, praying that the convention will grant the people the right to vote for or against each part of the constitution so altered or amended, as they shall deem fit;

Which was laid on the table.

Mr. COATES, of Lancaster, presented a memorial from citizens of the city and county of Philadelphia, praying that the constitution may be so amended as to provide for the more effectual security of freedom of speech, of the press, and of peaceably assembling for public discussion, as well as preventing violence by mobs and riots, and for compensating those or their heirs who may be injured in person or estate thereby;

Which was also laid on the table.

A motion was made by Mr. DARLINGTON, of Chester, and read as follows,

Resolved, That so much of the resolution of the 26th of December last, as declares that this Convention will adjourn *sine die* on the second of February instant, be rescinded and that this Convention will adjourn *sine die* on the —— day of February instant.

Mr. DARLINGTON, moved that the resolution be now read a second time, and the motion being agreed to, the resolution was read a second time, and being under consideration.

Mr. DARLINGTON, proceeded to fill the blank in the last line, with the word "fifteenth."

Mr. PORTER, of Northampton, suggested the propriety of postponing the fixing of the day of adjournment until we shall have previously gone through the business of the convention.

Mr. HIESTER, of Lancaster, thought it would be better not to fix any day at all.

Mr. M'DOWELL, of Bucks, moved to amend the resolution by striking therefrom the word "fifteenth," and inserting in lieu thereof the word "twenty-second," and by adding to the end thereof the words: "unless the business of the convention shall have been finished at an earlier period."

Mr. BELL, of Chester, expressed his hope that no day of adjournment would be fixed.

Mr. M'DOWELL, said he had voted against the second of February, because he thought the convention would not have carried through its business. He had now moved the twenty-second, because the convention had precisely agreed on a day.

Mr. BANKS, of Mifflin, said that having voted against the second, he was now in favor of fixing a day. He thought the twenty-second too distant. If we fix an earlier day and find we cannot get through, we can extend it.

After some further discussion in which Mr. CLINE, Mr. FARRELLY, and Mr. HIESTER, participated—the yeas and nays having been ordered, on the call of Mr. COX,—

The question was taken, on the amendment of Mr. M'DOWELL, and decided in the affirmative, as follow, viz:

YEAS—Messrs. Ayres, Barndollar, Bell, Biddle, Brown, of Northampton, Carey, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Coates, Cochran, Cope, Craig, Crain, Cummin, Curll, Darlington, Darrah, Dickerson, Donagan, Doran, Farrelly, Fleming, Foulkrod, Gamble, Grenell, Harris, Hastings, Hays, Helffenstein, Hiester, Hopkinson, Houpt, Ingersoll, Jenks, Keim, Kerr, Krebs, Lyons, Magee, Mann, Martin, M'Dowell, Montgomery, Nevin, Overfield, Payne, Pollock, Porter, of Northampton, Read, Ritter, Rogers, Russell, Scheetz, Scott, Sellers, Serrill, Shellito, Smyth, of Centre, Snively, Taggart, White, Woodward—63.

NAYS—Messrs. Baldwin, Banks, Barclay, Barnitz, Bedford, Bigelow, Bonham, Brown, of Lancaster, Brown, of Philadelphia, Chambers, Chandler, of Philadelphia, Clapp, Cleavinger, Cline, Cox, Crawford, Crum, Denny, Dickey, Donnell, Earle, Forward, Fry, Fuller, Gearhart, Gilmore, Hayhurst, Henderson, of Allegheny, Henderson, of Dauphin, High, Hyde, Kennedy, Konigmacher, Long, Maclay, M'Sherry, Merrill, Merkel, Miller, Pennypacker, Purviance, Reigart, Riter, Royer, Saegar, Seltzer, Sill, Smith, of Columbia, Stickel, Thomas, Todd, Weaver, Young, Sergeant, *President*—54.

The resolution as amended was then agreed to.

A motion was made by Mr. EARLE, of Philadelphia county, and read as follows, viz:

Resolved, That this Convention will submit the following as a distinct amendment to the constitution, to be voted upon by the people separately from all other amendments, on the ——— day of ——— 18 ——— viz:

"It shall be the duty of the legislature to provide by law for the establishment of schools throughout the state, in which all youth of the commonwealth may be taught and furnished with needful books at the public

expense; also to provide for the establishment of manual labor or other seminaries, for instruction in science and the arts, in such manner that they may be easily accessible to all persons within the commonwealth."

Laid on the table.

A motion was made by Mr. KONIGMACHER, of Lancaster,

That the convention proceed to the second reading and consideration of the resolution read on the 29th of January, as follows, viz:

Resolved, That the ninth article of the constitution be referred to the committee appointed to prepare and engross the amendments for a third reading, and that they be directed to report an amendment to said article providing that the right of trial by jury may be extended to every human being, and that the said committee be directed to prepare and engross said article for a third reading.

Which was disagreed to.

A motion was made by Mr. KERR, of Washington,

That the convention proceed to the second reading and consideration of the resolution read on yesterday, as follows, viz:

Resolved, That the committee appointed to superintend the printing of the Debates of this Convention, be instructed to make such arrangements as will hereafter prevent the insertion of reports and documents not intimately connected with the debates of this body or amendments proposed to the constitution.

And on the question,

Will the convention agree to the motion?

The yeas and nays were required by Mr. CURLL and Mr. MAGEE, and are as follow, viz:

YEAS—Messrs. Ayres, Barclay, Barndollar, Bell, Brown, of Lancaster, Carey, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Coates, Cochran, Cope, Craig, Crain, Crawford, Crum, Curll, Darlington, Darrah, Denny, Dickey, Dickerson, Donagan, Donnell, Earle, Farrelly, Forward, Fry, Gilmore, Harris, Hastings, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Ingersoll, Janks, Keim, Kennedy, Kerr, Krebs, Long, Lyons, Magee, M'Sherry, Merrill, Merkel, Montgomery, Nevin, Payne, Pollock, Purviance, Reigart, Read, Ritter, Rogers, Royer, Russell, Saegar, Scott, Seltzer, Serrill, Sill, Smyth, of Centre, Snively, Stickel, Thomas, Todd, Weaver, White, Young, Sergeant, *President*—80.

NAYS—Messrs. Banks, Barnitz, Bedford, Bigelow, Bandham, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Indiana, Cleavinger, Cox, Cummin, Doran, Foulkrod, Fuller, Gamble, Gearhart, Grenell, Hayhurst, Konigmacher, Martin, M'Dowell, Miller, Overfield, Pennypacker, Porter, of Northampton, Riter, Scheetz, Sellers, Shellito, Smith, of Columbia, Sterigere, Sturdevant, Taggart, Woodward—34.

So the question was determined in the affirmative.

Mr. K. said that he had offered this resolution with a view to prevent the introduction of extraneous matter into the reports of the Debates of this convention, and thus swelling out the size of the volumes to a great extent. It was very certain that the printing of the Debates would amount to a very large sum of money, and far beyond the expectations of any member of this body. He had looked over the first volume completed, and found in it tabular statements, reports from executive officers, communications, &c., all of which had no connexion with the debates or amendments, and occupied a great number of pages. Besides, most of these

documents would also be inserted in the journals of the convention made out by our secretary. He (Mr. K.) would not go into any further detail in regard to the matter, but would merely conclude by expressing his hope that the committee on printing would be instructed to prevent, hereafter, the insertion of any documents having no connexion with the debates, or the amendments to the constitution.

The PRESIDENT announced that the hour for the consideration of motions and resolutions had expired.

SEVENTH ARTICLE.

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

The second section of the said report, in the following words, being under consideration:

SECTION 2. The arts and sciences shall be promoted in one or more seminaries of learning.

Mr. SCOTT, of Philadelphia, moved to amend the said section by adding thereto the following, viz:

"The existing universities and colleges of this commonwealth, and those that may hereafter be established, shall be endowed from time to time as the funds of the commonwealth may permit, until the higher branches of a liberal education shall be made generally accesssible."

Mr. S. said that the proposition was laid before the convention in November last, and was numbered 126 on the files. Therefore, it was not a new proposition; but it was one of which notice was given in due and proper time. We had now in the commonwealth of Pennsylvania, a system of common schools established not exactly according to the terms of the constitutional provision, but by the legislative action of the constitutional provision—a system which extended to a very large portion of the young people of the commonwealth an elementary education: and which he hoped would, in the course of no very remote period of time, present to the youth of Pennsylvania, the means and opportunity, by the aid of endowments given by her collegiate establishments, of procuring, within the limits of their own state, that degree of more advanced education which they are compelled to look for beyond the boundaries of the commonwealth. He could desire that Pennsylvania should enjoy a reputation equal to that of Massachusetts, from her Cambridge; of Connecticut, from her Yale, and of New Jersey, from her Nassau Hall. He wished to secure to Pennsylvania some portion of that high honor which had for many years been shed over those states, derived solely and exclusively from the brilliancy of those literary institutions. In the commonwealth of Pennsylvania, there were two universities, and seven or eight colleges already established. Some of them partially in a flourishing condition, but all requiring the aid of the state, from time to time, in regard to endowments, and the proper support and care of their members. He thought they ought to receive the aid of the commonwealth—and that the commonwealth ought to bestow it. Those institutions were

fully capable of disseminating all the knowledge and benefits that were expected to be derived from them, and therefore were deserving, and should receive the support of the state. The resloution, or amendment in the form of a resolution, it would be observed, had been drawn with some care. It pledged the commonwealth to no present endowments. No gifts were therefore, to be given at this time from the funds of the commonwealth. It provided that the existing universities and colleges shall be endowed from time to time, as the funds of the commonwealth may permit: and, that they shall be endowed so that the higher branches of a liberal education shall be made generally accessible.

He did not suppose that there would be any immediate action on this amendment by the legislative bodies; although there had been two or three years ago a strong disposition on the part of the legislature to make liberal endowments to those institutions. He repeated that he did not imagine there would be any immediate action on the amendment; but he thought if the convention should adopt it, that at some future day, it might produce fruit which, perhaps, ought not to be looked for at the present moment. It would operate on the constitution as an existing provision in relation to education. It would preserve the attention of the executive and legislature to the subject It would rally the friends of education around the project, and be perhaps, the means of establishing, at no very remote period, amoung us, some noble seminaries. He would say a word or two in regard to the last branch of the amendment, which is in these words—"until the higher branches of a liberal education shall be made generally accessible."

How, he asked, was that to be done? How made generally accessible? The difficulty is in the expense which attends liberal education. All the universities and colleges are obliged to draw support from the friends of the students. And hence it was that students are obliged to pay more money for their education than was convenient either to them, or their friends, or relatives to do.

But, if those institutions were endowed, and the chairs of the professors filled with eminent men, paid by the state, the share of the expenses to each student would be so moderate that even the sons of poor parents might receive a good education. It would be competent for the legislature to provide that every institution upon which an endowment was bestowed, should educate a certain number of students even without charge. He knew that for many years past the University in this state had been the means, to a great extent, of giving a splendid education to many young men, whose parents were unable to assist them. The fund, at its disposal, was so judiciously applied, that the class-mates of the recipients of the bounty knew nothing of it, nor do the trustees generally. They knew there were such classes, but who the individuals were they were not permitted to know. And, among those that had received their education under these circumstances, were to be found men who had stood at the head of their respective classes, and afterwards occupied high stations in society, with credit to themselves and honor to their fellow-citizens.

No doubt there might be found among the common schools, many youths of bright intellect, whose advancement in learning and science

might be very great, if they had an opportunity of acquiring more than can be obtained in our common schools. He was of the opinion that the doors of our universities and colleges should be thrown open to them. Where young men were found in common schools possessed of strong natural talent and quick capacity, they ought to be sent to our colleges at the expense of the commonwealth. And, this desirable and laudable object could only be carried into operation by endowing our universities and colleges. It had sometimes been objected to on the ground that a collegiate education was fitted only for the wealthy portion of the community. And, these establishments were regarded as of an aristocratic character. This was an entire mistake. He believed it would be found that in every branch of science, of philosophy, and of literature, the greatest names associated with them, were those of men who had sprung from the humble orders of society. When a boy of humble and poor parentage, attaches himself to literature and to science and philosophy, he does it with an enthusiasm and zeal utterly unknown to those born in a more elevated sphere. And hence he becomes well grounded in whatever he has made his study.

Some of the best works on theology had been written by men of obscure origin. And, among the best and ablest mathematicians might be found men of the most humble birth and parentage. He would observe that the mathematical sciences were most admirably taught and developed in some of our literary institutions. None, perhaps, of all the different branches of education that were taught, was of as much benefit to a young and rising republic, like ours, as the mathematics. How, he asked, had it come to pass that Great Britain had produced so many great men in science and philosophy? Why, she had fellowships attached to her colleges, and they operated as a powerful inducement to men to distinguish themselves.

He had now said nearly all that he intended to say. He had adverted briefly to the grounds of the amendment. He believed that if its spirit were carried out in the commonwealth of Pennsylvania great benefit would result to it. He was happy to perceive, by various indications, that it would have the support of his friends around the house.

Mr. MILLER, of Fayette county, said that as he was afraid that the resolution to adjourn on the 22d of the month would be again rescinded unless a more speedy progress was made in the business before the convention, he would call for the previous question.

But the call was not seconded by the requisite number of delegates.

And the said amendment being again under consideration;

Mr. DORAN, of Philadelphia county, suggested to the mover so to modify it, as to embrace those universities which may hereafter be established.

Mr. SCOTT said, he would state in reply to the suggestion of the gentleman of the county of Philadelphia, (Mr. Doran) that he was willing to modify his amendment in any manner so as to secure the sanction of a majority of the convention, provided the principle itself was not affected by so doing. The reason which induced me to insert the word "existing" was that there are already nine of these institutions in different parts of

the commonwealth, and that I thought the chance of endowment would be better under the amendment as it stands, than if it were of a more extensive character. I will, however, to meet the views of the gentleman from the county, modify the amendment in the way suggested by him.

And the said amendment was then modified to read as follows;—

"The existing universities and colleges of this commonwealth, and those that may hereafter be established, shall be endowed from time to time as the funds of the commonwealth may permit, until the higher branches of a liberal education shall be made generally accessible."

Mr. DICKEY, of Beaver, said he had a very few remarks to make on this amendment. I suppose, continued Mr. D., that there is no delegate on this floor who is not in favor of encouraging these seminaries of learning, or who would object, when the funds of the commonwealth should be in a condition to grant them, that appropriations should be made for their support. But, at the same time, I trust that the majority of the convention will not think it necessary to introduce any constitutional injunction in relation to this subject. The legislature has from time to time attended to it by endowing the colleges, and the result has not been very satisfactory. The endowments went to support the professors, and so soon as the funds were exhausted the college went down. The history of Dickinson college is familiar to all. Endowment after endowment had been frequently and liberally made, and it went down until it got into the hands of a religious corporation, under whose management it has again risen up. La Fayette and Jefferson colleges are the only colleges in the commonwealth that have been successful.

When the common school system has been brought to a state of perfection, as I trust it will be, then the higher seminaries will flourish and not till then; and they will flourish, too, without any endowments on the part of the commonwealth. I am willing to leave the matter to the action of the legislature.

Mr. BIDDLE said, that he should not have taken any part in this discussion, but for an observation which had fallen from the gentleman who had just taken his seat. The gentleman has stated, continued Mr. B., that there are only two colleges in the commonwealth of Pennsylvania, that are now in a flourishing condition.

I beg to state for the information of that gentleman, that the university of Pennsylvania, located in the city, is at this moment in a most signally flourishing condition in all its departments. It is not necessary for me to dwell on the eminence of its medical school. In the department of arts, the course of instruction is comprehensive, and is ably and faithfully conducted by professors worthy of high commendation. The college-halls were filled with students. The university also embraces three free schools—all taught by skilful teachers, and all full. And lastly, it is indebted to the commonwealth for liberal endowments. I have felt it due to truth and justice to say this much.

Mr. PORTER, of Northampton, said that, having addressed the convention so often on the subject of education, he did not rise for the purpose

of speaking as to the argument. I have risen, continued Mr. P., solely with a view to reply to the remarks of the gentleman from Beaver county (Mr. Dickey). He is mistaken in the position he has assumed as to the condition of the colleges of this commonwealth. The very college to which he has alluded is at this time applying to the legislature for endowment, and the bill for that purpose has already passed one branch of the legislature.

I believe also that there is not a college in Pennsylvania, that is not in a flourishing condition. They all flourish, but they want aid. I can speak positively as to La Fayette college, and I believe I may as to all the others. We all know, however, that without endowment it is impossible that they can be sustained.

Mr. M'CAHEN, of Philadelphia county, said that until some provision had been agreed upon in relation to the first section of this article of the constitution—that was to say, as to the common school system—he was not disposed to do any thing with the higher seminaries. I should be glad, continued Mr. M'C., to see appropriations to seminaries to be thrown open to all the children of the commonwealth, but I am well satisfied that neither Jefferson, La Fayette, nor any other college in this state will answer the purposes required by the people, if the public money is to be given to them in this way. What is the fact? Persons who come in must first receive the approbation of the trustees—which approbation, probably, may be confined only to a few particular friends.

A large portion of the people of this commonwealth are uneducated, and until the legislature perfects a general system of education so as to throw open the schools to all, I will not give more power to the legislature than is given in the second section of this article as it now stands. I have no objection to the higher branches being taught in the common schools, but I object to colleges, the advantages of which will only be felt by a few. I shall vote accordingly.

Mr. CHANDLER, of Philadelphia county rose and said:

Mr. President, when this question was under discussion in committee of the whole at Harrisburg, I took occasion to make some remarks on the inefficiency of colleges without schools. Still we could have no colleges without schools, and I am not disposed to give up one good, because I cannot have another.

The gentleman from the county of Philadelphia, (Mr. Cahen) is so zealous in favor of the common school system, as to refuse to vote for any amendment to the second section of this article, until he knows what disposition is to be made of the first. I am not apprised of any disposition which is to be made of the first; but I think that we have had conclusive proof of what its fate is to be, for we have seen that those who were the earnest friends of a more extended provision have turned their backs upon it and voted it down.

There is no reason why we should neglect part of the good, because it may not be in our power to secure the whole. Thousands and thousands of our citizens are crowding to the halls of the New Jersey colleges, because those colleges have been endowed by the state to a sufficient extent to enable them to give rank to the professors.

Something has been said about the flourishing condition of our own colleges. It is to a certain extent true that they are flourishing, but still they stand in need of the protecting provision of the state. They are filled with flourishing and promising flowers, but there was something wanted for their encouragement and culture, so that we may derive something more from them than we now do—that we may assure ourselves of their permanence—and that parents may know that the whole establishment will not be broken up for want of funds, before their sons can obtain a degree. This has been the case. And we find in this fact a sufficient argument in favor of some provision being made for the efficiency and permanancy of these institutions.

The gentleman from Beaver county, (Mr. Dickey) to whose zeal and fervency we are indebted for the destruction of our amendment in regard to the common school system, says that when public schools are established throughout the state, it will then be time to provide for the endowment of universities and colleges.

Sir, the good and great men of Massachusetts did not think so. The pilgrims who arrived at Plymouth in the year 1688, founded Harvard college, and endowed it with professors. Here, then, they provided at once, not only to give the boys a common education at common schools, but to furnish teachers for those schools. In our state the difficulty is as to funds.

The institution in this city flourishes from the liberal endowments which it has received. And we know that the honors derived there flow from a long waiting for the harvest day.

I know how difficult it will be for a poor boy to reach up to the crown of pre eminence, but still it may be done. The cloud that hangs over him is surcharged with the electricity of knowledge, which, if it does not bow down to him, may still be reached, and its stores attained.

And the question was then taken.

And on the question,

Will the convention agree to the amendment?

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

YEAS—Messrs. Ayres, Baldwin, Biddle, Chambers, Chandler, of Philadelphia, Cline, Craig, Denny, Doran, Dunlop, Farrelly, Henderson, of Dauphin, Hopkinson, Merrill, Payne, Pennypacker, Porter, of Northampton, Russell, Scott, Serrill, Sill, Sterigere, Young, Sergeant, *President*—24.

NAYS—Messrs. Banks, Barclay, Barndollar, Barnitz, Bedford, Bell, Bigelow, Bonham, Brown, of Lancaster, Brown of Philadelphia, Carey, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cox, Crawford, Crum, Cummin, Curll, Darlington, Darrah, Dickey, Dickerson, Donagan, Donnell, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Harris, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Hiester, High, Houpt, Hyde, Ingersoll, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Magee, Mann, M'Cahen, M'Dowell, M'Sherry, Merkel, Miller, Montgomery, Overfield, Pollock, Reigart, Read, Riter, Ritter, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Thomas, Todd, Weidman, White—80.

So the amendment was rejected.

The third section of the said report, which is in the words following, viz:

"SECT. 3. The rights, privileges, immunities and estates of religious societies, and corporate bodies, shall remain as if the constitution of this state had not been altered or amended,"

Was then considered, and no amendment was offered thereto.

A motion was made by Mr. REIGART,

To amend the said report of the committee of the whole, by adding thereto the following new section:—

"SECT. 4. The legislature shall not invest any corporate body with the privilege of appropriating private property to its own use, unless the owners or proprietors of such property shall have been previously compensated therefor."

Mr. REIGART said, that the reason he had offered this new section at the present time was, because it constituted a part of the report of the committee on the seventh article of the constitution, and was to be found in the report now on file.

A large majority of the committee thought it their duty to submit this amendment, but it never came up for consideration in committee of the whole; having been cut off by the resolution of the gentleman from Adams, (Mr. Stevens) providing that the articles should be considered as on second reading.

He would, therefore, merely submit the amendment, and would not detain the convention by submitting any remarks upon it.

Mr. DUNLOP, of Franklin, said, that not expecting any proposition of this kind to be introduced, he was not prepared to give his opinion on it at this time. On first examination, however, (continued Mr. D.) it seems that the amendment is altogether too indefinite and ambiguous to meet with the approbation of the convention. For my own part, I shall need some explanation.

The amendment declares "that the legislature shall not invest any corporate body with the privilege of appropriating private property to its own use, unless the owners or proprietors of such property shall have been previously compensated therefor."

Now, I will ask the gentleman from Lancaster, (Mr. Reigart) what he means by the words "previously compensated therefor?"

Mr. REIGART: They mean previously to the appropriation.

Mr. DUNLOP resumed,

Then why not say so, in explicit and unambiguous terms? Why not say that the legislature shall not confer the right to appropriate private property, until compensation shall have been previously made therefor?

Any man who has had any experience in relation to the running of rail roads, turnpike roads, and other works of improvement, must be satisfied that there are times at which it would be highly disadvantageous to the public interests, that compensation should be made previous to taking the property. We know that in many instances it is difficult to ascertain what is the real amount of damage sustained.

It appears to be in accordance with the principles of right and justice, and it is so—that private property should not be taken for public use

without compensation being made. But I say that it imposes upon the public a difficulty in the prosecution of works of internal improvement, of which gentlemen are but little aware.

Compensation ought to be made—full and ample compensation;—of that there can be no question. And it ought to be made before the property is taken, if it can be done conveniently, and with a proper regard to the interests of the people, and if the amount of real damage sustained can be agreed upon with reasonable facility.

But suppose that this is not the case, and cannot be so. Suppose that a dispute should arise as to the amount of compensation, and that the parties should go to court upon it. Suppose you were to establish some tribunal to ascertain what the compensation is to be. They must go on and investigate the matter. It may take a month, aye, or it may take a year before the proper amount can be ascertained. We have known instances of troublesome fellows giving a great deal of annoyance in the prevention of works of internal improvement, in regard to the amount of compensation which they were to receive for their property, when they would in fact have suffered no inconvenience, and where they have refused to receive the reasonable compensation tendered to them.

How is the amount of compensation to be ascertained except by agreement or trial? And are works of public improvement to be suspended in the mean time? Suppose that an appeal is authorized to a higher court, and that a new trial is ordered. A writ of error may issue, and you cannot pass over the land before the case is finally settled.

The legislature has adopted a better system; that is to say, that when the parties cannot agree, and they appoint referees, and there is an appeal to court, the corporation shall have power to proceed with the work. And the propriety of this course is obvious, for if such an arrangement did not exist, it would be in the power of any man, whose cupidity or obstinacy might prompt him so to do, to throw obstacles in the way, and to put an end to the construction of the road, for a time.

It is unnecessary for me to occupy your time in demonstrating these things. Every man who has been a manager of any of these roads, will be satisfied that the difficulties are such as ought to induce us not to make any constitutional provision on the subject, but to leave it, as it has heretofore been left, to the wisdom of the legislature, under that clause of the bill of rights which provides that no "man's property shall be taken, or applied to public use, without the consent of his representatives, and without just compensation being made." You cannot ascertain the damages until such time as the ground is occupied, and until we know what injury is really sustained. People may raise difficulties from private pique, or from dissatisfaction with some of the contractors, and thus, as I have stated, the progress of the whole work may be stopped until the compensation is fixed.

I have known instances in which a company have offered ample compensation, and it has been refused. They then offered a larger compensation and that was refused; and the parties then went to throw every difficulty in the way of the construction of the work, and even went so far as to threaten violence to the contractors and their workmen.

I have known instances in which companies have offered to pay so much, on the condition that if a jury should say it was too much, the excess should be paid back—and I have known such offers to be refused. I believe that the adoption of this provision will be productive of more harm than good. There may be instances in which injury may be sustained, but I believe there are scarcely any whose property will suffer, although there may be a few.

But under what art of man, or what order of God is it, that a man should not suffer in some respect or other. And is it fair that because a solitary case of injury may here and there occur—is it fair, I ask, that we are to throw these obstacles in the way of works of internal improvement? This question is something like that of the school system. In that particular we have a constitutional provision sufficient to answer every purpose. It is full and ample—and there has been no public outcry against it; or, if there has, it has gradually died away as the advantages of the system have developed themselves. And yet we are asked by twaddlers to change it. So it is in the present case. The constitutional provision on the subject now before us is full and ample for every purpose, and the public do not complain. Why then annoy ourselves about it?

I am rated by the gentleman who stands at the head of the city delegation, and the editor of a newspaper—I say, I am rated handsomely by him in his publication for uttering a tirade, as he is pleased to call it, against education; and I suppose I may hear the same opinion about a tirade against the rights of my fellow-citizens and in favor of corporations. But when that delegate declares his own opinions and professes to make reports for publication in the newspapers, he had better be more cautious to confine himself within the bounds of reality—not to say truth. For when I said that I had voted for the common school law, and would do so again—that I was willing to risk my popularity on the experiment, that I was the friend of education but doubted whether the plan proposed was the way to carry the system out—that I thought a better mode to instruct the public would be to afford in academies or colleges the means of education about every man's fireside, and at the cheapest possible rate, I am denounced as delivering a tirade. I am afraid, that the delegate, has taken this means to let out "the venom of his spleen" against me, because I happened to remark that the state of New Hampshire produced no great or distinguished men, either in ancient or modern times. I believe he comes from New Hampshire—though I may probably be mistaken. But if he does, he only furnishes us with a living illustration of the truth which I uttered, that the state of New Hampshire produces no great or distinguished men. She may yet do so, and, God knows, I hope she may. And when years have passed over the head of that delegate, when he has gained more experience and is more cautious in the language he uses towards his co-workers for good or evil here, I hope it may be in my power at some future day—if we should chance to meet again in a similar arena—to withdraw what I have said as to the ability and intelligence of the state of New Hampshire.

The CHAIR, (Mr. M'Sherry) here interposed and reminded the gentleman from Franklin, (Mr. Dunlop) that the question before the convention was on the adoption of the new section proposed by the delegate from Lancaster, (Mr. Reigart)

Mr. DUNLOP resumed,

I know it, Mr. President, I know it. But we do sometimes find ourselves running after will-o'-the whisps;—these small things that play about, and get into a quagmire.

Mr. CHANDLER, of Philadelphia, said;

I do not rise, Mr. President, to reply to the indecent language of the delegate from Franklin, (Mr. Dunlop.) It would be unworthy of me to do so. I have already taken occasion to say to this convention, in reference to the reports which appear in my paper that I am not accountable for them. If however, any gentleman wishes to hold me accountable for what appears in the paper, I give him to understand that I am here and elsewhere, morally, legally and phyiscally responsible.

Mr. DUNLOP. Physically!

The CHAIR called the (Mr. Dunlop) to order.

Mr. CHANDLER. In regard to any thing else which has fallen from that person, in his usual manner of turning the convention into a circus, in the presumption that by his indecent language he may acquire a sort of fame, it would be unbecoming in me to attempt to follow him. I do not envy any man the smile which he may perchance succeed in creating, by such indecent and ungentlemanly allusions as have characterised his observations.

Mr. DARLINGTON, of Chester, rose to a point of order.

Mr. CHANDLER said, he knew that he was out of order.

Mr. INGERSOLL said. I have nothing to do with this war, and I do not rise for the purpose of interfering with it in any way. I might perhaps say that I take a sort of malicious pleasure in witnessing it, having suffered under this sort of arrow

I rise, however, to say something as to the question before the convention. I hope that the gentleman from Lancaster, (Mr. Reigart) will not press his amendment at this time. I am the anxious friend of that amendment, but I think that it is out of place here. When we reach the ninth article—commonly known as the bill of rights—we can then properly discuss this question, and I trust that there is no portion of the article to which the attention of this body will be more anxiously turned.

So decided are my own views in relation to this matter, that I wish to go far beyond the amendment now before us. I have no idea that this provision should be laid upon corporate bodies alone—it should be applied to all individuals—corporate or not.

The convention will do me the favor to recollect that, some time since, among other things, I offered a proposition in the following words:

"Private property shall not be taken for public use without equivalent therefor in money, ascertained by general law, and paid before any private property shall be entered upon in order to be applied to public use."

It will be perceived, (continued Mr. I.) that this goes further than the proposition of the gentleman from Lancaster. Whether or not it will receive the sanction of a majority of this body, I can not undertake to say. But I know that this is an object of the greatest magnitude. The gentle-

man from Franklin, (Mr. Dunlop) is mistaken if he supposes that there have been no public or private complaints upon this subject.

When I had the honor to be a member of the legislature. and chairman of the committee on internal improvement, there was no subject on which the petitions were so numerous. There was no subject on which all were so sensitive, as that of entering other men's land. Within a few days, he had seen an English paper, in which it was stated that in the house of lords, a declaration was made that England was the only country where a man's body could be arrested under a judgment. This statement was made by Lord Lyndhurst, an American born. And I, (said Mr. I.) say, by analogy, that this is the only country where every man's land may be cut and hacked to pieces by any one who fancies he can make a public improvement by doing so. I say, although this declaration may be sneered at, that it is one which deserves the deepest consideration.

In France, no one can enter lands of another before the damages are paid. The law in England is the same and the practice is to issue an interdict against entering another person's property until the damages are ascertained. The lawyers were lately in the practice of doing this. This is a crying evil (continued Mr. I.) a number of individuals—it is not necessary that they should be incorporated—actuated by some selfish object, under the guise of promoting public improvement—mere combination, union of individuals is sufficient. These unite, and raise, for the most part by borrowing, an adequate fund to go to work with—go through your land or mine—they have done it already through mine—and cut your barn or your house in half. This could not be done in Turkey: it would be against the law in France, and no one would dare to do it in England. It is a subject of great and universal complaint, and a remedy is hereby called for. Whether it would be the sense of this body to make the remedy, he knew not, but he would unite with any gentleman at the proper time, to make the effort. It could be done, at the proper time, in the ninth article.

If gentlemen wish to introduce a clause here, he would support it. But that it might be done thoroughly, as it ought to be, it should prohibit all persons from taking property until the legislature shall erect some competent tribunal, or court of justice, which can be appointed beforehand, and where the amount of injury can be beforehand ascertained, and adjudged due, so that the amount of the damage may be realized in the manner in which ordinary debts are collected: and that complaints of capricious verdicts, whether for too small a sum to recompense the owner of the lands, or so large as to operate as a check on internal improvement, may be brought and determined. He hoped that some proposition on the subject would be brought before this body, by the gentleman from Lancaster, or some other gentleman, at a proper time; and, he flattered himself that it would receive the support of a majority of the convention.

Mr. Bell, of Chester, said that with much diffidence he must differ from the gentleman who had just addressed the convention. It was true, there were complaints, and they were in many instances, well founded; but these were confined to the legislative action in creating insolvent and unpopular corporations, for the purpose of carrying on some canal or

rail road. He hoped the gentleman from Lancaster, would persist now in his amendment, and take the sense of the convention upon it, because it was against these inefficient corporations that all the complaints had been made. These corporations looking up to the state, have always the assurance that whenever the state authorizes the appropriation of private property to public uses, the improvements they contemplate will be made. Thus the owners of property are frequently thrown at the feet of insolvent corporations. It is the opinion of some eminent jurists that to take private property for public uses without compensation, is unconstitutional. Yet in some instances, the legislature of Pennsylvania have violated common honesty and common propriety, in permitting insolvent men to band themselves together as corporators. It had been said that it would be impracticable to carry out the principle of the amendment of the gentleman from Lancaster.

The legislature of Pennsylvania, in many cases have made it a condition in the charter of a corporation, that before taking private property they shall make compensation. But the legislature, seduced by influence, have, in other cases, violated this wholesome rule, and permitted corporations to take property without compensation. He particularly alluded to the Valley rail road. The ostensible design of the company was to avoid the inclined plane at the Susquehanna, by going through the most fertile parts of the country. The legislature authorized the company to take the property of individuals, leaving the owners to seek compensation afterwards in the mode in which they best could. Under this authority, the company went on selecting spots, and after ruining the city of Chester, became insolvent. When the company were applied to for compensation, they were informed very cooly that the company were out of funds, but that the creditors might hope for payment whenever the road should be carried through, and the company were in funds. They actually went so far as to close their books to prevent any transfers of the stock, lest there should be transfers made to beggars, and then issued notes of five, ten, two and one dollars, and pledged as security for their redemption the capital stock of the company, which was not worth the paper.

As for their capital stock, that is not worth the paper upon which their notes are printed. They do not promise to pay in current notes, much less in specie. But they promise some day to make redemption in their actual stock, and they have again began to cut up the farms of the people in Chester county. Here is a proof of the manner in which the legislative provision operates; for here private property is taken for private purposes. This is the way in which these provisions thus granted by the legislature, in violation of the constitution, are abused within my knowledge. I dare say that there are other gentlemen on this floor who are acquainted with such instances, and the question is whether this convention, sitting here to establish fundamental principles for the protection of life, and reputation, and not the least of all, for the protection of property—the question, I say, is whether when an amendment of this nature is submitted to us, we should so far forget the duty we owe to ourselves and the people whose welfare and interests are thus committed to our charge, as still to leave in the hands of the legislature, the power thus to take the private property of our citizens. Shall we do so? Is there not honesty in the commonwealth? Ought we not in our action here, to carry out the rules

which govern the intercourse between man and man? Who in society takes the property of another without giving or securing proper compensation for it? And yet we find the commonwealth of Pennsylvania, not only taking private property without compensation, but actually giving to private individuals the power to appropriate private property not only without first making private compensation, but under circumstances which render it doubtful whether compensation will ever be made or not.

For these reasons I shall vote in favor of the proposition of the gentleman from Lancaster.

Mr. DARLINGTON, of Chester, said that he was friendly to the principle of the proposed amendment, but that he did not see the necessity that payment should be first made for private property taken for public use. I would suggest to the gentleman from Lancaster, continued Mr. D., so to modify the amendment as to provide that the property should not be taken until compensation had been first made or secured to be made.

I have also my doubts as to the propriety of introducing this as a new section of this article; and I think it would be better that it should be made a part of the tenth section of the ninth article of the constitution. The words of the tenth section of that article, as they at present stand, were "nor shall any man's property be taken, or applied to public use, without the consent of his representative, and without just compensation being made."

Now, the legislature, in carrying out this provision of the constitution, have in all instances in which they have taken the property of individuals for public use—that is to say, when the state works have required them so to do—made proper compensation. Generally, however, they have not made compensation until after the property was taken, and until such time as the amount of damage to be sustained by the owner could be fairly ascertained.

It is a notorious fact, however, that in some instances corporations have been created, which have been authorized to take private property, and have been required only to make compensation at such time as their work was complete. The consequence has been that companies have been incorporated, which have entirely failed to answer the objects for which they were created—which have turned out to be total failures—and which were unable, on the completion of their work, to make any compensation to the parties whose property they had taken. In this manner, the provision of the constitution has been violated. Private property has been taken for public use, and no compensation has been made. The case of the Valley rail road, which has been alluded to by my colleague, (Mr. Bell) and which was principally through the county of Chester, is a striking instance of the injustice which has been done, and I here take leave to say, that I subscribe to the entire correctness of the statement made by my colleague in relation to that road.

Sir, this is a grievance which has been felt as well by those whom I represent, as by citizens in other parts of the state; for in other parts also, private property has been taken, where no adequate security has been given for compensation for the damages which might be thereby sustained. It is an evil which should be looked to, and which demands

a corrective. But I would not, with a view of remedying this evil, require by a constitutional provision that the compensation should be actually made before the work is completed, because, until that event takes place, you cannot with any degree of certainty tell what is the amount of damages really sustained, or what may be the extent of the advantage which may accrue to the individual from the construction of the work, and which ought to be taken into consideration as an off-set. All I would require of the legislature would be that adequate security for compensation should be given by the company or individual authorized to take the property, before the company or the individual should be allowed to touch it, and that, whenever the work should be completed, the compensation should be made.

The legislature would have no difficulty in carrying out such a provision to advantage. It would be easy for that body when about to incorporate a company for the construction of a canal, or rail road or turnpike, to require that such security should be given for the payment of damages accruing on account of private property taken for the construction of the work, as would be satisfactory to the judges of the courts—that is to say, security for payment on the completion of the work, at which time the amount could be fairly ascertained. This is my idea, and whenever the proper time arrives, I shall put it in form before the convention. If the gentleman from Lancaster, (Mr. Reigart) presses his section at this time, I shall propose an amendment of the character indicated. If, however, it is the sense of the convention, that a provision will come more appropriately in the ninth article—as I am myself disposed to think it would—I will waive my amendment until that article is before us. The latter part of the tenth section reads as follows:

"Nor shall any man's property be taken, or applied to public use, without the consent of his representative, and without just compensation being made."

I would amend the the section so as to read as follows;

"Nor shall any man's property be taken, or applied to public use, without the consent of his representatives, and without just compensation being first made or secured to the owners thereof."

If the gentleman from Lancaster, determines to urge a vote on his section now, I will ask him to accept my amendment as a modification of his own.

Mr. Porter, of Northampton, said that it had been his fortune to be engaged much in the assessment of damages. I have had the honor, (continued Mr. P.) to be one of the state appraisers of damages; and although I believe that there are cases in which much injury has been done, I still would not be willing to insert in the constitution the words of the section proposed by the gentleman from Lancaster, without some qualification. On this question I speak from experience; and every gentleman who has had any experience in matters of this kind, knows that it is not possible in all cases to assess the amount of damages until such time as the work is completed. I will take an instance:

A canal is constructed through meadow-land. You raise embankments upon each side so many feet, and carry the canal through. If you

assess the damages before the work is complete, the individual may be paid only for the amount of land required for the embankment; whereas it may turn out that the moment the water is let into the canal, it will be found oozing through, and probably making a swamp of ten or twelve acres for which he has been paid nothing. I have known such a case. How can you ascertain the damages in such a case before the work is finished? It is perfectly right and just that whatever advantage may accrue to an individual from a work of improvement running through his property, should be set off against the amount of damages. And how can the facts necessary to a fair assessment be ascertained until after that work is completed? How can the advantages be guessed at in perspective? Here are two principles which, according to my view, would interfere with the question of settlement; that is to say, in each instance there may be much injustice done either to the corporation or to the individual. It seems to me, however, that there is one principle which has been lost sight of. It is this:—When the proprietaries of Pennsylvania first came to this country, they allowed to every grantee, with the exception of the owners of city lots, six acres in every one hundred, as an allowance for public roads and highways. On the principles of common honesty, therefore, no man has a right to claim a cent, because he has been compensated in the original grant.

He was aware that the feelings of society are against it. But he referred to a principle as long ago as 1802, in the case of M'Clenachan vs. Curwen, (3 Yeates, 373; 6 Binney, 514.) The court decided that the owners were entitled to no compensation, because they were compensated in the original grant. But, as regarded improvements, they were entitled to compensation at the rate of six per cent. This was what had been allowed by the proprietary of Pennsylvania to individuals whose improvements might have been destroyed in laying out and opening roads. He was aware that this thing was lost sight of, and that people say "Oh, but we have a right to be paid for it." Gentlemen would find in the case of Messenger and ———, (Binney's reports,) that a man pays so much less, who buys accordieg to strict measure—that in one instance he gets one hundred acres for one hundred, and in the other one hundred and six. And this would bring it back to six per cent. This was a reserve made by the wisdom of William Penn in lieu of the proposition agreed upon in 1681 with the first purchasers of lands in Pennsylvania, before he or the adventurers had sailed for this country.

He (Mr. P.) thought, however, that the whole matter would come up more properly for discussion in the bill of rights, as the gentleman from Chester very properly said. It was thought that if the word "first" were inserted in the tenth section before the word "made,' all the purposes required would be attained. He would admit that there was an evil to guard against. He liked the provision in the bill passed by the legislature of New Jersey, incorporating the Camden and Amboy rail road company, which declares that the amount of damages which a party may sustain shall be a lien on all the property of the corporation, and take precedence of all other claims upon it. Some provision of that kind would obviate the difficulties he had pointed out, in estimating the damages, &c. There was one principle which however new, seems to have been settled by all legal adjudications. It was, that the legislature may

make public improvements by themselves, or authorize corporations to make those improvements. That, if the public are secured as a matter of right in roads, they are to be considered as appropriated to the public use; although they may be constructed by individuals, or by private corporations, the public are repaying them by a certain and regular toll. This would seem to be the law in all cases.

He did not like the language which the gentleman from Chester proposed to insert as an amendment to the tenth section. Why? Because it was an invariable rule under our constitution, and it was a rule which existed even in despotic and monarchical governments, that you cannot take one man's property and give it to another. He did not think the language of the amendment sufficiently guarded. He never could give his consent to the adoption of any principle that would authorize the taking away of any man's property. He was afraid that the effect of the amendment was not properly understood. He could not believe that this was the gentleman's intention. He thought that if the gentleman from Lancaster, (Mr. Reigart) would look to the tenth section of the bill of rights, he would see that the introduction of the words "first paid or secured" would answer. He was of the opinion that those words would effect the object the gentleman had in view, and no one would more cheerfully vote for those words than he (Mr. P.) would.

Mr. REIGART modified his amendment by inserting after "compensated," the words "as security given therefor."

He said that when we looked to the practice that had heretofore prevailed in the legislature of granting acts of incorporation for rail roads and canals, and for other purposes; and regarded the many complaints that have been made in reference to the taking of private property for public use, the convention must see the necessity that existed of devising some remedy to prevent dissatisfaction in future. Although he was willing to take this amendment any where, yet he knew there were objections felt by gentlemen to making any alteration in the bill of rights. He was aware, too, that there were doubts upon the minds of many gentlemen whether the convention would allow the legislature to pass acts previously compensating the owners of private property taken for public use. Did the amendment he had offered beget any remedy at all? Here, perhaps, was an individual warring against a company who had cut off his barn, his garden, or his orchard, and they laugh him to scorn, and before he can get any compensation from the company it has exploded—broken up, and he is left without any remedy at all. Now, the gentleman from Franklin, (Mr. Dunlop) had argued that the actual amount of damage done could not be ascertained until the work was finished. So, also, did the delegate from Northampton, (Mr. Porter) contend. In his opinion, if the amendment should be adopted, the legislature could authorize a judicial tribunal to assess the amount of damages as well before as after the work is completed. Why, he asked, was there any man concerned in public improvements who did not see that there was very great danger to be apprehended by the owner of private property under the existing law? But, supposing there was error in this point, did it follow that we should not insert this provision? Did it follow that we should give corporations these enormous rights at the expense of our citizens, for the purpose of making money? It certainly did not. Let them conform to the terms of their charter, or let them not accept it.

He contended that it was not necessary to consume years in order to ascertain the amount of damage. A tribunal could be appointed that would act promptly. Was he to go to law with his neighbors, and to continue at it for years? The necessity had certainly not been shewn for it. The question was, shall a corporation have superior privileges to that of a citizen? But, said the gentleman from Franklin, or the gentleman from Northampton, it will do more harm than good. He (Mr. R.) denied it, and maintained that the provision he proposed would have a salutary and beneficial effect. The injustice of the existing provision had been clearly and palpably shewn by the gentleman from Chester, and others. The delegate from Northampton, (Mr. Porter) said that six per cent. had been reserved for roads and highways. But what of that? The state would possess this power. But he would ask, is that power possessed by individuals embarked together for the purpose of making money? Is that to apply to individuals? Shall the legislature give the right to individuals? Shall they shelter themselves under that power?

I apprehend, (said Mr. R.) therefore, that this does not apply to the present case. If it applies to the state, most certainly the reservation is by the state, and will not apply to individuals.

But the delegate from Northampton, (Mr. Porter) has given us an instance of a canal constructed through meadow-land, and in which the water leaked out, and overflowed a number of acres. All we can say of this is, that it is an isolated case, which can not be set up as a standard for judgment. Can not a man tell whether a canal constructed ten feet above meadow-land will do it injury, before, as well as after the work is completed? If he has any knowledge of such things, he would know before as well as after. But even if it were otherwise, the case, as I have said, is but an individual case.

For my own part, I have no sort of personal interest in the settlement of this question, and I leave the amendment entirely in the hands of the convention, to be disposed of as they may please. My object is a common one. And if the convention think proper to negative the section, so be it:—I shall have nothing more to say.

Mr. Chambers, of Franklin, rose and said, although, Mr. President, I am favorable to the principle of the proposition of the gentleman from Lancaster, (Mr. Reigart) as now modified, I should still prefer that it should not be pressed at this time, but that it should be offered as an amendment to the ninth article. I think that an amendment which will answer every requisite purpose, may be there introduced in three or four words, and I have some objections to the phraseology of the gentleman's amendment, althongh, as I have said, I am in favor of the principle. There is too much verbiage about it, by which it is rendered somewhat obscure. It provides that the "legislature shall not invest any corporate body with the privilege of appropriating private property to its use," &c. Now, the very act of enactment is as investment of authority. What is the mischief which we are desirous to remedy or prevent? It is—that the occupation of individual property shall not be allowed until compensation has been made, or security given. This modification I approve of decidedly, and, indeed, if it had not been made, I could not, under any circumstances, have voted in favor of the amendment.

The delegate from Lancaster tells us, that the inconvenience attending the ascertainment of damages before such time as the company may have completed their work, is a small affair—a matter which can easily be disposed of in the course of a few minutes. In this the delegate is mistaken. Such is not the fact. The legislature, in the first place, appoints a tribunal, or jury, to ascertain the amount of damage done; but in almost all such cases there ought to be a provision for appeal. In all the late acts passed by the legislature of Pennsylvania, there is a provision that when the individual or the company are dissatisfied, either party may appeal to court for trial. Well, sir, is this a matter which is disposed of in Lancaster county in two or three minutes? It is placed upon your trial calendar like any other case. It may go to the supreme court—it may go through all your legal tribunals before a final disposition is made of it. It may be in the power of a troublesome individual, where there is a public improvement of forty or fifty miles in the course of construction, to throw himself in the way of its prosecution, not only to the annoyance of the public whose convenience is to be enhanced by its completion, but also to the annoyance and detriment of all others through whose lands it may have been constructed. There may be one fourth of a mile, in reference to which a single individual may have it in his power, by appeal to court, to delay the completion of the work for a year. This is a state of things not to be tolerated; and while we do prefer justice to individuals, we must not lose sight of the wants and convenience of the public, or of the rights and interests of the company. All that an individual has a right to look for, is an indemnity for loss—a compensation for damages sustained, if the amount of that loss or damage is acertained, and until it is ascertained, security for compensation; that security to be provided in such manner as may be directed by law. Beyond this he cannot reasonably expect any thing.

I do not altogether concur in the opinion of the gentleman from Northampton, (Mr. Porter) that rail-road or canal companies are entitled to the land as a part of the surplus land granted by the proprietary. The surplus land which was granted, was for roads and highways that were common to every individual, and which every citizen could use with his horses and his vehicles at any time—roads which all could use alike. But are rail roads works of that kind? They are not open like a highway; they are to be used only by the engines and cars of the company, and only at such times and in such manner as the company may direct. The two cases then are not the same. In this case, I say individuals are to be paid for their property. To my view, it is sufficient that security for payment is given, and I shall be satisfied with an amendment which goes to that extent. But I should prefer waiting until the constitutional provision with which this amendment is more immediately connected, shall come up before the convention.

Mr. Reigart thereupon withdrew his amendment, but gave notice that he should renew it when the ninth article should be taken up by the convention.

Mr. Porter, of Northampton, made an explanation in reference to a remark which he made as to the right of companies, under their propretary, to construct their works without making compensation, and in regard to

to which, he said, the gentleman from Franklin, (Mr. Chambers) had misunderstood him.

A motion was made by Mr. STURDEVANT, of Luzerne,

To amend the said report by adding thereto the following new section, viz:

"SECTION 4. The legislature shall not invest any corporate body with the privilege of appropriating private property to its use, without requiring such corporation to compensate the owners of said property or give adequate security therefor, before such property shall be appropriated."

Mr. BELL, of Chester, said that upon reflection he felt satisfied that the object proposed by the amendment would be better obtained by the insertion of a few additional words to the tenth section of the ninth article of the constitution. He would move, therefore, that the further consideration of this section be postponed for the present.

Mr. STERIGERE, of Montgomery, submitted to the Chair that the motion of the gentleman from Chester was not in order.

Mr. BELL said, that as he understood the gentleman from Franklin, (Mr. Dunlop) was desirous to submit an amendment to the amendment of the gentleman from Luzerne, he (Mr. B.) would withdraw his motion for the present.

A motion was then made by Mr. DUNLOP,

To amend the amendment by striking therefrom all after "section 4," and inserting in lieu thereof the following, viz: "No corporation shall have the power of using private property without the assent of the owner, unless compensation shall be first tendered or secured."

Mr. DUNLOP said, that the amendment of the gentleman from Luzerne, seemed to imply that the legislature might and ought to invest any corporate body with the privilege of appropriating private property to *its* (own) use; whereas it ought to be clearly understood that the property is taken for use of the public. The words, as they now stand, continued Mr. D., might open a new constitutional view—which is not contained, nor intentended to be contained in the constitution of Pennsylvania.

It is necessary also to use the word "tendered," instead of "paid," or "compensation;"—because the party might refuse to take the compensation. It seems to me that if compensation is either tendered or secured, every object will be attained.

Mr. BELL said, that this was a very important subject—one in which the people were much interested, and it was of great moment, therefore, that it should be considered under the most favorable circumstances. Many gentlemen might be inclined to vote against an amendment now, only because they conceived that this was not the proper place for its insertion, or because they had not made up their opinion upon it. To give time for reflection, therefore, he would move that the further consideration of the subject be postponed for the present.

Mr. STURDEVANT said, he entirely concurred in the opinion of the gentleman from Chester, (Mr. Bell) that this was an important subject. It required action; and as it was doubtful whether the convention would get

at the ninth article before the 22d day of February, he could not yield to the suggestions of gentlemen about him to withdraw his amendment altogether. He had, however, no objection that the further consideration of it should be postponed for the present.

Mr. INGERSOLL said, he was sorry to find that a difficulty had been raised which appeared to him to be altogether gratuitous. There seems to be a unanimous sentiment among the members of this body, continued Mr. I., that something should be done in this matter. If any thing is to be done, three words will accomplish our object if inserted in the right way and place; that is to say, by inserting into the latter part of the tenth section of the ninth article the words "first," or "second." The clause would then read;—

"Nor shall any man's property be taken, or applied to public use, without the consent of his representative, and without just compensation being *first* made *or secured.*"

Instead of this, the proposition of the gentleman from Luzerne, (Mr. Sturdevant) omits to speak of the party which is most complained of;—and who would not be restricted at all by the provision he has offered;—that is to say, the corporation.

There is another fact to which I will call the attention of the convention at this time. As to party decisions out of doors, there are certain lines of demarcation distinct from the republican line of demarcation. There will be a majority of this body in favor of certain reform amendments to the constitution, as I consider them. I call upon all these gentlemen, to pause, and reflect well upon every additional section which they may be inclined to append to the constitution, especially if it is important in its character—to reflect upon it as tending to defeat the objects of those who are desirous of reform. Here is a substantive section touching every man's private property—touching every man's corporate property—and yet omitting to touch the corporation which is the party most complained of, and against whose encroachments protection is wasted; and the section as it now stands seems to be not only unnecessary, but wholly mischievious, to say nothing of its phraseology, and there are many more words than are necessary, which probably might lead to litigation and difficulty. When, therefore, three or four words inserted in the proper place will accomplish the whole purpose—binding the state as much as the individual and the corporation as much as the state, and the individual as much as the corporation—binding all three equally alike—why should this new and long addition be made to the constitution?

I am aware that a memorial has been presented here, emanating from citizens of the county which the gentleman who offered the section represents in part on this floor, and actuating the delegation from that county to a distinct course upon this subject. I appreciate the very proper feeling which induces the gentleman to endeavor to carry out the wishes of these memorialists. But can any gentleman doubt that, as we have now voted to give ourselves three weeks more time, can there, I ask, be a doubt that we shall not have a full opportunity to dispose of this question in the ninth article, which is its proper place? For my own part, I am at a loss to conceive how we shall manage to consume these three weeks.

There will be abundance of time allowed for the consideration of the ninth article, even if we should not remain in session so long as until the 22d day of February. I know that there are some of my friends in this body whose legal engagements call for their presence elsewhere, and I have no objections to accommodate them, if possible, by adjourning at an earlier day than we have now agreed upon. In any event, I believe there will be time enough to do every thing; but if there should not be, let us take more—let us take enough, and let us not force a good thing into a bad thing by putting it in the wrong place and in the wrong terms. I confess that I am anxious about this matter. The principle is a most important one; it is one which ought to be put before the people in the most acceptable shape; looking to cool, dispassionate and fair reform.

I repeat, however, that this is not the place for it, nor this the manner in which the desired object will be accomplished. And I regret that after the gentleman from Lancaster, (Mr. Reigart) had withdrawn his proposition, the gentleman from Luzerne, (Mr. Sturdevant) should have thought proper to offer a similar one at this time.

Mr. Dunlop, of Franklin, said, I concur with the gentleman from the county of Philadelphia, (Mr. Ingersoll) that we should all agree to fix upon the right phraseology for this amendment, but I dissent from him when he says that one or two words will settle the difficulty, if introduced in the right place and in the right manner.

The gentleman points us to the latter clause of the tenth section of the ninth article, which says "nor shall any man's property be taken or applied to public use, without the consent of his representatives, and without just compensation being made." And here, he says, an effective amendment may be introduced in three words.

Now, Mr. President, it is to be borne in mind that there are two methods of taking private property for public use—one by public direction where the work is carried on by the commonwealth herself; and the other, where a corporation is made use of in the management of a work of internal improvement or for some other equally important purpose. We all agree that "tendering" compensation—and we all agree that "securing" compnsation would be sufficient, at least, I understand that there is no difficulty between myself and the other members of the convention, so far as concerns that point. Will not every purpose, then, be effectually accomplished by adopting the words of the amendment offered by myself?

The question of taking private property for the use of the commonwealth, and that of taking it for the use of corporations, are two very distinct things. And these two distinct questions can not, in my opinion, be properly disposed of by the introduction of three words in the manner indicated by the gentleman from the county of Philadelphia. To do so, would be to blend the powers of the commonwealth with the powers of corporations. Is it not a distinct question whether we shall vest a corporate body with power to take private property, or whether we say that the commonwealth shall secure or tender compensation for property taken for public use?

It seems to me that the question of investing a corporate body with such power is distinct from the question of giving that power to the com-

monwealth herself. It never was expected that the commonwealth should condescend to give security for payment of property thus taken, when the whole power of the commonwealth was pledged.

At first sight, I confess I was inclined to the opinion that two or three words inserted in the manner and place suggested by the gentleman from the county of Philadelphia, might have accomplished the object we have in view; but after further reflection, I have come to a contrary conclusion. The gentleman from the county of Philadelphia, I think, will himself also find upon close examination that a section will probably be required to adjust the matter satisfactorily, and in such a way as will leave no room for doubt or misconstruction. At any rate, it is a point deserving of further consideration, and, with that view, I move that the convention do now adjourn.

But Mr. D. withdrew the motion at the request of

Mr. WOODWARD, of Luzerne, who said that he wished to submit a few words in answer to one or two observations which had fallen from the gentleman from the county of Philadelphia, (Mr. Ingersoll.) I allude, continued Mr. W., to his remarks in relation to amendments to the ninth article.

I dissent *in toto* from the idea that we *must* remain here until the twenty second day of February, simply because the resolution we have adopted affords us that latitude. And I now give notice that when we have gone though with the eighth article, I intend to move that we proceed to the consideration of the report of the committee on the subject of future amendments to the consitution; and I also intend to use my efforts in every proper way to resist entering at all upon the consideration or discussion of the ninth article. If we open that Pandora's box—

Mr. INGERSOLL. There is hope at the bottom.

Mr. WOODWARD. There is not hope at the bottom of *that* box.

I say that I shall in every proper manner oppose the taking up of this article, and I shall do so with a view of closing the labors of this body at as early a period as possible. If we now enter upon that article, there is no telling where we may end. I have no idea that I shall be successful in my resistance, but I shall resist nevertheless.

Well, then, my colleauge and myself feel some anxiety about the adoption of this amendment; and if this is not the proper place to introduce it, I know not where the proper place is to be found. At the same time, we are both willing that its further consideration should be postponed for the present, in order to give time for examination and reflection. I hope, therefore, that it will be postponed; but I hope also that it will ultimately be inserted in this place, and that the ninth article of the constiution of 1790 will forever remain a sealed book to us.

A motion was then made by Mr. DUNLOP,

That the convention do now adjourn; which motion prevailed.

And the convention adjourned until half past three o'clock this afternoon.

THURSDAY AFTERNOON, FEBRUARY 1, 1838.

The PRESIDENT laid before the convention a communication from a committee of the legislature, accompanied with the following resolution, viz:

Resolved, That a committee of five be appointed, to confer with the Convention assembled at Philadelphia to propose amendments to the State Constitution, for the purpose of procuring a sufficient number of copies of the Debates of that body for the members of the Legislature.

Which was read and laid on the table.

SEVENTH ARTICLE.

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

The question being on the motion of Mr. BELL, of Chester, to postpone the further consideration of the amendment offered by Mr. DUNLOP to the amendment of Mr. STURDEVANT together with the amendment of the latter, and report of the committee for the present.

Mr. MANN, of Montgomery, did not see what was to be gained by postponement. He would be in favor of attaching such a clause to this article. It might be as well to go on now, and act upon it. There was a majority of the convention now in favor of it.

The question was then taken, and the motion to postpone was decided in the negative. Ayes 35—noes 44.

The question recurring on the motion of Mr. DUNLOP to amend the amendment of Mr. STURDEVANT, by striking therefrom all after "section 4," and inserting in lieu the following, viz:

"No corporation shall have the power of using private property without the assent of the owner, unless compensation shall be first tendered or secured."

Mr. HOPKINSON, of Philadelphia, hoped this proposition would not prevail. He would be glad if gentlemen in favor of it would suffer it to lie over until the ninth article should come up for consideration. The objection urged was that while the commonwealth tied up its own hands. companies are allowed to take private property. The action of the commonwealth had been as much complained of, as is that of the companies. He would rather have a claim against an individual than against the commonwealth. Let the commonwealth take it into its own hands, appoint commissioners, and give security as individuals do! Suppose such a law to be passed, and the property of the individual to be taken for the public works, can he sue the commonwealth? No: he must go with his petition to the legislature, where it will be referred to a committee, and he must give his time in attendance, in the legislature. An in-

dividual may have to travel a thousand miles, and must, after all, depend on a committee of the legislature. When the king of Prussia wanted to take the garden of a poor widow, and she refused, he had no power to take it. So the legislature should have no power to grant to private corporations of private individuals such power. The legislature can have no such power. Whenever the property of an individual is taken for the public use he has the guaranty of the corporation that he will be paid for it. If he is not paid, injustice is done. The property must be obtained on some terms, if the public interest requires it.

Mr. H. then went on to show that the insertion of this section in the constitution would create a conflict between it and the present provision in the bill of rights or ninth article. He contended that according to the language of the constitution, as it now exists, there was no power to take property from an individual without compensation. Every view satisfied him that there was no necessity for the adoption of the amendment now, and he hoped it would remain until the convention should be called to act on the ninth article.

Mr. Dickey, of Beaver, said that he was entirely opposed to any postponement of the subject until the ninth article of the constitution should be taken up. He expressed himself to be in favor of the proposed amendment. He adverted to the terms of the acts incorporating the Cumberland Valley rail-road and the Norristown and Valley rail-road, and stated that under the provisions of the respective charters the companies had so well and skilfully managed their operations as to have avoided getting into difficulties with the land-owners. He thought, however, that the land-owners should be secured against any infringement on their rights, while at the same time the public convenience should be consulted. He would require of the corporation, whatever it might be, to compensate the owners of private property, or give security therefor, before appropriating it to their use. Mr. D. related what had been the course pursued between incorporated companies and the owners of private property, with a view to settle and adjust their differences.

He did not believe that there could be a better mode devised than the present one. It had given general satisfaction, although there had been a few solitary instances to the contrary. The gentleman from Northampton, (Mr. Porter) had referred to one, where, after the water had been let into the canal, it ran into and overflowed some adjoining lands. The damage had not been foreseen, before the work was completed, and no contingent allowance had been made in regard to it The parties, consequently, came to the legislature for redress, as was usual in such cases. And he (Mr. D.) would like to know if the legislature had ever refused to grant it, where proof was shewn by the parties claiming that they were entitled to it? In conclusion he expressed his hope that the amendment of the delegate from Luzerne would be adopted.

Mr. Bonham, of York, said if any one subject, more than another, demanded and was entitled to the serious attention and consideration of the convention, it was that of Corporate Rights and privileges. He thought there could be no question that the legislature had, for many years past, been pursuing a course of legislation which had seriously affected and infringed upon the private rights of individuals in this commonwealth

A great deal had been said by delegates in relation to vested rights, and of the great impropriety and injustice of disturbing or interfering with hem,

Now, he would say a few words on this point, and show how those rights had been disregarded, at least, in respect to the parties of whom he was about to speak. He had known, in that section of the country in which he lived, men to have had their lands completely destroyed by the introduction of a rail-road or canal running through them.

He recollected that in 1834–5 the legislature passed an act to incorporate a company to construct, or make a rail-road from Wrightsville, on the Susquehanna, in York county, to York and Gettysburg. The act conferred upon them the right to enter upon any lands in the valley for the purpose of exploring, surveying, and locating the route of the said rail-road. He would read the precise words of the act, in question. They were these: "And when the said route shall be determined by the said company, it shall be lawful for the said company, their agents, contractors, &c. at any time, to enter upon, take possession of, and use such land; and also, to take from any land in the neighborhood, gravel, stone, wood, and other materials, for the purpose of constructing and maintaining such rail-road, subject, however, to such compensation as shall be hereafter ascertained," &c.

Shortly after this chartered privilege was granted, a part of the road was put under contract, viz: Wrightsville and York.

While this work was progressing, a great many of the finest farms in that fertile valley were almost entirely ruined, and the owners of which were not permitted to say a word. They could have no redress at that time, whatever they might be able to obtain thereafter. The only hope they had of being indemnified for their losses depended upon the work being carried out into successful operation. But, unfortunately for them when the work was nearly completed, the company failed. And, the rails which lay at the road side, ready for putting on the track, were sold by the sheriff, and bought by another company. The road now remained in an unfinished state, and only one or two individuals received any compensation for the loss they sustained. And, thus had the property of honest and industrious farmers been sacrificed, and their rights violated with impunity. The company being insolvent, the land-holders had no possible means whereby to redress their grievances.

At the next session of the legislature (1835–6) as if determined to usurp the rights, and further to oppress, the respectable, peaceable and industrious farmers of the beautiful valley between York and Wrightsville, (which is not more than half a mile wide in many parts) and utterly destroy their farms—they passed an act incorporating another company to erect a second rail-road, to run parallel with, and near to the first. The farmers became highly indignant and exasperated at the conduct of the legislature, and were determined to resist any further encroachment on their rights. And, he sincerely believed that had any attempt been made to execute the work, there would have been blood shed.

Now, these were evils, for which some remedy ought to be found. The rights of private individuals ought to be better secured to them than

was the case at present; and the legislature should be restrained from invading the rights, and perpetrating, by these acts of incorporation, such serious and disastrous evils upon the welfare and prosperity of the industrious farmer.

He recollected one instance, particularly, of a farmer, who had about forty acres of land, and the company ran their rail-road, near to his farm house, and they were remonstrated with, and every means were tried by the farmer, to induce them not to run the road so close to it, as the consequence must be, the destruction of his property. The request, however, was not listened to; it was treated with disregard, if not contempt, for the company went on with their work, and the result was, that the man's farm was destroyed. And now he had no opportunity whatever of obtaining any remuneration for the great losses and sacrifices he had sustained. Now, if the legislature really did possess the power, and which he very much questioned, to grant acts to companies, so fruitful of evil and destitute of a just regard for private rights, it was high time that some provision should be inserted in the constitution that would prevent, for the future, a repetition of these grievances.

If a public improvement should prove a benefit to a man's property and he an honest man, he would not think of asking for any compensation. But, in those cases, where a mans property was injured, and he compelled to submit to the inconvenience and loss of having a rail-road run through his farm, he ought to be compensated for every acre of land destroyed by the company. Doubtless, a rail-road was rather an advantage to those not living in the immediate vicinity of the road, and whose property was not close to it, and therefore free from all the inconveniences which it occasioned.

What he now said on this subject was dictated by his own feelings, and was the result of his own experience, for he had suffered a good deal of inconvenience as well as loss by the incorporation of rail-road and canal companies. He had recently lost property by the construction of a canal leading to Port Deposit. And, the company had not yet condescended to ask him what satisfaction he required for the destruction of his property. They had never counselled him in regard to it, but went to work and destroyed it.

He begged to call the attention of the convention to one or two other acts passed by the legislature, antecedent to those he had already noticed and commented upon.

An act of incorporation was granted to a company by our legislature at the session of 1831–2 to make a rail road from York to the Maryland line. This act says that "it shall be lawful for the president, directors and company of the said rail-road company and their agents and all persons employed by or under them for the purposes contemplated in the act, to enter upon any land which they shall deem necessary for laying out said road. And also, for the purpose of searching for stones and gravel or wood for constructing said road. But no stone, sand, gravel or wood shall be taken away from any land without the consent of the owner thereof until compensation be ascertained and paid," &c.

In this act no injustice that I have ever heard has been complained of. But subsequent legislatures have gone further and assumed a right, that,

in my humble opinion, did not belong to them. They passed laws incorporating private companies, with authority to enter upon and apply private property to their own use without obliging them, as they in justice and right should have done, and as was done in the act of incorporation of the York and Maryland line rail-road company, to first pay for the property so applied, or securing payment for the same, as soon as the damages could be ascertained, and that before the property should be destroyed. Such acts of our legislature I have always considered unjust, unrightous, and unconstitutional.

An act was passed at the session of 1835-6, to incorporate a company to construct a canal from Wrightsville, in York county, to Havre de Grace, in Maryland, with the privilege of entering upon and converting private property to their own use, without first making satisfaction.

Having expressed his sentiments fully and undisguisedly on this important subject, he would conclude by reiterating his opinion that some provsion ought to be inserted in the constitution that would prevent hereafter a repetition of all those evils and grievances originating from a disregard of the rights of private property. He would with pleasure vote for the amendment of the delegate from Luzerne.

Mr. REIGART, of Lancaster, said that when he offered the amendment he had the honor to submit this morning, he did it under the firm belief that something should be done to prevent corporate bodies appropriating private property to their own use, before giving some security to do so. After an argument on it, he was persuaded—although the seventh article was under consideration, and this seemed to be the appropriate place—that the ninth article would be the proper place for the amendment, and it might be done in two or three words. Therefore he had withdrawn the amendment in order to offer it in the ninth article.

He was aware that there was a feeling prevalent among gentlemen against touching the ninth article. He would call the attention of delegates to the state of facts as connected with the adoption of the amendment as proposed. We must strike out a section in the ninth article, if we insert this amendment in the seventh, otherwise we should leave a contradiction in the ninth. We should, therefore, have to go into the consideration of the ninth article. There was another reason, too, why the amendment should be put in that article, which is commonly called the Bill of Rights, because it embraced one of the reserved rights of the people, viz:—that in no case shall private property be taken for public use, without an equivalent being given therefor. He moved a postponement of the question, and asked for the yeas and nays.

The CHAIR declared the motion not to be in order.

Mr. DICKEY said that in referring to the ninth article of the constitution, he found the clause to read

"Nor shall any man's property be taken, or applied to public use, without the consent of his representatives, and without just compensation being made."

It would be observed that the amendment offered by the gentleman from Luzerne, made a restriction on the legislature not to invest a corporate body with the privilege of appropriating private property to its use

and which was also for their use, without first obtaining compensation, or adequate security. Now, there was nothing in this amendment at all conflicting with the tenth section of the ninth article. The article, therefore, ought not to be touched. We should now have a different rule for assessing damages than we have had in incorporate companies. Under the decisions of a tribunal, no injury had been done. And, where the parties had not obtained any amount of damages, they went to the legislature, and if their claim was a just and equitable one, they have obtained redress.

Mr. BIDDLE, of Philadelphia, said that he was in favor of the principle of the amendment, which he was of opinion ought to be inserted in the ninth article, therefore he would vote against its introduction into the seventh.

Mr. DENNY, of Allegheny, hoped the gentleman from Luzerne would withdraw his amendment, and offer it again when the ninth article should come up for consideration. He was in favor of the amendment, but wished it postponed till that time, which probably would be to-morrow. He was not sure that the legislature had the power to authorize a corporation to take any man's property. It was said, that the objects of a corporation were of a public character.

He did not think that the construction of a rail-road or a bridge was for the public benefit alone. They looked to private benefit also. The public are benefitted incidentally by the construction of a road or a bridge; but the company expect to be remunerated for their trouble. He wished to see the report of the committee on the ninth article, which, no doubt, would be such as he could expect, from the manner in which that committee was composed, before he gave his vote on the amendment.

I know, said Mr. Denny, that cases, have occurred, which have come within my own knowledge, and in which this power has been used oppressively and to a greater extent, probably, than in the despotic countries of Europe. And of this the citizens of Pennsylvania have universally complained. Injustice has heretofore been done by the servants of the commonwealth, who believed that they had the right to take possession of the property of individuals, and who have baffled their claims for compensation—by putting them off from year to year. In later times, I am aware that the legislature has adopted a more liberal plan for assessing and paying the damages accruing in such cases, than was at first adopted.

I shall, therefore, if an amendment is to be urged in this article, vote in favor of it; though I should prefer that it should be deferred until we reach the ninth article, at which time we shall have the report of the committee submitted to us, and which, I have no doubt, will be full of light. We shall most probably get though the seventh and eighth articles in a short space of time, and may thus get a sight of the ninth article before we adjourn this evening.

Mr. WOODWARD said that he was in favor of the amendment, and in favor of its insertion in this place. The seventh article on which we are now engaged, continued Mr. W., relates to the subject of corporations; and the amendment of my colleague (Mr. Sturdevant) relates to the power of the legislature in erecting corporations. I think, therefore, that this

is precisely the proper place for the amendment, and I rise to say a few words in support of it.

What is it? It is "that the legislature shall not invest any corporate body with the privilege of appropriating private property to its use, without requiring such corporation to compensate the owners of said property or give adequate security therefor, before such property shall be appropriated."

There cannot be a doubt that the adoption of such a provision will tend to remedy a great evil now existing in this commonwealth, of which many and grievous complaints have been made, and that it will be a salutary restraint upon the power of the legislature in granting these acts of incorporation. And, in answer to the objection of the gentleman from the county of Philadelphia (Mr. Ingersoll) and others, that this amendment properly belongs to that part of the Bill of Rights which requires compensation to be made for property taken for public use, and that it will be inconsistent and out of place here, I will take leave for a moment to turn the attention of those gentlemen to the words of that part of the tenth section which is supposed to be applicable here. They are as follows:

"Nor shall any man's property be taken, or applied to public use, without the consent of his representatives, and without just compensation being made."

Now, this clause provides only for a special case either as to corporations or individuals; while the amendment of my colleague embraces a general provision and, at most, is but a re-asseveration of the same principle. The two are not in any manner, or to any extent, inconsistent with each other. The clause in the Bill of Rights provides for just compensation, nor does it prohibit the legislature from providing that just compensation shall be made before the property is taken. The legislature, then, has power to require compensation to be made before the property of the individual is entered upon, and therefore the previous proposition of my colleague, requiring that corporate bodies, where power is given them to take private property, shall make or secure compensation to the owner, before the property is taken—such a provision, I say if inserted in the seventh article—would not be at all inconsistent either with the letter or the spirit of the other provision in the Bill of Rights. What more is wanting than is to be found in the Bill of Rights? What more can be added? Is it intended to say that the commonwealth shall not take the property of her citizens to carry on works of internal improvement, without such limitations and restrictions as will for ever prevent the progress of those improvements? And is this amendment which the gentleman from the county of Philadelphia (Mr. Ingersoll) desires to introduce into the Bill of Rights, is it intended, I ask, to put an end to our noble system of internal improvements? If that is its object, I, for one, am against it. Your Bill of Rights, if left as it has stood for seven and forty years, secures a just compensation for any property which the legislature, in any form, may take away? What more is wanting? As to the mode of making the compensation and the time at which it shall be made, all these things are open to the action of the legislature. But a just compensation *must be* made, or not one foot of land can constitutionally be taken from the citizen. This is the state of things as the constitution stands at the present time.

I am free to admit that there are great evils existing, not only in consequence of legislation in favor of corporations, but in consequence also of legislation in favor of internal improvement system, as to the state works. These evils are the result of an inadequate assessment of the compensation; for an opinion has taken possession of the board of appraisers that the interests of individuals should so far yield to the interests of the commonwealth as that their property should be taken for the use of the public, without any thing like an adequate compensation being yielded for it. The evil is in the administration of the system, and not in the system itself. How is the evil to be remedied? By this convention? In what manner? Can we legislate so as to make a board of assessors who will award proper remuneration? Not at all. That is a matter which belongs to the legislature and not to us. Allow a jury of the county; let the legislature allow a jury of the county to come before them, and to get from them the compensation which this board of assessors, taking only a bird's eye view of the injury sustained, may refuse to allow. Or let the legislation be modified from time to time in such manner as the legislature may think proper. The evil lies in the administration of the system, and in the imperfect manner in which these damages are assessed. And I say that it will be impossible to devise, in the constitution, a remedy for those evils. The remedy is to be applied by the legislature, and is to be applied appropriately and exclusively by the legislature.

The gentleman from Allegheny (Mr. Denny) has made allusion to a report of the committee on the ninth article, which he hopes may have some bearing and throw some light upon this question. The gentleman does not, I think, precisely understand the character of the complaint which was referred to that committee; if he did so, I apprehend he would see the difference between the two cases.

In a few counties in Pennsylvania that is to say, in the counties of Lycoming, Luzerne, Schuylkill and Northumberland, the legislature, under an act passed on the fifth of May, 1832, called the "lateral rail road law" authorized the owners of land, mills, quarries, coal mines, lime-kilns or other real estate in the vicinity of any rail road, canal, or slack-water navigation, made by any company, and not more than three miles distant therefrom, to make lateral rail roads to the same. Well, sir, under this law, the individual claiming to construct the rail road, must make compensation to the individual over whose land the road is to pass. Before a blow is struck, six viewers are appointed by the court of common pleas of the county to examine into the necessity and usefulness of the proposed road, and to report what damages will be sustained. If no appeal is taken from this report, the court confirms or rejects it. Either party may appeal, in which event a jury go upon the ground and assess the damages to the owner.

These are the provisions of the "lateral rail road law." Here is not a case of the legislature taking private property for the purpose of constructing public works, nor of constructing works of corporations. The complaint is not that compensation is not adequately made; but the complaint is that there is private property taken from one man and given to another; that the property is not taken for public use, but absolutely for private use—that it is, in short, a sacrifice of a private right for private use. Sir, there is much in the argument. What may be the report of

the committee upon the ninth article, I do not know; but it does not fall within the provisions of this case; because the only question proposed is, whether we shall incorporate any provision in the constitution by which the legislature shall be prohibited from passing such laws at all, not whether compensation is now adequate or not.

It is said, in opposition to this amendment, that the declaration of rights is the proper place for its insertion. I here take occasion to repeat the opinion I expressed this morning, that I do not believe the convention can possibly get through with the ninth article, if we once venture upon it, in time to adjourn on the 22d day of February. I hope, therefore, that we shall not attempt to do any thing with it; I hope it will be left as it is. So far as my own knowledge extends, there is nothing in that article in regard to which the people of the commonwealth desire that any change should be made. Most assuredly, they do not wish that we should change that provision which secures to them a just compensation in cases where their property is taken by the legislature. There it is now, a firm constitutional guaranty, and I, for one, am not willing to do any thing which will shake it.

Let us then adopt this amendment; let us place this restraint upon the legislative power in creating corporations, and let us adopt it in that article of the constitution which relates to corporations. Let us insert it here, where it ought to be. Let us waive the consideration of the ninth article; let us proceed in the consideration of those other matters which await our action, and which in my opinion are ample to occupy our time until the day fixed for our final separation, and so let the constitution be submitted to the people. I know of nothing in the report of the committee which can render it at all necessary for us to enter upon the consideration of the ninth article, but, even if it were otherwise, surely there can be nothing which renders it necessary for us to postpone action on this amendment, in order to place it in the ninth article. Indeed, I apprehend that it would be out of place there, more out of place than the provision of the ninth article would be out of place united with this, if placed in the seventh article.

If then it be necessary and wise to place this restraint upon the legislature in relation to these corporations, and to require—as the amendment of my colleague does—that compensation shall be made or security given before the property is appropriated, I can see nothing in it which is in any manner inconsistent with the provision in the bill of rights which requires that just compensation shall be made for property taken or applied to public use. If there is any inconsistency between the two provisions, I confess that I am not able to discover it. I hope, therefore, that the amendment of my colleague will be adopted, and make part of the seventh article of the constitution.

Mr. Biddle said, that there was no individual in or out of this body, who would be more unwilling than himself to retard the progress of internal improvement in the state of Pennsylvania. I trust, continued Mr. B., that nothing will be done calculated to have that effect. I also believe, and I trust that all of us entertain the same opinion, that the commonwealth has no right to take the private property of her citizens except it be for public use. And it matters not whether the property be taken by

the commonwealth in its own sovereign character directly, or whether it be taken through the medium of a grant to a corporation or an individual. It is still taking private property for public use. For any thing like a personal object, I feel confident that there is no individual within the sound of my voice who would consent that the property of one man should be taken and given to another.

What then is the subject matter to which this amendment relates? It is that of taking private property for public use. Now, does it not seem consistent and proper that the whole of this subject should be embraced in one article of the constitution, and not that one part of it should be embraced in the seventh article and the other in the ninth article—or, as it is commonly termed, the bill of rights. It is certainly proper that the people, in referring to the provisions of the constitution in this particular, should be enabled to find them all under one head and in one convention.

But the gentleman from Luzerne (Mr. Woodward) says, that the amendment will be out of place in the ninth article, because it is a restriction on corporations. I will ask the gentleman whether he does not recollect that the first article is that in which, upon second reading, it was thought proper to insert a provision placing restriction upon corporations? Is this the consistency which we would give to an instrument, which is to remain, I trust, as the fundamental law of the land for many years to come? There is no gentleman in this body who feels more sensibly than I do, the necessity of retsraining corporations from interfering with the rights of individuals; and while I would give to corporations the full benefit of the privileges which may be legitimately conferred upon them, I would at the same time, adopt every proper means to prohibit corporations, or individuals, or the commonwealth itself from interfering with the just rights of our citizens.

Believing, then, that the just object which we now have in view is the protection of the rights of individuals, that the two provisions ought to be placed in one and the same article—that is to say, in the bill of rights—I am opposed to the insertion of the amendment here. The gentleman from Luzerne (Mr. Woodward) has thought proper to tell us twice that we could not reach the ninth article, considering that we have agreed to adjourn on the 22d day of February. Why can we not? We are now on the seventh; and the eight is composed of one section only, relating to the oaths of office. Why then, I ask, are we not to reach the ninth article? and what is the obstacle which stands in the way?

The geentlman has further told us, that few—or, I believe he said no changes in the ninth article have been desired by the people. If this is so, the argument works against himself, because we shall pass rapidly over it, and his fears as to the time it will consume, will turn out to be groundless If there be any important question to be considered in the ninth article—and I believe there is one which, in point of importance is second to none which we had before us, we should attend to it.

I hope that we shall not go inconsiderately over it. Rather than do so, it would be better not to enter at all upon the consideration of that article. We have abundance of time to perform all the duties which devolve upon us and to discharge them faithfully; and with the continuation of that diligence with which we have for some time past pursued our labors, I

think we may bring them to a close on the day appointed, with entire comfort and satisfaction to ourselves.

For these reasons, I shall be compelled to vote against the adoption of this amendment at the present time.

Mr. DARRAH demanded the previous question.

Mr. DUNLOP withdrew his amendment.

The question being,

"Shall the main question be now put?"

It was decided in the affirmative.

The question then being on the amendment.

Mr. CURLL asked for the yeas and nays, which were ordered, and the question being put, it was decided in the affirmative, as follows, viz:

YEAS—Messrs. Ayres, Banks, Barclay, Barndollar, Barnitz, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Cochran, Cox, Craig, Crain, Crawford, Crum, Cummin, Curll, Darlington, Darrah, Denny, Dickey, Dickerson, Donagan, Donnell, Earle, Fleming, Fry, Fuller, Gearhart, Gilmore, Grenell, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hyde, Jenks, Kennedy, Kerr, Konigmacher, Krebs, Lyons, Magee, Mann, M'Cahen, M'Dowell, M'Sherry, Merrill, Merkel, Miller, Montgomery, Overfield, Payne, Pennypacker, Pollock, Purviance, Read, Riter, Ritter, Rogers, Royer, Russell, Saeger, Scheetz, Sellers, Seltzer, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Sturdevant, Taggart, Thomas, Weaver, White, Woodward, Young, —92.

NAYS—Messrs. Baldwin, Biddle, Brown, of Lancaster, Chambers, Coates, Cope, Doran, Dunlop, Farrelly, Gamble, Harris, Hopkinson, Houpt, Ingersoll, Maclay, Porter, of Northampton, Scott, Sill, Snively, Todd, Weidman, Sergeant, *President*—22.

Mr. PAYNE, moved to amend the report of the committee, by adding the following new section:

"SECT. 5. The legislature shall, from time to time, pass such laws as shall be calculated to encourage intellectual, scientific and agricultural improvement, by allowing rewards for the promotion and improvement of arts, sciences, commerce and manufactures, and to encourage the principles of humanity, industry and morality."

Mr. M'DOWELL, moved to amend by adding the words, "and animal magnetism." He would suggest to the gentleman to accept it.

Mr. PAYNE remarked, that he thought that gentleman did not seem to understand the motives by which he was actuated in offering it. Gentlemen smiled when they heard the word "morality." But he could assure them that he was in earnest in offering the amendment, and he thought that if they looked it over seriously, they would discover nothing in it calculated to excite a smile.

His amendment was almost a *verbatim* copy of a clause in the constitution of Indiana. He was of opinion that it ought to be obligatory on the legislature of Pennsylvania, to encourage agricultural, intellectual, and scientific societies, and to give rewards to those who excel in any of those branches.

However delegates might be disposed to make light of this matter, he could assure them that he was serious in offering the proposition, and in

what he had said. He thought the amendment embraced subjects that ought to come before the convention, and which were well deserving of its serious consideration. He hoped gentlemen would not laugh it off, until at least, they heard it read again and understood its bearing. He was not disposed to trifle on matters of such serious import. He hoped he would never so far forget what was due to himself and to the occasion, as to offer any amendment to excite a smile or a laugh. He would not accept the amendment.

Mr. DARLINGTON, of Chester, observed that as the object of the gentleman from Bucks, (Mr. M'Dowell) was obtained, in creating a smile, he hoped the gentleman would withdraw his amendment.

Mr. M'DOWELL, then withdrew the amendment.

Mr. PAYNE, and Mr. HENDERSON, of Dauphin, asked for the yeas and nays, which were ordered.

And the question then being taken on agreeing to the section, it was decided in the negative—yeas 39, nays 80.

YEAS—Messrs. Banks, Biddle, Bonham, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Cline, Cochran, Cox, Craig, Denny, Doran, Dunlop, Farrelly, Fuller, Helffenstein, Henderson, of Dauphin, Hyde, Ingersoll, Jenks, Long, Lyons, Maclay, Magee, Mann, M'Cahen, M'Dowell, Meredith, Merrill, Payne, Porter, of Northampton, Read, Rogers, Royer, Scott, Serrill, Sill, Sterigere, Taggart—39.

NAYS—Messrs. Ayres, Baldwin, Barclay, Barndollar, Barnitz, Bedford, Bell, Bigelow, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Chambers, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Coates, Cope, Crain, Crawford, Crum, Cummin, Curll, Darlington, Darrah, Dickey, Dickerson, Donagan, Donnell, Earle, Fleming, Forward, Fry, Gamble, Gearhart, Gilmore, Grenell, Harris, Hayhurst, Hays, Henderson, of Allegheny, Hiester, High, Hopkinson, Houpt, Kennedy, Kerr, Konigmacher, Krebs, M'Sherry, Merkel, Miller, Montgomery, Overfield, Pennypacker, Pollock, Purviance, Reigart, Riter, Ritter, Russell, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Thomas, Todd, Weaver, Weidman, White, Woodward, Young, Sergeant, *President* —80.

A motion was then made by Mr. DICKEY,

That the amendments to the seventh article be prepared and engrossed for a third reading.

Mr. DENNY rose to inquire of the Chair, whether one section of the article, and that too, a very important one, had not been postponed?

The CHAIR said, he would state, in reply to the interrogatory of the gentleman from Allegheny, (Mr. Denny) that the first section of the seventh article—being that which had reference to the subject of education had been postponed under a vote of the committee.

Mr. DICKEY said, that the section had certainly been postponed as stated by the Chair; but there was no amendment pending at the time.

The CHAIR said, that there was no amendment pending to the first section of the article, and that if the motion of the gentleman from Beaver, (Mr. Dickey) that the article be prepared and engrossed for a third reading, should be agreed to, the provision of the old constitution would stand, except in so far as it might have been altered by amendments already agreed to.

Mr. EARLE said, he hoped that the gentleman from Beaver, (Mr. Dickey) would withdraw his motion, or that, if he declined to do so, it would be negatived by the convention. Much time had already been spent in the consideration of the section referred to, and there were several gentlemen who yet retained an anxiety to offer amendments.

It was fair and proper that an opportunity should be afforded to these gentlemen, at least to have a vote taken upon their different propositions, and no great length of time would be consumed by it.

Mr. DICKEY, declined to withdraw his motion.

And on the question,

Will the convention agree to the said motion?

The yeas and nays were required by Mr. DORAN and Mr. REIGART, and are as follow, viz:

YEAS—Messrs. Barclay, Barndollar, Barnitz, Bedford, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Butler, Carey, Chambers, Clapp, Clarke, of Beaver, Cleavinger, Cochran, Cox, Craig, Crawford, Crum. Darlington, Darrah, Dickey, Dickerson, Donagan, Fleming, Forward, Fry, Fuller, Gearhart, Gilmore, Harris, Hayhurst, Hays, Henderson, of Allegheny, Hiester, High, Hopkinson, Hyde, Jenks, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Mann, M'Dowell, Merrill, Merkel, Miller, Overfield, Pennypacker, Reigart, Read, Ritter, Royer, Russell, Saeger, Scheetz, Sellers, Seltzer, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Thomas, Todd, White, Woodward, Young—71.

NAYS—Messrs. Ayres, Baldwin, Banks, Biddle, Brown, of Philadelphia, Chandler, of Philadelphia, Clark, of Dauphin, Clarke, of Indiena, Cline, Coates, Cope, Crain, Cummin, Curll, Denny, Donnell, Doran, Dunlop, Earle, Farrelly, Gamble, Grenell, Helffenstein, Henderson, of Dauphin, Houpt, Ingersoll, Maclay, Magee, M'Cahen, M'Sherry, Meredith, Montgomery, Payne, Pollock, Porter, of Northampton, Purviance, Riter, Rogers, Scott, Serrill, Shellito, Sill, Sterigere, Taggart, Weaver, Weidman, Sergeant, *President* —47.

So the motion was determined in the affirmative;—and it was therefore

"*Ordered*, That the amendments to the said article be referred to the committee, to report, prepare and engross the amendments for a third reading.

On motion of Mr. DARRAH, of Berks,

The report of the committee to whom was referred the eighth article of the constitution, as reported by the committee of the whole, was read the second time in the words following, viz:

ARTICLE VIII.

"Members of the general assembly and all officers, executive and judicial, shall be bound by oath or affirmation to support the constitution of this commonwealth, and to perform the duties of their respective offices with fidelity."

Which article was considered, and no amendment was offered thereto.

A motion was then made by Mr. PORTER, of Northampton,

That the convention proceed to the second reading of the report of the committee to whom was referred the ninth article of the constitution.

Mr. WOODWARD, moved to amend that motion, by inserting that the convention proceed to the consideration of the report of the committee on the subject of future amendments to the constitution.

The CHAIR decided that the latter motion was not in order, until the previous motion of the gentleman from Northampton, (Mr. Porter) had been disposed of.

And the question then recurred, on the motion of Mr. PORTER of Northampton,

That the convention proceed to the second reading of the report of the committee to whom was referred the ninth article of the constitution.

Mr. WOODWARD requested the gentleman from Northampton, to withdraw his motion.

Mr. PORTER: For what purpose should I withdraw it? Is it the object of the gentleman from Luzerne, (Mr. Woodward) to give the go-by to the ninth article? If it is, let him say so at once.

Mr. WOODWARD: That *is* my object.

Mr. PORTER: Does the gentleman intend to say, that his object is to pass over the ninth article entirely and finally?

Mr. WOODWARD: I do say so.

Mr. PORTER: Then I must decline to withdraw my amendment.

Mr. DORAN moved that the convention now adjourn, which was decided in the negative.

The question then recurring,

Will the convention agree to proceed to the second reading of the report of the committee to whom was referred the ninth article of the constitution?

Mr. SMYTH, of Centre, called for the yeas and nays, and they were ordered.

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

YEAS—Messrs. Ayres, Baldwin, Barnitz, Bell, Biddle, Brown, of Lancaster, Carey, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Coates, Cochran, Cope, Craig, Darlington, Denny, Dickey, Dickerson, Donnell, Doran, Dunlop, Earle, Farrelly, Fleming, Forward, Gamble, Grenell, Hays, Helfenstein, Henderson, of Dauphin, Hiester, Hopkinson, Houpt, Ingersoll, Jenks, Kerr, Konigmacher, Long, Maclay, M'Cahen, M'Dowell, Meredith, Merrill, Montgomery, Pennypacker, Pollock, Porter, of Northampton, Reigart, Read, Russell, Saeger, Scott, Serrill, Sill, Sterigere, Thomas, Weidman, Young, Sergeant, *President*—63.

NAYS—Messrs. Banks, Barclay, Barndollar, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Cleavinger, Cox, Crain, Crawford, Crum, Cummin, Curll, Darrah, Donagan, Fry, Fuller, Gearhart, Gilmore, Harris, Hayhurst, Henderson, of Allegheny, High, Hyde, Kennedy, Krebs, Lyons, Magee, Mann, M'Sherry, Merkel, Miller, Overfield, Purviance, Ritter, Royer, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Todd, Weaver, White, Woodward—53.

Mr. FRY, moved that the convention now adjourn, and the question being decided in the affirmative,

The convention adjourned.

FRIDAY, FEBRUARY 2, 1838.

Mr. EARLE, of Philadelphia, presented a memorial from citizens of Philadelphia, praying that an amendment may be inserted in the constitution of this commonwealth making provision for the more effectual security of freedom of speech, of the press, and of peaceably assembling for public discussion, as well as for preventing violence by mobs and riots, and for compensating those of their heirs who may be injured in person or estate thereby;

Which were laid on the table.

Mr. EARLE, presented two memorials from citizens of Philadelphia county, praying that a trial by jury may be granted in all cases where liberty is at stake;

Which was also laid on the table.

The PRESIDENT obtained leave of absence for a sew days from today; and,

Agreeably to a rule of the convention, he nominated Mr. PORTER, of Northampton, to preside in his stead, *pro tempore.*

A motion was made by Mr. HIESTER, of Lancaster,

That the communication from the committee of the house of representatives of this, commonwealth relative to the Debates of the convention and read yesterday, be referred to the committee appointed to ascertain and fix the manner of distribution of the Debates and Journals of the convention.

Mr. FULLER, of Fayette, asked whether this committee had not been discharged?

Mr. COX, of Somerset, said this committee had been raised for a special purpose, and having made report, in pursuance of its instructions, had been discharged.

The PRESIDENT said the convention could refer the subject to any number of gentlemen.

Mr. CLINE, of Bedford, said there was a difficulty as to what legislature the work could be given. The debates would not be printed while the present legislature was in session. They would not be embraced in less than ten or twelve volumes of which there had been only two delivered as yet. The printing might occupy two or three years. It seemed to him therefore, to be useless to refer the matter to any committee.

Mr. KONIGMACHER, of Lancaster, moved to amend the motion by striking therefrom the words, "the committee appointed to ascertain and fix the manner of distribution of the Debates and Journals of the convention," and inserting in lieu thereof the words, "a select committee."

Mr. M'SHERRY, of Adams, was not in favor of this amendment. He was one of the committee first named, and was not willing to lose the services of the chairman. There would be a great number of copies of the Debates, which we should not know what to do with. He had no objections to be a member of the committee.

Mr. STERIGERE, of Montgomery, suggested that the gentleman from Lancaster, (Mr. Konigmacher) would of course be chairman of the special committee. So that the gentleman from Adams, would not lose the services of that gentleman. He would move to amend the amendment by striking therefrom all after the word "that," and inserting in lieu thereof the words as follow, viz: "one hundred and thirty-three copies of the Debates of the convention directed to be deposited by the delegates for the public use in public libraries, lyceums and other places, be distributed among the members of the present legislature."

Mr. COX, of Somerset, thought the members of the legislature no more entitled to copies of the Debates, than any other citizen of the commonwealth was.

Mr. HIESTER, of Lancaster, said, the object was to show respect to the legislature.

Mr. SMYTH, of Centre, entertained doubts of the prudence of any reference. It was the province of the legislature, if they want copies of the Debates, to print them. The present legislature had no better right to copies than that which called the convention. He moved that the resolution and amendment be postponed indefinitely.

Mr. FULLER, of Fayette, was opposed to indefinite postponement. He would not be disposed to treat the communication with contempt. The legislature may have been sincere in the desire to obtain copies, and therefore he could not treat the communication with contempt. They had no more right to copies than other legislatures. If the gentleman from Centre would so modify his motion as to make it merely to postpone the further consideration of the matter for the present he would vote for it.

Mr. DARLINGTON, of Chester, demanded the previous question, but the call was not sustained.

Mr. SMYTH, said he had no desire to offer any proposition which was deemed indecorous, nor any wish to occupy the time of the convention. He would ask the yeas and nays on his motion.

Mr. BELL said, that as he was not present in convention yesterday morning, when this question was under consideration, he would ask that the communication from the legislature might be read.

And the communication having been read accordingly;

Mr. BANKS, of Mifflin, said he was in favor of the motion for indefinite postponement. Why should the members of the legislature ask this convention to set apart for them any number of copies of the Debates? It was in the power of that body to appropriate funds for the printing of these Debates for themselves, as they did for Purdon's Digest and other works which were printed under their orders. Why did they not appoint a committee to inquire into the expediency or propriety of printing a certain number for the use of the senate and house, and of the libraries? This was the proper course for them to pursue, if they were anxious to be in possession of the work.

Mr. STERIGERE said, that the legislature could not procure one hundred and thirty-three copies of the Debates, because, if he was correctly informed, no such additional copies would be printed. There was a way, however, in which their request might easily be complied with. There was appropriated to each member of the convention, seven copies of the Debates. If each delegate instead of receiving these seven copies were to receive only six, one copy might then be appropriated to each member of the legislature. And six copies were certainly as many as any gentleman would want to distribute among the libraries, or otherwise, in the various counties. It was not a matter like printing Purdon's Digest, as the gentleman from Mifflin, (Mr. Banks) had intimated, because he (Mr. S.) understood that there were no copies of the Debates to spare.

Mr. CUNNINGHAM, of Mercer, said he thought it was due to the legislature that their communication should receive a respectful consideration. I should be pleased, continued Mr. C., if the gentleman from Montgomery, (Mr. Sterigere) would withdraw his motion to amend the amendment, and the gentleman from Centre, (Mr. Smyth) would withdraw his motion for indefinite postponement, because I might have an opportunity to submit an amendment of my own. I am desirous to give a chance to the legislature to do justice to this convention and at the same time to establish a reciprocal good feeling between the two bodies; and I do not think they can better accomplish this desirable end, than by increasing the amount of our pay. I hope gentlemen will afford me an opportunity to propose an amendment to that effect.

Mr. SMYTH, of Centre, said, he could not withdraw his motion for indefinite postponement. He thought that the matter had better be disposed of now, and in the manner indicated by his motion. One of the resolutions which had been offered in the legislature in relation to the proceedings of this convention, complained of the time and money consumed in consequence of its protracted deliberations. Why then, said Mr. S. should we be instrumental in doing any thing which will increase that expense? If any further expense is to be incurred by the printing of extra copies of the Debates, let it rest with the legislature, and not with this body.

Mr. FULLER, of Fayette, said that he made the suggestion he did as to postponement for the present, not for the purpose of having a debate hereafter, or of referring the communication of the legislature to a committee, but only that time might be allowed the convention to see if that body were sincere in their request. To postpone the consideration of the subject indefinitely would be to treat the legislature disrespectfully; it would, in fact, be kicking their application out doors.

Mr. SMYTH, of Centre said that he did not think that the motion for indefinite postponement deserved so harsh a term as "kicking" the communication of the legislature out of doors. He was aware, however, that he had to take the responsibility of his own acts.

Mr. READ, hoped the motion to postpone would not be agreed to. It was true, as the gentleman from Mifflin, (Mr. Banks) had stated, that the legislature had money to provide these books for themselves, but it was to be borne in mind that the convention had already expended much money to publish the work. We have appropriated to ourselves (said Mr. R.) more copies than we shall know what to do with; and, in all

probability, it will be a trouble to us to dispose of them. Why should the legislature be put to the expense of providing these books for themselves, when we know not what to do with the many copies which have been assigned to us. I am in favor of granting the request at once.

Mr. BANKS, of Miffiin, desired to put one question to the convention. It was this:—Did the present legislature deserve better at the hands of the convention, or of the state, than the last legislature which authorized the convention; or did they deserve better than the legislature which were to follow? It is very certain, said Mr. B, that these Debates can not be all finished until the present legislature has risen. That being the case, what legislature is entitled to receive copies of the Debates, or to what legislature should the preference be given? So far as the copies assigned to myself are concerned, I am willing to appropriate them, to such extent as they will go, to the members of the past or preseut legislature.

Mr. CRAIG, of Washington, was opposed to the motion to postpone indefinitely. It seemed to be taken for granted that if a committee was appointed on the communication, the members of the present legislature were to get each one copy of the Debates. He did not now consider this as a necessary inference;—it did not follow that the copies should be given only to the present legislature.

Mr. C. here gave way to Mr. Smyth, of Centre, who said he had risen for the purpose of withdrawing his motion to postpone the further consideration of this subject indefinitely.

So the motion for indefinite postponement was withdrawn.

And the question then recurring on the amendment to the amendment, as proposed by Mr. STERIGERE:

Mr. CRAIG resumed.

I am opposed to the proposition of the gentleman from Montgomery, (Mr. Sterigere) confining the distribution of the copies to members of the present legislature. I should prefer that the subject should go to a committee, which should take into consideration whether it would not be better, as well as more courteous to say, that one hundred and thirty-three copies of the Debates should be placed in the representatives' hall, to be at the disposal of the legislature. Being thus placed, we do not say who shall take the books, but we leave to the present, or the succeeding legislature as the case may be, to make such disposition of them as they may think proper.

After a few words from Mr. KONIGMACHER, in opposition to the amendment to the amendment, and in favor of his own proposition,

The question on the said amendment to the amendment was taken, and decided in the negative without a division.

So the amendment to the amendment was rejected.

And the question then recurring on the amendment of Mr. KONIGMACHER;

It was taken and decided in the affirmative; ayes 54—noes 35.

So the amendment was adopted.

And the motion as amended was agreed to.

The said committee was ordered to consist of five members. And, thereupon, Messrs. HIESTER, BARCLAY, PAYNE, SMYTH, of Centre, and Cox were appointed a committee for the purposes expressed in the said motion.

A motion was made by Mr. BROWN, of Philadelphia, and read as follows, viz:

"*Resolved*, That one copy of the Debates of this convention in English and German, be presented to James Ross, and one copy to Albert Gallatin, as a testimony of the respect entertained for them as the only surviving members of the convention of 1789—90, that formed the present constitution of Pennsylvania.."

And on motion of Mr. BROWN,

The said resolution was read the second time, and unanimously agreed to.

Mr. COCHRAN, from the committee to prepare, engross and report the amendments made to the constitution on second reading, for a third reading, made report as follows, viz:

That they have had the subject under consideration, and find the amendments made to the first article, as passed on second reading, correctly printed, and submit the first, second and third sections, as agreed to in convention, on second reading.

The words "each county shall have at least one representative, but," in the eighth and ninth lines of section four, being intended to be confined in their operation to the situation of the commonwealth at the time the present constitution was formed, are no longer applicable, and ought therefore to be stricken out, and the words which follow in the ninth, tenth, eleventh, and twelfth lines to the end of the section, appear to the committee to be incongruous with, and contradictory of, the provisions of the fifth section, so far as the latter prohibits the union of two or more counties to form a representative district, when one of them shall contain more than "one half of the average representative ratio of taxable population." If the said fifth section is retained, the word "average" should be stricken out as superfluous.

That the remainder of the said fifth section, with the sixth, seventh and eighth sections, be submitted as agreed upon in convention on second reading.

That the word "serve" be substituted for the words "hold said office," in the sixth and seventh lines of the ninth section.

That the words "after the adoption of" be substituted for the word 'under," in the second line of the tenth section, and the words "to the constitution" be inserted after the word "amendments," in the tenth line of the said tenth section, and in the said tenth line of the said tenth section the words "in operation" be stricken out, and the word "adopted" be inserted in lieu thereof, and the word "serve" be substituted for the words "hold their offices," in the eleventh line of the said tenth section.

That sections eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, thenty-three, twenty-four, and twenty-five, be submitted as passed in convention on second reading.

That the word "it" be substituted for the word "they," in the ninth line of the twenty-sixth section, and the words "create, renew, or extend the charter of more than one corporation" be inserted at the end of the said twenty-sixth section, as more definite than the words "contain more than one corporate body," which are recommended to be stricken out; and that the word "or" be substituted for the word "and," in the ninth line of the said twenty-sixth section.

Which is respectfully submitted.

Mr. STERIGERE, moved that the said report be printed for the use of the members, but withdrew the motion, at the request of

Mr. DICKEY, who said he rose for the purpose of inquiring whether this committee had, or ought to have, any thing to do with sections of the constitution which could not be read a third time.

I intend to move, continued Mr. D., that the report be sent back to the committee for the purpose of correction, so far as it relates to sections of the constitution which have not been amended, and which can not come up on third reading. None but those sections of the constitution which have been amended either in committee of the whole, or on second reading, can be read a third time.

But there is another reason which is in itself sufficient to cause this report to be sent back. It is this. It seems to me that the committee have transcended the power given to them under the resolution of the gentleman from Luzerne, (Mr. Woodward) and that they have undertaken to record an alteration in the fourth section, which can only be done by a vote of this convention, as in committee of the whole, and that, too, by a vote of two thirds of the members.

Under these considerations, I will submit the following motion:

That the said report be recommitted to the said committee, in order that it may be made in conformity to the instructions given to that committee.

Mr. BELL, of Chester, said the gentleman from Beaver, (Mr. Dickey) charges the committee appointed to prepare and engross the amendments, for a third reading, with having transcended the powers conferred upon them by the convention. I did certainly anticipate that some difficulty would exist, and that some obstacle would be thrown in the way of the action of this committee. I did not apprehend, however, that so grave a charge as this would have been made against us. Let us call the attention of the convention to the resolution of the gentleman from Luzerne, (Mr. Woodward) under which we derive our powers.

Mr. B. then read the resolution referred to, and proceeded.

Now, in view of this resolution, I will ask any gentleman to point out what we have done that we were not authorized to do? In what particular have we transcended our power, or usurped that which was not delegated to us? All that the committee have done is, in the first place, to recommend verbal alterations, with a view more clearly to express the ascertained wish and intention of the convention; and in the next place, without recommending any thing, the committee have reported the discovery of certain incongruities and inconsistences between one of the sections of first article of the constitution of 1790 and a section of the new constitution as amended by this convention. And does not all this

fall within the power delegated to the committee? They have merely suggested that such contradictions exist, leaving it to the convention to act in such manner as to them may seem proper. I repeat that, as to matters of phraseology, the committee have recommended certain changes, but that, as to the incongruities and contradictions which they have discussed, they have recommended nothing, but have contented themselves with laying before the convention a simple statement of the facts. I am unable to see in what particular the committee had gone beyond the bounds of their legitimate power; and I can not, therefore, see that there is any reason which ought to induce the convention to recommit this report.

The CHAIR here announced that the hour appropriated to the consideration of petitions, memorials and resolutions had expired; and announced the order of the day.

A motiom was made by Mr. BANKS,

That the rule limiting the consideration of petitions, motions and resolutions to one hour each day, be in this case dispensed with, for the purpose of a further consideration of the said motion to recommit the report of the committee to prepare, engross and report amendments made to the constitution on second reading, for a third reading.

Which motion was agreed to.

The question then recurring on the said motion, viz:

"That the said report be re-committed to the said committee, in order that it may be made in conformity to the instructions given to that committee."

A motion was made by Mr. BANKS,

To amend the said motion by striking therefrom all after the word "be," and inserting in lieu thereof the following, viz:

"Laid on the table, and printed for the use of the members."

And, thereupon, the immediate question was called for by Mr. WOODWARD and twenty nine other delegates rising in their places.

And on the question,

Shall the question now be put.

The yeas and nays were required by Mr. DICKEY and Mr. WOODWARD, and are as follows, viz:

YEAS—Messrs. Ayres, Baldwin, Banks, Barclay, Barndollar, Barnitz, Bedford, Bell, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavenger, Cline, Coates, Cochran, Cope, Cox, Craig, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Darlington, Darrah, Dickerson, Donagan, Doran, Dunlop, Earle, Fleming, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Houpt, Hyde, Keim, Kennedy, Kerr, Krebs, Long, Lyons, Maclay, Magee, Mann, Martin, M'Cahen, M'Dowell, Merrill, Merkel, Miller, Montgomery, Nevin, Overfield, Payne, Porter, of Lancaster, Reigart, Read, Riter, Ritter, Rogers, Royer, Russel, Saeger, Scheetz, Sellers, Seltzer, Serrill, Shellito, Sill, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Thomas, Todd, Weaver, White, Woodward, Young, Porter, of Northamton, *President pro tempore*—103.

NAYS—Messrs. Biddle, Chandler, of Philadelphia, Denny, Dickey, Farrelly, Hopkinson, Ingersoll, Konigmacher, M'Sherry, Pennypacker, Scott, Sterigere—12.

So the convention determined that the question should now be taken.

The amendment to the amendment was then agreed to.

The question recurring on the adoption of the resolution as amended.

Mr. DICKEY, rose and said, that he had yielded the floor to the gentleman from Mifflin, (Mr. Banks) not that he supposed he was to be deprived of an opportunity of stating his exceptions to the report of the committee. He did not except to their report on account of any want of confidence in their ability or fidelity to discharge their duties. But, he thought it was not proper that the report should be printed, because the report did not conform to the instructions given the committee, and because they had transcended their powers. He was far from saying that they wilfully and voluntarily did so. It was attributable to an error of judgment, that they had mistaken the extent of their instructions. Their instructions were to point out any incongruities or inconsistency in the different sections, of the several articles. The power granted them did not extend to striking out, or recommending to strike out a part of the existing constitution, which could not be touched on second reading. The forty-second rule of the convention says:

"If the committees report that no amendment is necessary in an article, the report shall be considered first in committee of the whole, and again on second reading. Amendments may be offered either in committee of the whole or on second reading, whether the committees shall have reported amendments or not, and if no amendment shall be agreed to in committee of the whole, or on second reading, the existing constitutional provision shall stand."

Now, as the rule could not be rescinded without the leave of two-thirds of the convention, and as the committee had acted contrary to the rule, and in opposition to their instructions, he would say that the report ought not to be printed, until it should have been sent back to the committee, and returned by them in a corrected form.

He would ask if he was correct in the view that he had taken? The committee in their report, recommended, in regard to the fourth section, that the words "each county shall have at least one representative, but, "shall be striken out, because no longer applicable, they being intended to be confined in their operation to the situation of the commonwealth at the time the present constitution was formed," and because, too, they are incongruous with and contradictory of, the fifth section."

Here, then, was a new section introduced by the gentleman from the county of Philadelphia, (Mr. Earle) never read in committee except in manuscript and passed in haste—in indecent haste, and this committee of revision undertook to recommend that a part of the fourth section of the present constitution should be stricken out, in order that it may be made in perfect conformity to the fifth section.

Why, he would ask, was this recommended? Did not the gentlemen of the committee, in recommending these words to be stricken out, strike out the principle of the amendment itself? And, yet the committee, in the face of their instructions, recommended that a portion of the amendment should be stricken out, to make way for the hasty, crude, and undigested amendment of the delegate from the county of Philadelphia.

The committee should have confined themselves to a statement of facts,

and spoken only of incongruities as related to the existing section of the constitution. The ratio of representation was fixed by the constitution of 1790, by which the county of Philadelphia was entitled to a certain number of representatives, in proportion to the number of her taxable inhabitants. And, no county was entitled to a separate representation, unless it had a number of taxables equal to the ratio established by law. The new section five, reads thus:

"Not more than three counties shall be united to form a representative district: No two counties shall be so united, unless one of them shall contain less than one half of the average representative ratio of taxable population: and no three counties shall be so united, unless two of them combined shall contain less than one half of the representative ratio aforesaid."

The object of the mover might have been, and no doubt was, that those counties not having a full ratio, by a fraction, should have a full representation. A part of the old constitution was regarded no doubt by the committee as the more incongruous, as it stood in the way of the operation of the new section, which favored the counties of Juniata, Mifflin and others, having a fraction, or thereabouts, less than a ratio under the present constitution. Herein, then we found the whole secret of the incongruity, and gentlemen could not get at their favorite object in any other way. This was the cause of the report of the committee.

He reiterated his opinion that the committee had transcended their instructions, not only in recommending the convention to strike out the principle of the fourth section, but in not confining themselves immediately to their instructions.

Now, to those articles to which no amendment had been made, the committee could not report any alteration. It had been the intention of the gentleman from Luzerne, when he moved the instructions to a committee of nine; and which were to govern a committee of three—that the committee should recommend no alterations of principle, but merely verbal alterations. And, so far, however, as the report was confined to verbal amendments he had nothing to say against it.

Mr. Reigart, of Lancaster, said that he did not think that the committee had transcended their powers. Most certainly the remarks of the delegate from Beaver, (Mr. Dickey) had not had the effect of convincing him that such was the fact. What he desired was, that the report of the committee might be laid on the desks of the delegates, so that each might be able to judge for himself whether or not they had done so. He, however, apprehended that there was not the slightest evidence to show that they had transcended their powers. He wished to see exactly what they had done. No one could give an opinion of the report until he had read and given it some examination.

Whether it recommended any radical alterations, or struck out a principle, was for the convention to determine. The report ought to be printed, and laid on the table of members. He expressed his hope that the debate would be speedily put an end to. He would, however, if sustained call the previous question. Mr. R. then moved the previous question: which was sustained.

The main question was ordered to be put.

And the resolution, as amended was agreed to, and the report ordered to be printed, and laid on the table.

NINTH ARTICLE.

The following reports from the majority and minority of the committee on the ninth article of the constitution, were read —

Mr. PORTER, of Northampton, from the committee to whom was referred the ninth article of the constitution, made the following report:

The existing bill of rights as it stands, except that the twenty-sixth or last section thereof, shall be numbered twenty-seven, and that the following be introduced as section twenty-six.

"Those who conscientiously scruple to bear arms shall not be compelled to do so, nor pay an equivalent therefor, except in times of exigency or war."

Mr. PORTER, of Northampton, from the minority of the committee to whom was referred the ninth article of the constitution, made the following report, viz:

The undersigned, a minority of the committee on the ninth article of the constitution, submit the following as provisions, which in their judgment should be inserted in the bill of rights, in addition to those reported by the committee, to be called sections twenty-seven and twenty-eight, and the section reported twenty-seven, to be numbered thirty.

SECTION 27. No perpetual charter of incorporation except for religious, charitable or literary purposes, shall be granted, nor shall any charter for other purposes exceed the duration of ———— years.

SECTION 28. No charter of incorporation for banking purposes nor for dealing in money, stocks, securities, or paper credits shall exceed the duration of ———— years nor shall the same be granted where the capital authorized exceeds ———— dollars without the concurrence of two successive legislatures.

SECTION 29. The legislature shall have no power to combine or unite in any one bill or act, any two or more distinct subjects or objects of legislation, or any two or more distinct appropriations, or appropriations to distinct or different objects except appropriations to works exclusively belonging to and carried on by the commonwealth. And the object or subject matter of each bill or act shall be distinctly stated in the title thereof.

J. M. PORTER,
R. M. CRAIN,
HENRY SCHEETZ.

The convention then took up the ninth article for consideration, and the following was read:

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE,

SECTION 1. 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.

Mr. DARLINGTON, of Chester, said he wished to call the attention of the gentleman from the county of Philadelphia, (Mr. Martin) to what he was about to say. It would be recollected that the convention had determined—

The CHAIR, (Mr. Porter) remarked that it was not in order to make any observations at this time, as there was no motion before the convention.

Mr. DARLINGTON said, that he had risen for the purpose of making an inquiry—

The CHAIR again called the gentleman from Chester to order, and requested him to take his seat.

Mr. EARLE, of Philadelphia county, said he would appeal from the decision of the Chair.

The CHAIR observed that the gentleman must reduce his appeal to writing.

After some confusion and excitement,

On motion of Mr. SCOTT, of Philadelphia, the delegate from Chester was allowed to proceed with his remarks.

Mr. DARLINGTON then said he wished to learn from the Chair whether it was in order for him (Mr. D.) or the delegate from the county (Mr. Martin) or any other gentleman to move the insertion of the word "white" in the first line of the section after the word "all." He moved to amend by inserting after "rights" the following: "of which no one may be deprived by reason of his opinions or his complexion, differing from that of the majority."

Mr. D. remarked that if the delegate from the county of Philadelphia had proposed the amendment, to which he (Mr. D.) had alluded, so as to make this section correspond with another part of the constitution, he would not have moved this amendment. He was in favor of the bill of rights (or ninth article) as it stood in the constitution of 1790, because his opinion was that "all men are born free and equal." The reason why he had opposed this amendment was, because he would not have any man deprived of his rights on account of a difference of colour, or opinions, or anything else.

Therefore it was that he was in favor of saying "that all men are born equally free and independent, and have certain inherent and indefeasible rights," of which rights they shall not be deprived on any account whatever. And the language of the bill of rights could be altered in other parts of it to agree with this amendment. Let the article be altered, if the gentleman from the county of Philadelphia thinks proper to offer an amendment, and say that "all power is inherent in white people," for such is now the principle already decided by this convention.

This convention has solemnly decided that all power is in the hands of those who are of the Anglo-Saxon race. I look to symmetry. I look to the spirit of the constitution being carried through from beginning to end; and if it is the sense of a majority of the people of this commonwealth that civil and political rights shall be enjoyed only by a portion of her citizens, let the constitution at least be consistent; and let that principle be carried out through every clause of the instrument. Let us

say explicitly, and in terms which admit of no doubtful construction, what we intend to do; and instead of securing by the constitution the right of trial by jury to *all* the people, let it be secured to all white people, and let others be deprived of it. Let us declare the truth plainly in this, which is the fundamental law of the land. Nay, let us even go further, and alter the language of the Declaration of Independence, so as to make that comform to the peculiar opinions and notions of the day. Let every thing be in harmony. If it be true, as is here alleged, that the power of this government is the power of a portion of the people only, let that doctrine be made known from the house tops; let it be proclaimed on the summits of your mountains, and in the hearts of your vallies. Let the people know how the truth is. If, on the contrary, the language of your bill of rights contains the true sentiment—If it is true, as is there stated, that "all men are born equally free and independent, and have certain inalienable 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;"—if, I say, all this be true, then I ask you to go further—to adopt the amendment I have proposed, and to secure these rights to every individual, no matter what may be the cast or colour of his skin.

Mr. HAYHURST, of Columbia, said, that as he did not believe that the people of Pennsylvania required any alteration in this article of the constitution, and as he did not think that the debate, however extended it might be, would lead to any change, he would ask for the immediate question.

Which motion was sustained by the requisite number of delegates rising in their places.

Some desultory conversation here ensued as to the effect of the call for the immediate question, as compared with the call for the previous question.

Whereupon, Mr. HAYHURST, consentaneously with the other delegates who had been in support of the motion, withdrew the call for the immediate question, and demanded the previous question.

Which said demand was seconded by the requistte number of delegates rising in their places.

And on the question,

Shall the main question be now put?

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

YEAS—Messrs. Ayres, Banks, Barclay, Barndollar, Barnitz, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Cochran, Cox, Craig, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Darrah, Dickerson, Donagan, Doran, Fleming, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, Henderson, of Dauphin, High, Houpt, Hyde, Ingersoll, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, M'Sherry, Miller, Nevin, Overfield, Payne, Reigart, Read, Riter, Ritter, Rogers, Russell, Saeger, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Todd, Weaver, White, Woodward, Porter, of Northampton, *President pro tem.*—84.

NAYS—Messrs. Baldwin, Biddle, Brown, of Lancaster, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clarke, of Indiana, Coates, Cope, Darlington,

Denny, Dickey, Dunlop, Earle, Farrelly, Hays, Henderson, of Allegheny, Hiester, Hopkinson, Long, Maclay, M'Dowell. Merrill, Merkel. Montgomery, Pennypacker, Porter, of Lancaster, Reigart, Royer, Serrill, Sill. Thomas, Weidman, Young—35.

So the convention determined that the main question should be now taken.

The CHAIR stated that the main question was on agreeing to that part of the report of the committee, which says that no amendment is necessary to be made in the first section of the ninth article of the constitution.

Mr. FARRELLY, of Crawford, said that he would appeal from the decision of the chair on that point. His belief was, that the question was on the amendment of the gentleman from Chester. Mr. F. gave his reasons upon which he grounded his appeal.

Mr. DICKEY, of Beaver, entertained the opinion that the delegate from Crawford was in error.

Mr. DUNLOP, of Franklin, thought the gentleman, (Mr. Farrelly) was entirely mistaken in the views he had taken of this matter. In his, (Mr. D's.) opinion, the man question was on agreeing to the ninth article. He, however, cared not which way the question was decided. He was satisfied with the bill of rights as it stood.

The CHAIR read the rule in reference to the manner of proceeding.

Mr. DUNLOP said two or three words in favor of the course contended for by the Chair.

After a few words from Mr. STERIGERE in favor of the decision of the Chair, Mr. FARRELLY withdrew the appeal, and it was renewed by Mr. EARLE, who gave his reasons for this course. He was followed by Mr. CHAMBERS in explanation of the rule; which was, on the motion of Mr. EARLE, read by the secretary. The President then gave the grounds on which he based his decision, and Mr. EARLE thereupon withdrew the appeal.

The question was then taken on the report of the committee on the first section, and it was agreed to without a division.

The convention then proceeded to the consideration of the second section, which is as follows:

SECT. 2. That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness: For the advancement of those ends, they have, at all times, an unalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper.

Mr. EARLE, of Philadelphia county, objected to voting on the question. That it was inexpedient to amend the section. The question taken must be on the whole or a part of the report. The president of this body had no right to amend the report of the committee, and if he did, delegates ought not to sustain him.

Mr. READ, of Susquehanna, called the gentleman to order, and stated the reasons why he did so.

After a few words between Mr. EARLE and Mr. READ,

The question was taken on the adoption of the report of the committee on the second section, and it was agreed to.

The convention next proceeded to the consideration of the third section:

SECT. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can, of right, be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishments or modes of worship.

Mr. CUMMIN, of Juniata, moved to amend, by striking out all after the word "conscience," in the sixth and seventh lines, viz: the words "and that no preference shall ever be given by law to any religious establishment or mode of worship."

Mr. C. said that he had moved to strike out these words because they were inconsistent with, if not in direct contradiction of, the language of the second section of the sixth article of the constitution. He was sorry the subject was not in abler hands. He, however, would argue it in the best manner he was able. In the section to which he had just referred, it was there laid down that "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."

Now, what, he asked, were we to understand by "freemen"? The freemen of the commonwealth And there was a clause also in the same section with regard to conscientious scruples—that a man should not be compelled to do military duty, if he entertained any, but should pay an equivalent instead. The words which he had moved to strike out, were, in his opinion, at variance with the language of the section which he had just read. It might be said, perhaps, that these conscientious scruples belong to every citizen of the commonwealth of Pennsylvania. But this he denied. What other religious society, besides the Quakers, had sought or prayed to be exempted from military duty, and refused to pay an equivalent, as they said in their memorials. He would contend then, that there was a contradiction between the language of the two sections, which ought to be reconciled. This convention, under a full sense of what was due to its own character and dignity, would not overlook and leave uncorrected this contradiction. He cared not what might be the mode of worship adopted by any set of men, they could not, in his judgment, be exempted, for any reason whatsoever, from the payment of an equivalent for the non-performance of military duty. But, strictly speaking, no man could really be excused—could give an equivalent for his services. What could be an equivalent for a man's services in battle—as, for instance, in the defence of Baltimore, when bombarded by the British? What, he asked, would have been an equivalent for the services of the man who shot Gen. Ross, when in full march on Baltimore, and which would probably have been in flames in a few hours afterward? Nothing.

He knew that it was contended by many that all men may refuse to do military duty by the payment of a tax. This position he utterly controverted and most positively denied. He contended that the society of

friends claimed the right, as a religious body, separate and apart from other denominations, to be exempted from either doing duty, or paying an equivalent therefor. When this question was up before, the delegate from Bedford, (Mr. Russell) offered an amendment to the effect that all persons should be exempted from military duty who chose to exempt themselves. It, however, was voted down. The convention said that they should not have this privilege who asked to be exempted on the score of religion, and of its being irreligious to bear arms. Did not the constitution state that no preference shall be given to any religious sect?

"All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can, of right, be compelled to attend, erect or support, any place of worship, or to maintain any ministry, against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given by law, to any religious establishments or mode of worship."

All this he subscribed to—he fully admitted. No man on this floor could shew that his right of conscience had been infringed, or he persecuted for exercising it. Nobody objected to any man exercising his right of conscience. It was a glorious right, and he highly valued it. But yet he had been charged with being opposed to it. He entirely denied the truth of the charge. He would say that he esteemed the exercise of the right of conscience in any set of men, but he could not respect them, if they did not obey the laws of their country—if they did not act as patriots, and if they even refused to pay an equivalent for the non-performance of a duty, which it became all men, professing to be patriots, to discharge. The society of friends admitted that they had paid $300,000, by the sale of property levied upon and sold in order to pay for a non-compliance with the requisitions of the law. Now, he regarded this as nothing less than a rebellion against both divine and human laws. They own their allegiance to the Prince of Peace, and he thought the more of them on account of it. But he could not support any section which went to give them a preference over all other religious sects. He could not give his vote for creating any odious distinctions in society, which, he maintained, would be the case: unless the amendment he had offered should prevail. They were distinctions which no man ever dreamt of in Pennsylvania. It was his decided opinion that, if the other religious classes of the community were to be actuated by the same principles, feelings, and notions as the Quakers, it would not be long before a dissolution of the government would take place. For how could it be supported? How protected?

There was no government on the face of the earth better entitled to the respect and allegiance of the people, than the government of this state, and the general government of the United States. The people ought all to be on an equality of footing. But this had not been the case, as he could show, with respect to the Quakers, if he were to go into a statement of facts as connected with the early history of this country. He could show how these people had been opposed to their own government, and thrown every obstacle in its way. He could shew that they had not been patriots, but on the contrary, enemies of their country, prior to the French Canadian War, and during the revolution of 1774-5-6.

At both periods these people had shown great enmity to their own government. They not only stood out against the demands of the governor for men and money, but they did all they possibly could to induce others to follow their evil and unpatriotic example during the last war.

He did not wish to repeat what he had before said. He desired the clause which he had indicated, stricken out, in order that there might be no contradiction in the language of the constitution. He did not believe that there was a scholar in that hall who was able to reconcile the conflicting, as he conceived it to be, language of the two sections.

There had been some delegates in this convention who had expressed themselves in language which showed their hostility to foreigners, and the descendants of foreigners. And, in the course of their argument, they had intimated as much as that they preferred the blacks to them. He would say to those gentlemen that it would be well if they would take counsel of their reason, instead of giving way to passion. Let them look back to the history of their country, and they would find that foreigners, despised as they might be, were not backward in assisting this country against her enemies. It was the duty of every man owing allegiance to the government, to do his utmost to sustain it. With regard to the memorial of the blacks, the very principle of it proves them to be a distinct people.

He maintained that those delegates elected to this convention, and who advocated this exclusive privilege in regard to the Quakers, would seem to have been elected for the purpose of defeating those measures that were calculated to add to the dignity, and to advance the glory of Pennsylvania, and of the Union at large. He would say most unequivocally that if the society of friends would not give their aid and assistance to the state, when deemed necessary, they had no right to have any representatives on the floor of this convention. Mr. C. proceeded to notice some of the taunts, as he regarded them which had been thrown out against foreigners by certain delegates—when he was reminded by

The Chair, (Mr. Porter) that he was digressing from the subject before the convention.

Mr. Ingersoll, of Philadelphia county, moved an adjournment. The motion was lost.

Mr. Cummin then resumed his remarks, by reiterating his sentiments in regard to its being the duty of the society of friends to contribute their aid and support to the government under which they live, as well as any other class of citizens.

Several motions were made that the convention adjourn; which were negatived.

Mr. Fuller, of Fayette, moved the previous question; which was sustained.

And on the question,

Shall the main question be now put?

It 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 third section?

The yeas and nays were required by Mr. DARLINGTON and Mr. EARLE, and are as follow, viz:

YEAS—Messrs. Ayres, Baldwin, Banks, Barndollar, Bedford, Bell, Biddle, Bigelow, Bonham, Brown, of Lancaster, Brown, of Philadelphia, Butler, Carey, Chambers, Chandler, of Philadelphia, Clarke, of Beaver, Clarke, of Indiana, Coates, Cox, Craig, Crawford, Crum, Cunningham, Darrah, Denny, Dickey, Dickerson, Donagan, Doran, Earle, Fleming, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Houpt, Hyde, 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, Porter, of Lancaster, Read, Ritter, Royer, Russell, Seager, Scheetz, Scott, Sellers, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Thomas, Todd, Weidman, Woodward, Young, Porter, of Northampton, *President pro tem.*—94.

NAY—Mr. Cummin.

So the question was determined in the affirmative.

Mr. DORAN, of Philadelphia county, moved that the convention do now adjourn;

Which was agreed to.

Adjourned until half past three o'clock this afternoon.

FRIDAY AFTERNOON, FEBRUARY 2, 1838.

NINTH ARTICLE.

The convention resumed the second reading of the report of the committee to whom was referred the ninth article of the constitution.

The fourth section being under consideration, in the words as follow, viz:

"SECT. 4. That no person who acknowledges the being of a God and a future state of rewards and punishments, shall on account of his religious sentiments be disqualified to hold any office or place of trust or profit under this commonwealth."

A motion was made by Mr. READ, of Susquehanna,

To amend the said section by striking therefrom all after the words "section 4," and inserting in lieu thereof the words as follow, viz:

"That no person who acknowledges the being of a God and his own accountability to the Supreme Being, shall on account of his religious sentiments be disqualified to give evidence or to hold any office or place of trust or profit under this commonwealth."

Mr. READ, made a brief explanation of his object. He would not (he said) detain the convention but a moment. The amendment which he had

submitted he considered as a necessary and important one. He had expressed his views on the subject some months ago, at Harrisburg. The persons who desire this amendment, are a large number. There are many of them memorialists of this body.

The respectable society of friends, who by the present constitution are totally excluded from the right of holding office; for, although they believe in future rewards and punishments, they do not believe in a future state of reward and punishment; and the courts have recognized this withdrawn distinction, and on their construction, have excluded the best men of the commonwealth from the privilege of giving testimony on oath. There are some two or three congregations in this city, and seventy or eighty in the state of Pennsylvania, whose rights are not held to be sacred under the present constitution.

He would repeat what he had already said, that the courts who had excluded a portion of the friends and the universalists did not properly construe the law. He would not say more, but would merely call the attention of gentlemen to the facts. The operation of their grievances, and the extent to which they are oppressive on a numerous and worthy portion of our citizens, would be sufficient to induce him to place his amendment on much stronger grounds.

It was not his intention to occupy the time of the convention on repetitions. He would content himself with calling attention to the evils and disqualifications which this construction of the courts has introduced, and this was a good and sufficient reason why the rights of this portion of our society should be placed under more effectual guards. He would not now go any further, but would merely ask for the yeas and nays on his amendment.

Mr. DORAN, of Philadelphia county, moved to amend the amendment by striking therefrom all after the word "that," in the first line, and inserting in lieu thereof, the words following, viz: "The civil and political rights, privileges or capacities of any citizen shall in no wise be diminished or enlarged, on account of his religion."

Mr. DORAN proceeded, to give his reasons for offering this amendment. The third section of the ninth article is as follows:—

"SECT. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can of right be compelled to attend, erect or support any place of worship or to maintain any ministry against his consent; that no human authority can in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious establishment or mode of worship."

Now, Mr. President, general as the proposition of the gentleman from Susquehanna (Mr. Read) would seem to be on a superficial view of it, I am forced to say it does not meet my approbation. It recognizes and embodies the same objectionable principle which exists in our present constitution. It contains a religious test, and therefore justifies the interference of governments with the rights of conscience. A sincere believer in the great doctrines of christianity, of which the existence of a future state of rewards and punishments is certainly not the least, and with every

wish to see them embraced by the whole human family, I cannot sanction a principle at war with the freedom of conscience, and thus, in my judgment, at war with the true spirit of that holy religion. I cannot, and I hope I never shall, be the advocate of intolerance, by whomsover it may be attempted.

But, sir, disguise the principle as you may, palliate it by the plea of morality and religion, apply it exclusively to a handful of people and to no others, to the degraded or the ignorant, to the savage or the heathen; confine its operation to the poorest being that crawls on the earth, or to the political, and not to the civil, rights of but a single class in society, and that the smallest possible in numbers, what is it but an outrage upon religion, and the natural and inalienable rights of man? For what right can be more original, or less the proper subject of control and coercion, or one more important in its conseqnences, than that of worshiping Almighty God according to the dictates of one's own conscience? He who attempts to restrict it—he who seeks by force to impose on his fellow citizens his own religious opinions as the only standard and rule of faith—violates the social compact, injures the cause of christianity, and proves himself unfitted for the enjoyment of civil liberty. The man that would avow such designs, and justify their execution, is a traitor to religion, and an enemy to a free government. Piety and patriotism are too pure to be mixed up with such base alloy; and certainly it is doing but small justice to christianity to say that it requires the aid of the secular power to uphold and support it.

Take up the page of history, that instructive and humiliating record of human infirmity, and there you will find it written in language that cannot be mistaken, that civil and religious liberty have uniformly gone hand in hand, and that, wherever religious liberty existed, if civil liberty was absent, it was not long before the latter came in by means of the former. Trample on the rights of conscience, introduce religious tests, and form a union between church and state, and what becomes of civil liberty? If it be not already overthrown by the adoption of those measures, it soon sinks under the superincumbent weight of the predominant sect, and "like the baseless fabric of a vision, leaves not a wreck behind."

To the shame of mankind be it spoken, history exhibits melancholy evidence of their weakness and errors, and shows that even our holy religion—a religion which breathes the spirit of mercy and benevolence, teaches the forgiveness of injuries, the exercise of charity, and the return of good for evil, may, by being vested with political power, be so perverted as to become the instrument of persecution and oppression, bloodshed and vengeance for differences of opinion, even in the hands of good men, actuated by honest motives. It proves too, that religion may be blended with politics, and, that when so blended, it enters into the ordinary transactions of life, severing the ties of friendship and kindred; poisoning the spring of individual and national happiness; and becoming the fruitful source of long, bloody, and disastrous wars. It also proves that intolerance begets intolerance, and a persecuted sect, at a convenient opportunity, from fear or revenge, sometimes in turn is changed into a persecutor in the infliction of the same wrongs which it had so loudly condemned when inflicted on itself. For ages it displays an entire ignorance on the part of the world, of that true and just principle of legislation,

that the actions of men, and not their opinions, fall properly within the scope of it—that it is tyranny to curb or to punish the freedom of religious belief; and that the worship of God in our own way, and according to the dictates of our conscience, is imposed on us as a duty from the performance of which we cannot be freed by any temporal power.

The aid of the state was generally invoked by the church to punish schismatics and heretics; and christendom sanctioned, as cardinal and correct, the cruel and impious maxim—"*Non haereticis verba reddere sed furcas figere oportet.*"—"*Compel heretics—stop their mouths not with reason and argument, but with fire and faggot.*" Such were the fruits of religious tests, office qualifications, and church and state! Let no sect desire to be excused from the charge, for the practice of burning heretics prevailed in Protestant as well as Catholic countries. Indeed, so universal was this practice that Montesquieu was by it led into an error, in attributing to all religions as a natural feature this fell spirit of intolerance, giving as a reason, that every religion which is persecuted becomes itself persecuting, because it attacks the religion which persecuted it; not as a religion, but as a tyranny.—Sp. of laws, book 25, ch. 9.

The union of church and state was thought to be necessary for the security of both, and was maintained on the ground "that church and government may very well stand together; it being the duty of the magistrate to take care of matters of religion, and to improve his civil authority for observing the duties commanded by it." Strong as was the current of public opinion in favor of this doctrine; and countenanced as it was, by laws of long standing, and by the decrees of the established church, it could not carry away the masculine understanding and liberal heart of Lord Bacon.

Admitting "that heresies and schisms are, of all others, the greatest scandals; yea, more than corruption of manners," he contended in his essay on unity and religion stoutly, and, I think triumphantly, "concerning the means of procuring unity, men must beware that, in the procuring or maintaining of religious unity, they do not dissolve and deface the laws of charity and of human society. There be two swords among christians—the spiritual and temporal, and both have their due office and place in the maintenance of religion; but we must not take up the third sword, which is Mahomet's sword, or like unto it, that is, to propogate religion by wars, or by sanguinary prosecutions to force consciences;" adding at the close of the essay the following sentence, which I recommend to the serious consideration of the convention, as perhaps affording some clue to the zeal of those who warmly advocate the propriety of religious tests. "And it was a notable observation of a wise father, and no less ingeniously confessed, that those which held and persuaded pressure of consciences were commonly interested therein themselves for their own ends."

The civil power was not only permitted but enjoined to put down heretics. The suppression of heresy was preached in the pulpit, prayed for in the closet, and approved in the senate. Amid the universal confusion created by fanatics, the voice of reason and humanity could not be heard, and the shedding of human blood was always resorted to where the pretext was the salvation of souls and the good of religion.

Burton, who belonged to the school of the bigots, differed somewhat from the rest of his class, and supposed that heresy was a disease as well

as a crime. In his anatomy of melancholy, he gravely and in his quaint language, prescribes the following singular mode of treatment for heretics :—

"As Hipposcrates said in physicke, I may well say in divinitie; *q æ ferro non curantur, ignis curat.* For the vulgar, restrain them with lawes, mulcts, burn their bookes, forbid their conventicles; for when the cause is taken away, the effect will soon cease. Now for prophets, dreamers, and such rude silly fellowes, that through fasting, too much meditation, preciseness, or by melancholy, are distempered, the best means to reduce them *ad sanam mentem*, is to alter their course of life, and with conference, threats, promises, perswasions, to intermixe physicke. Hercules de Saxonia had such a prophet committed to his charge in Venice, that he thought he was Elias, and would fast as he did; he dressed a fellowe in angel's attire, that said he came from Heaven to bring him divine food, and by that meanes staid his fast, administered his physicke; so by the mediation of this forged angel he was cured. Rhasis, an Arabian, cont. libas. cap. 9, speakes of a fellowe that in like case complained to him, and desired his helpe; I asked him, (saith he) what the matter was? he replied, I am continually meditating of Heaven and Hell, brimstone, &c., and am so carried away with these conceits, that I can neither eat, nor sleep, nor go about my business. I cured him (saith Rhasis) partly by persuasion, partly by physicke, and so I have done by many others. We have frequently such prophets and dreamers among us, whom we persecute with fire and faggot: I think the most compendious cure for some of them at least had been in Bedlam."

Let me ask, then, do gentlemen desire to see established in this commonwealth a meretricious union of church and state—a pampered, corrupt, and lazy hierarchy—sowing discord and strife among our citizens, devouring the fruits of the industrious, spurning the common charities of life, and perpetrating, under the cloak of piety, every vice in the black catalogue of moral depravity.

I beseech them before they curse the country with this dreadful evil to listen to the warning voice of one of high authority, of a late learned and worthy English clergyman, who had in his native land, attentively considered the practical operation of the system. The Rev. Robert Hall, in his 'Christianity consistent with a love of freedom,' unhesitatingly declares that 'the boasted alliance between church and state, on which so many encomiums have been lavished, seems to have been little more than a compact between the priest and magistrate, to betray the liberties of mankind, both civil and religious.'

What, sir, is a religious test but church and state in disguise, the germ of a hierarchy; the entering wedge of a great national, religious establishment; the incipient stage of that foul disease which experience shows insidiously attacks, then wastes, and ultimately destroys the body politic? What is it but the same in principle with the arbitrary mandate of James First: 'I will have but one doctrine, and one discipline, one religion in substance and in ceremony.' I confess to you freely, I see no difference between the one and the other.

Nor is restraint upon conscience in direct hostility to christianity, to free government, and an enlightened age only, but it is equally opposed

to the mild and just principles of our ancestors. What was it that induced them to leave the country of their birth, their kindred, and their friends, to cross the wide and perilous ocean, and to encounter the dangers and privations of a wilderness life in distant lands, and on inhospitable shores? What was it that prompted the catholic lord Baltimore, the puritan Roger Williams, and the quaker William Penn, to fly from the face of civilized though cruel man, and to undertake the settlement of colonies?

It was to escape from religious tests and penal laws, which required conformity to a church establishment. Eternal exile in an unexplored country, seemed better in their eyes than the abandonment of religious liberty; and far away from the reach of their oppressors they sought in woods and wilds, peace and safety for themselves and their companions.

'The world was all before them, where to choose
Their place of rest, and Providence their guide.'

A Roman Catholic nobleman in 1632, was the first that ever recognized among the colonists the inalienable and sacred rights of conscience, affording thereby the earliest example, perhaps in the world, of a legislator inviting his subjects to a free indulgence of religious opinion. Lord Baltimore, the founder of Maryland, is entitled to that honor.

As has been observed by a celebrated writer, "he laid the foundation of this province upon the broad basis of security to property, and of freedom of religion, granting in absolute fee fifty acres of land to every emigrant; establishing christianity agreeably to the old common law, of which it is a part, without allowing pre-eminence to any particular sect. The wisdom of his choice soon converted a dreary wilderness into a prosperous colony." 1 Chalmer's Annals, 207, 208.

What a full and satisfactory refutation does this case of Maryland afford of the argument we hear so frequently urged by men of contracted views, that a country cannot prosper, nor a people be happy, contented and virtuous, without some religious test by which, as they allege, persons dangerous to society and to the government on account of their morals, may be excluded from office!

Not long afterwards, Rhode Island, under the auspices of Roger Williams, whose name should be held in lasting veneration by every friend of civil and religious liberty, responded to the doctrine of toleration, and upon a more liberal and just scale, and in her charter, which deserves to be called *magna charta*, proclaimed to the whole world this ever memorable and true principle:

'That no person within the said colony, at any time thereafter, shall be any wise molested, punished, disquieted, or called in question, for any differences in opinion in matters of religion, who do not actually disturb the civil peace of our said colony; but that all and every person and persons may, from time to time, and at all times hereafter, freely and fully have and enjoy his own and their judgments and consciences, in matters of religious concernments, throughout the tract of land hereafter mentioned, they behaving themselves peaceably and quietly, and not using this liberty to licentiousness and profaneness, nor to the civil injury or outward disturbance of others; any law, statute, or clause therein con-

tained, or to be contained, usage, or custom of this realm, to the contrary hereof, in any wise notwithstanding.'

The amendment I have the honor to submit to the convention, is the same principle expressed in a few words:

'That the civil and political rights, privileges, or capacities of any citizen shall in no wise be diminished or enlarged on account of his religious opinions.'

William Penn may fairly be ranked as another great champion of conscience. By laws agreed upon in England the 5th May, 1682, between him as the governor and chief proprietor of Pennsylvania and the freemen and planters of that province, before he ever took his departure from his native country: for I think he did not sail until the following August; it is declared and approved and held forever as fundamental in the government of the province:

"That all persons living in this province who confess and acknowledge the one Almighty and Eternal God to be the creator, upholder and ruler of the world, and that hold themselves obliged in conscience to live peaceably and justly in civil society, shall in no ways be molested or prejudiced for their religious persuasion or practice in matters of faith and worship, nor shall they be compelled at any time to frequent or maintain any religious worship, place, or ministry whatever."

I consider moreover all religious tests to be destructive of a sound principle that lies at the foundation of our republican institutions. I mean that the people alone are and ought to determine who shall be their public servants. But a religious test takes this power out of their hands, and, without regard to merit or capacity, confines their choice to those only who profess a certain creed.

Mr. Jefferson, writing to a friend in 1822, says:

"I write with freedom, because while I claim a right to believe in one God, my reason tells me, I yield as freely to others that of believing in three. Both religions, I find, make honest men, and that is the only point society has any right to look to."

But is it possible by any legislative enactment to regulate the religious opinions of men or to mould them into any given shape? Can you by penal statutes, by racks and tortures, by faggot and fire, curb the freedom of thought? Can you, except by reason and argument, convince the understanding and direct the judgment? Can any human tribunal, by the exercise of temporal powers, suppress schisms and heresies? I answer distinctly in the negative.

All history, all experience, shows that the more you forcibly interfere with opinions, religious or otherwise, and extravagant as they may be, the more powerful they become and the greater influence they possess. Coercion makes hypocrites, not converts. The only way to subdue opinions is to allow their free and unrestrained enjoyment. If they be erroneous, mankind will eventually discover it, indeed one half of the various and conflicting creeds that exist in the world, have been fostered, propagated, and supported by intolerance and persecution. An old author says: "Heretiques and schismatickes are generally so refractory,

self-conceited, obstinate, so firmly addicted to that religion in which they had been bred and brought up, that no terrour, no persecution can divert them."

To show, sir, that intolerance fails to accomplish the object it aims at, and commends the poisoned chalice to its own lips, I beg leave to cite the instance of the Huguenots of France The more they were persecuted the more they increased, and had not their persecution been abandoned they would have become in all probability the predominant religion of that country.

James in his life of Jean Baptiste Colbert (a recent and excellent sketch) says, "at the accession of Henry IV, the Huguenots formed nearly a twelfth part of the kingdom; and it is probable that had the persecution which they suffered under the house of Valois been continued for many years longer without interruption, they would eventually have outnumbered their adversaries. Under Henry IV., however, persecution ceased, the protestants were declared eligible to every office in the state; a court of justice was established in Paris, called La Chambre de l'Edit, for the purpose of trying causes between protestant parties; and such privileges were granted to them as secured them the free exercise of their religion, and seemed to guard them forever against the intolerance of their adversaries. Though Calvin burnt Servetus for differing with him in opinion, yet the religion which he taught is naturally not one of proselytism; and the Huguenots, as soon as they found themselves free from oppression, made but few attempts to gain converts from the Roman church, neglected many precautions for their own security, and in a great many instances, as soon as honor was no longer implicated, conformed, for the sake of convenience, to the religion of the majority."

Why then do we endeavor to force consciences? Why do we shut out from the pale of the commonwealth a numerous body of our citizens? Why do we say that one portion of our citizens shall be entitled to all civil and political privileges, but that another equally moral, intelligent, and patriotic, because they happen to differ from us in creed, shall not? The inquiry is very natural and proper, but I will not answer it. I leave it to those who admire test laws, bills of pains and penalties, and church and state.

I have thus attempted to state the objections to the amendment of the gentleman from Susquehanna. I have said that the qualification for office which it required was a religious test, and therefore dangerous to civil and religious liberty. That I could yield to no human tribunal, however eminent it might be, the right to dictate to a community, or to any member of it, a religious creed.

These objections apply with double force to the fourth section of the ninth article of the present constitution, the section now under consideration. When I compare that section with the one preceding it, there is manifest contradiction between them.

In the one it is asserted, and eloquently asserted, "that all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can of right, be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; that no human authority can in any case

whatever, control or interfere with the right of conscience; and that no preference shall ever be given by law to any religious establishment or worship," and yet in the other this sacred principle is entirely abandoned and trampled under foot by the provision, that he who acknowledges the being of a God and a future state of rewards and punishments shall be capable of holding any office or place of trust or profit under this commonwealth.

Allow me to ask whether the latter does not deny and abridge your natural and indefeasible right to worship your Creator according to the dictates of your own conscience, when it declares unless you worship Him in a particular mode prescribed by law, you shall not be entitled to all the rights of a citizen or capable of enjoying any public office, but you shall be singled out from the rest of your fellow citizens as unworthy of confidence, for no other reason, but because you choose to worship Him according to the honest dictates of your conscience, independent of the government?

Surely it is a singular natural and inalienable right which the state can thus control and abuse! Yes, sir, and although physical force is not employed, a force no less powerful is resorted to, that of public opinion and personal gain, to compel the citizen to attend, erect, and support a place of worship which he secretly disapproves of; thereby converting him into a hypocrite and a scoundrel, and making him maintain a ministry against his own consent, for by so doing he knows he will acquire wealth, public office, and respectability. Such is the natural operation of the section.

Will any one then pretend to say that it does not interfere with the rights of conscience or give a preference to a religious establishment or mode of worship? This is no fancy sketch pencilled for the purpose of effect.

This bigoted and barbarous provision has disfranchised and doomed to perpetual ignominy, and seclusion some of our best and most useful citizens, every way worthy of filling the highest offices in the gift of the nation. The country needs their services. Who, in this enlightened age, will dare to say the country shall not have them?

Our tables are covered with petitions signed by gentlemen of note and property, praying the convention to strike out this odious feature in the constitution. Not a counter petition has been presented. Let us without delay redress their grievance, and so act up to the great christian and republican doctrine which measures out to all men, of all descriptions, and of all creeds, an equal and impartial justice.

There is another absurdity in the section. It is at variance with the constitution of the United States, which declares that no religious test shall ever be required as a qualification to any office or public trust under the United States; as if the national offices were so unimportant in their character they did not require the same qualifications as those of the state; or as if there was not the same danger in the one as in the other without the prohibition of religious tests, of a predominant sect getting once possession of the government, and passing laws by which they could secure to themselves a monopoly of all offices of trust and profit.

In truth the feelings and intelligence of the civilized world are now averse to religious tests. Virginia, Kentuckey, and other states of the Union have discarded them. England, that might be said to have been their patron and protector, has denounced them, and poor Ireland upon whom, like heavy manacles, they have hung for centuries, eating her flesh to the very core, is now shaking them off with a strength and determination that must command success.

Shall Pennsylvania refuse to do her duty, terrified by the cry of fanaticism? Shall she abandon the generous principles of her founder? Shall she voluntarily extinguish the light of religious liberty handed to her by her sister states, and grope back to the midnight darkness of a barbarous age? As a Pennsylvanian, proud of the honor of my native state, I answer no—never!

I close with the excellent remark of Queen Mary, the wife of William the third: "It is not in the power of men to believe what they please: and therefore they should not be forced in matters of religion contrary to their persuasions and their consciences."

Mr. BIDDLE of Philadelphia said there was a great misapprehension on the subject. The incompetency rests in the broad principle of common law. The impressions of gentlemen were erroneous. He hoped the convention would not proceed to vote under a mistaken view.

Mr. READ said if the gentleman would read the amendment he would find he had mistaken it.

Mr. DORAN asked for the yeas and nays on his amendment and they were ordered.

Mr. EARLE, of Philadelphia county said he should like the amendment of his colleague better, if instead of "religion," he would change the phrase, so as to read "religious opinions."

Mr. DORAN accordingly modified his amendment as suggested.

Mr. EARLE said he should support the amendment of his colleague. It was most consistent with reason. If it should fail, he would then vote for the amendment of the gentleman from Susquehanna. He took it that, without good reason were shewn for it, we had no right to reject any one on account of religious opinions, alluding to the second section, which says—"all power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness," &c. Here is a rule introduced to restrain the sovereignty of the people. If the rule means any thing, it means that the people shall not elect an individual to office, whether as senator or member of assembly, because his religious opinions happens to be of a free cast. Can any good reason be shewn for this? Have different clauses in the constitution of other states been productive of injury? The constitution of the state of Tennessee is different. That he preferred to the clause in our constitution. The constitution of a number of our sister states are without any provision of the kind; and he would ask if any injury ever had resulted, or was ever likely to result from the omission of it?

If this means any thing at all, it is to exclude, first those who do not believe in a Supreme Being; and secondly, those who do believe in a Supreme Being, but not in a future state of rewards and punishments. Now, how does the case stand in regard to the first class excluded—that

is to say, those who do not believe in a Supreme Being? In the first place, there are few, very few men, who do not, in some form or other, believe in the existence of a Supreme Being. It is so accordant with the nature of man to hold such a belief, that the instances are extremely rare in which men are to be found who do not entertain that belief.

Suppose that there are individuals who entertain honest and conscientious doubts on this subject, which he cannot dissipate. Will you not presume that that individual is an honest man, notwithstanding the peculiar opinions which he may entertain? Would any thing induce him to hold such opinions, in opposition to the strong and deep rooted prejudices of his fellow citizens, except a sincere conviction of their truth? Suppose, then, that a man holding these opinions and unable to convince his mind to the contrary, should place himself before the people for election to any office, or before the governor for appointment—if he is more competent for the office he seeks than his competitors, should the prejudices known to exist against such opinions as his on the subject of religion, be allowed to prevent his election, and to secure the success of his competitors;—for if such a man is elected, it will be because he has superior qualifications to any of his competitors.

Suppose that his qualifications in point of industry and integrity and ability are superior. Is there any reason why he should be excluded? Is there any member of this body—is there any citizen in Philadelphia who, if he wished a painful disease cured, an irregular watch repaired, or a suit at law tried, would he be so absurd as to refuse to engage the services of a man who would accomplish any of these objects in the best manner, simply because the religious opinions of the individual might not be in unison with his own? I trust that there is no man in the commonwealth who is so bigotted as to refuse to accept the services of a man on account of his religious opinions. If this is a good rule in private life, it is also a good rule in public life; and if it should ever happen that an individual is more competent for any purpose who may happen to hold religious opinions contrary to those entertained by the mass of mankind, he ought to have an equal chance with others; and the people should be left to judge for themselves.

As to the second branch which relates to a belief in a future state of rewards and punishments, I think that such a provision is unreasonble and oppressive in the highest degree; and the application which has been made of it in the courts of justice is in the highest degree absurd. One class of citizens believe in a future state of rewards and punishments which is not perpetual, but which endures only for a certain time. That class the legislature cannot prohibit from holding office and yet because another man may not hold exactly the same opinion the legislature may disqualify him if they think proper. For instance, is it not unreasonable that an individual belonging to the first class, shall be allowed all his civil rights, while another man who believes in future punishment for all crime, but believes that the punishment is to take place *in this world*, shall be excluded? They both hold to the doctrines of future punishment, and they both believe that it is not to be everlasting;—but the one believes that it is to take place in this world, while the other believes that it is to take place in another world. And yet this provision in the constitution of 1790, allows the legislature to make an unreasonble

and absurd difference between them. Sir, this is a relic of the ancient religious bigotry which existed in the world, and it is desirable that all such vestiges should be eradicated as soon as possible; and the sooner it is done, the better. It has been said by the delegate from Washington, that in France the failure to recognise religion in the constitution produced all the anarchy and bloodshed which characterised the revolution in that land—or something to that effect. I do not concur with the gentleman in this opinion; I do not think that it is to be borne out by facts. I think Robespierre has been referred to as the most sanguinary of all the sanguinary characters that flourished in the French revolution. At all events, he had that character; and if the gentleman will look to the character and history of that revolution—I mean any accurate history of those times—he will find that Robespierre instead of being an infidel in religion, was in fact considered a religious fanatic. He favored a sect of which Catharine Peotte, I think, was the leader; and yet there was as much blood shed on one side as on the other. There was as much blood shed by the monarchists of the revolution as by any other party, and the monarchists generally were of the christian religion. You will probably find no person who is sceptical in his religious opinions, that has persecuted to death those who differed from him, and yet you will find the professors of the divine doctrines of christianity persecuting to death those who are opposed to them, in direct violation of that very religion which they profess to take as the rule and guide of their conduct.

Mr. PORTER, of Northumberland, said that as the chairman of the committee which had deemed it inexpedient to make any alteration in this provision of the constitution of 1790, that this subject was referred to the committee by resolution numbered 43, to be found in report No. 22, I read the following extract from page 207 of the first volume of the journal:—

"No. 43. Submitted by Mr. Keim, of Berks, instructing this committee "to consider the expediency of so amending the constitution, as to allow forever in this state the free exercise and enjoyment of religious profession and worship to all mankind; but that the liberty of conscience hereby secured, shall not be construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of this state." The committee deemed it inexpedient to adopt any further provision on this subject, than is contained in the existing bill of rights, which allows full freedom of religious opinion to all, and denies the right of any human authority to control or interfere with the right of conscience, and prohibits any preference from ever being given by law to any religious establishments or modes of worship, and prohibits the legislature from ever disqualifying persons from holding offices or places of trust or profit under the commonwealth on account of their religious sentiments, who acknowledge the being of a God and a future state of rewards and punishments."

Now, continued Mr. P., I apprehend that there is an error in the arguments of some gentlemen who have addressed the convention on this subject.

In the first place, the existing provision of the constitution prescribes no rule in itself. It merely declares that "no person who acknowledges the being of a God and a future state of rewards and punishments, shall,

on account of his religious sentiments, be disqualified to holding any office or place of trust or profit under this commonwealth. It restrains legislation on this subject. It says that the legislature of Pennsylvania shall not, by any future enactment, disqualify any person from holding office, if he believes in the being of a God and a future state of rewards and punishments. There is nothing, then, in this constitutional provision which, in itself, disqualifies any body. There has been no legislation under it for the period of forty-seven years which disqualifies any one.

What, then, is the situation in which we are placed? We are asked solemnly to embody in the fundamental law of Pennsylvania, a provision which will destroy all that our courts of common law have done, in explaining and deciding the common law of the land, the result of the experience of years; we are asked, I say, to reverse the well settled law of the land in this fundamental instrument.

Now, Mr. President, there are two objections to be urged against doing this.

The first objection is, that if it be neceassary to do so, the legislature of the commonwealth are abundantly competent to legislate on the subject. If it be advisable that those persons should be excused from the operation of the common law rule which says, that the man who denies the being of a God shall not be called upon to invoke that God when he is called upon to testify in a court of justice, your legislature is competent to do it; and I would not, therefore, upon that ground over-load the constitution with provisions which may be exceptionable or unnecessary. The common law has said that the man who disbelieves in a state of future rewards and punishments shall not be called upon in a court of justice to take an oath which, in a certain event, invokes the infliction of future punishment upon him; that is to say, if he shall testify that which is not true. This is the common law of the land at the present time, and it grows out of no salutary provision. It has grown out of the good sense of society. The judges have adopted this rule, because they believe that it is, of all others, the best calculated to promote a sacred regard for truth; and they have said that, in the administration of the common law, they shall not place credence in the statements of a man denying the existence of a Supreme Being, and who denies his own responsibility to him.

Let me ask gentlemen to pause and reflect before they make an innovation by adopting, in this amended constitution, that which is the legitimate object of state legislation; and then let me ask whether they are prepared to say that a man who is an athiest—who denies the existence of a Supreme Being, as well as his own accountability to him—shall be enabled to give his testimony in a court of justice? Are gentlemen ready to promulgate this doctrine here? I do not think, nay, I entertain the most certain conviction, that there is not a member of this body, if he sincerely reflects on the consequences which must inevitably result to human society, who would give his sanction to such a proposition.

It may be true, as the gentleman from the county of Philadelphia (Mr. Earle) has stated, there are but a few athiests; still we know that there are some; and in a neighboring county, not long since, one miserable wretch came before the court, and openly disavowed his belief in the existence

of a Supreme being. The testimony of that man was rejected; and I say that the rejection of it was only carrying out the common law of the land. There could be no policy in admitting such testimony. What is the oath you administer to a witness? It is this:—

"You do solemnly swear."

And the individual is then required to kiss the book. By this they say, they will answer to God in the great day for the truth of all they may then say. Is it not a mocking to say, that a man who scoffs at a future state of rewards and punishments, shall be bound by such an oath? And even if it were proper to introduce this subject into your constitution, I submit to the members of this convention, whether they are prepared to cut loose that which, according to the view I take, is the only thing by which mankind are made safe in society.

I am aware, Mr. President, that the doctrine that it is wrong to say any thing on the subject of religion, is a foolish doctrine, and that it has many advocates in the present day. It is a doctrine which will have advocates at all times and upon all occasions. It is a doctrine which had its advocates at the period which has been alluded to by the gentleman from the county of Philadelphia, (Mr. Earle) when the christian religion was abolished in France and the Goddess of reason was worshipped. What was the the consequence of all this? Why, that which was sure to be the consequence. France was deluged in blood.

Let gentlemen refer to the history of those times; and let them see how many of the citizens of that country were butchered in cold blood, by a population that had lost all sense of religious obligation. Sir, let us learn a lesson from experience. Let not the blood-stained records of that misguided land be altogether lost upon us. Let open the door of infidelity here by permitting a man who denies the existence of a Supreme Being, or denies a future state of rewards and punishments, to be received as a witness in a court of justice upon the same terms as consciencious men who do believe in the existence of a Supreme Being, to whom they are accountable in a future state for their conduct here upon earth. Let us not take so dangerous a step; let us not put into the hands of the irreligious and the profligate, an instrument by which at some future day they may uproot the foundations of society in this now favored and happy land.

I am aware that there are several congregations of the society of universalists at this day, who deny all future states of rewards and punishments. I know that this was not originally the doctrine of that sect. I know that when that sect first came into existence, they believed that mankind were to be punished for a little space of time, after which their punishment was to cease. All such men are at this time admitted as witnesses in courts of justice. It is only the man who utterly denies every thing of the kind who is rejected, and if gentlemen will take the trouble to refer to the last decision in Judge Cowan's Reports on this subject, they will find it to be so. It is the law of the United States; it is the law of the commonwealth of Pennsylvania, and it is the law of every christian country at the present time. And, sir, it ought to be the law.

How can a man be held responsible for any oath he may take, if he does not believe in a world to come. By what other bond can you bind

him. I appeal to the experience of gentlemen here? You have seen a child called into a court of justice. What is the first question that is put to a child when supposed to be of tender years? The first question is, as to the age of the child. The next question is, what will become of persons who swear falsely, or affirm falsely? The response is that they will be punished in the world to come; and if the child does not answer so, it is said not to possess a sense of responsibility sufficient to justify the admission of its testimony on the guilt or innocence of another party. And, let me ask, what does that imply? That it is custom which comes down to us sanctified by the wisdom and the approbation of ages; that it grows out of no bigotry—that it grows out of no superstition—that it grows out of no fanaticism; but that it has its root and origin in the good sense of mankind—in a knowledge of the basis upon which human society is founded, and the means which are requisite for its preservation.

Now, Mr. President, we are asked to set aside, by a constitutional provision, a course of decisions of our courts which have their foundation in good sense; and to set aside that which would be in a measure calculated to destroy the purity of our administration of justice, as well as the safety of society. Shall we do this? Have we reflected on the consequences? And if we have not, are we prepared to take such a step without reflection? Shall we allow all persons not believing in the existence of a Supreme Being and denying their own accountability for their deeds on earth—shall we, I ask, allow such persons to go before a court of justice and to ask the court to absolve them from the consequences of their disbelief? There is nothing in this provision of the constitution from which any thing need be apprehended.

The legislature has no power under it to exclude any man, if not excluded according to the common law of the land, which our fathers brought with them from England—under which you have lived, and which, by the blessing of God, has carried us safe through the war of the revolution up to this day, And shall we now unsettle this rule for a mere speculative proposition, which may land us where it landed France in the days of the revolution? Sir, I trust not.

Mr. BROWN, of Philadelphia, rose to a point of order. He begged to inquire of the Chair (which was temporarily occupied by Mr. Chambers) whether the gentleman from Northampton, (Mr. Porter) who had just taken his seat, had not been appointed the presiding officer of the convention, in the absence of the president, (Mr. Sergeant?) If so, Mr. B. submitted that the gentleman from Northampton, under the rule, was prohibited from addressing the convention.

The CHAIR said, he would state in answer to the inquiry of the gentleman from the county of Philadelphia, (Mr. Brown) that the gentleman from Northampton, (Mr. Porter) had been appointed presiding officer in the absence of the President. The rule prescribed, however, that the presiding officer might name a delegate to perform the duties of the Chair, provided such substitution did not extend beyond an adjournment.

Mr. DORAN, of Philadelphia county, said, Mr. President, I concur in the opinion expressed by the gentleman from the county of Northampton, (Mr. Porter) that if the constitution of 1790, introduces no religious test

neither the amendment of the gentleman from Susquehanna, (Mr. Read) nor that which I have myself proposed, ought to be adopted by this convention, because it would be a superfluous waste of time to introduce such amendments, if nothing of this kind is there to be found. Allow me then, to call the attention of the members of this body to the fourth section of the existing constitution, that we may see whether it does, or does not, contain a religious test It says;

"That no person who acknowledges the being of a God and a future state of rewards and punishments, shall, on account of his religious sentiments, be disqualified to hold any office or place or trust of profit under this commonwealth."

Such are the terms of this provision. What is the meaning of them? What is the common sense construction? It is simply, that every man who does not acknowledge the being of a God and future state of rewards and punishments may be disqualified by the legislature from holding any office of trust or profit under the commonwealth of Pennsylvania. This is the plain and obvious interpretation of the language.

If this is so, I will respectfully ask gentlemen here whether they are willing that this power should be vested in the legislature? whether they are willing that any particular body of our fellow citizens should enjoy privileges of this natare, while another should not? Whether, in short, they are willing to unite, as I consider, church and state; that is to say, to give to those who have the sole power, such power as will enable them to disfranchise their fellow citizens on account of their religious opinions?

He thought that was the natural construction to be put on this section of the constitution. The people had long desired the introduction of such an amendment as this into the constitution. We had had a number of petitions as well from the city and county of Philadelphia, as other parts of the state, praying that the convention would not incorporate any provision in the constitution requiring religious tests. What more did gentlemen say? Why, that it was violating the common law of the land—that we have had it for a number of years—that we derived it from England. Why, it was once a principle of the common law that no man could become a witness unless he swore on the book and kissed the book. Now, he would ask, if this was the practice at the present time, where would be the Quakers, and others, who swear with uplifted hand—who affirmed? If the common law was to be the governing rule here, we should, to a great extent disqualify vast numbers of our most valuable citizens.

He believed that the spirit of the age was against religious tests. He thought the time was not far distant, when the practice of swearing witnesses in courts of justice would be abolished. He believed the time was coming when they would be dispensed with altogether. Mr. D. having stated the object with which he had offered the amendment asked for the yeas and nays.

Mr. M'Dowell, of Bucks, said that he was not in the convention at the time the gentleman from Susquehanna addressed it; but he understood that he had made the assertion that a portion of the society of friends did not believe in a future state of rewards and punishments. Did the gentleman say so?

Mr. READ, of Susquehanna, replied. He had been told that he had expressed himself loosely—with some inaccuracy. He had said that a portion of the friends did not believe in a future state of rewards and punishments. He had been told that he was understood to mean, of the society, or congregation of friends. He did not intend to say so. He meant to say individuals—m ny of whom he had conversed with—would be excluded from holding office under the provision of the existing constitution. He did not mean to be understood as refering to any societies, or bodies, who had held it as an article of their creed. He did know however, that there were large congregations of universalists who held the doctrines, and were excluded under the terms of the present constitution, from holding office; and who, too, by virtue of the common law, to which the gentleman from Northampton had referred, were excluded from giving testimony.

He (Mr. R.) knew thousands, who were as respectable—as much entitled to credence, as any man on that floor, who have been excluded by your life tenure judges from giving testimony, but whether by the common law, or not, he could not tell. Such cases, however, did exist, and hence arose, as he had said before, the necessity that the convention should throw around the courts additional security and guards. The gentleman from Northampton, spoke of the common law as if this amendment was not in accordance with the common law.

Mr. PORTER, explained that the common law was sanctioned by the law of experience, and therefore, we must be fully satisfied that we were right, before we undertook to alter it.

Mr. READ remarked that he had referred to the evils which had been known, in fact, to exist under the present constitution—that it excluded the universalists—a society of men, most of whom were as honest as any of us, and as much entitled to credence. He did not belong to the society. In speaking of these violation of rights, he had mentioned the case of a Jew, who having refused on a Saturday to serve on a jury—it being his Sabbath—was imprisoned. As these evils, then, had been suffered, and as an opportunity now presented itself, to get rid of them, he hoped that something would be done. The amendment seemed to deserve attention, and should be adopted. He repeated that he did not mean to say that any of the society of friends held such doctrines as he had mentioned.

Mr. COPE, of Philadelphia, remarked, that no man belonging to the society of friends, could for one moment, hold such principles.

The question being then taken on the amendment to the amendment, it was decided in the negative—yeas 16,—nays 88.

YEAS—Messrs. Bigelow, Brown, of Lancaster, Brown, of Philadelphia, Clapp, Coates, Darrah, Doran, Earle, Gilmore, Hastings, Martin, M'Cahen, Ritter, Sterigere, Thomas, Weaver—16.

NAYS—Messrs. Ayres, Banks, Barclay, Barndollar, Barnitz, Bedford, Biddle, Brown, of Northampton, Carey, Chambers, Chandler, of Chester, Clarke, of Beaver, Clarke, of Indiana, Cleavinger, Cline, Cochran, Cope, Cox, Craig, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Dickey, Dickerson, Donagan, Farrelly, Fry, Fuller, Gamble, Gearhart, Grenell, Harris, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Ingersoll, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Maclay, Magee, Mann, M'Dowell,

M'Sherry, Merrill, Merkel, Miller, Montgomery, Overfield, Pennypacker, Porter, of Northampton, Purviance, Read, Rogers, Royer, Russell, Seager, Scheetz, Scott, Sellers, Seltzer, Serrill, Shellito, Sill, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Todd, Weidman, Woodward, Young, Porter, of Northampton, *President pro tem.*—88.

The question next recurring was on Mr. READ'S amendment.

Mr. EARLE, of Philadelphia county, would say a word or two to show the impolicy of excluding witnesses on account of their religious sentiments from giving evidence in a court of justice. In one of our sister states—the state of Connecticut—a law was passed very recently to correct a judicial decision, so as to prevent the evidence of an individual who was a universalist, from being received. Now, the effect of this rule was, that a man who was orthodox might murder any man who happened to be heterodox, because the latter was not allowed to give testimony. The rule therefore, gave a license to commit all sorts of crime, because you could not convict the murderer, or criminal. It was exceedingly absurd in practice? Did we not, he asked see gross perjuries committed every day in our courts of justice? Who were the authors of them? They were believers or unbelievers according to the language of the constitution. If they were believers, they ought to have shown their particular belief, as there was no guaranty against the commission of perjury. If the perjured individuals were unbelievers, then it showed that this rule was entirely useless.

What, he asked, was the effect of the rule? Why, it was that those under a particular belief were to go into court and swear one way, while the orthodox swear another. Or they might, perhaps, both be unbelievers in rewards and punishments, and one man might go forward and convict the other man.

The other is an honest man who will not keep any thing concealed. A dishonorable man bears false witness against me, and I can not call an honest man to testify in my favor, and the consequence is that I must be convicted of the crime with which I am charged, and of which I know myself to be innocent both in act and intention. This is the effect of the rule.

But again. There is a rule of common law that a man who has been convicted of an infamous offence shall be precluded from giving testimony, but he may, nevertheless, give testimony in certain cases; as for instance in the case of an assault upon his own person. But it is a common practice, where the prosecuting officer is desirous to convict, to do it under the testimony of infamous persons; to get the governor to grant a pardon, and thus a man who could not have been a witness fifteen minutes before, the moment he receives his pardon is made a witness, at once. In this way, the convicted felons of your state are admitted to give testimony; but the honest man who happens to hold peculiar opinions on matters of religion—this man, I say, is to be excluded.

Why is a felon admitted to testimony? For what purpose? It is because a certain chain of circumstances is corroborated by other witnesses, and you want to secure a proof stronger than that, which all your other witnesses are unable to give. Nothing is to be believed simply because a man may swear to it in a court of justice; for we are all aware that men do not at all times swear to the truth. But when you come to examine

and cross-examine a witness, you will generally detect some inconsistency—something in the eye, the manner, or the countenance, which will convince a jury that he is not telling the truth. But, on the other hand, a man who tells his story consistently from beginning to end, will never be caught and convicted in this way, as the perjured man will. The rule then is a wise one, that where a convict is pardoned, he may be admitted as a witness; because the jurors have sense and intelligence enough to discriminate; and will convict a party upon the testimony of such a man, unless corroborated by other circumstances and the testimony of other witnesses.

Is there any objection, then, to adopting the same rule of conduct with a man who entertains certain opinions on the subject of religion, which do not fall in with the generally received opinions of mankind;—a man whose word would pass under any circumstances, when not under oath? —a man in whom all of us would place unlimited confidence in all the business affairs of life? And yet we say, that such a man shall not be permitted to give his testimony in a court of justice; while the man who is a notorious thief, or a convicted felon, may give his testimony freely? Sir, this state of things is not in accordance with the general liberal principles of a republican government. And I hope the amendment will be agreed to.

Mr. SHELLITO, of Crawford, rose to make an inquiry from the gentleman from the county of Philadelpha, (Mr. Earle.)

Did the gentleman from the county, wish to do away altogether with the oath taken by a witness in a court of justice? Or, if not, what oath would be taken from a man who did not believe in the existence of a God, or in a future state of rewards and punishments?

Mr. EARLE said, he would answer the inquiry of the gentleman from Crawford, by simply referring him to the fact that the amendment of the gentleman from Susquehanna, (Mr. Read) had no relation to persons who did not believe in a Supreme Being. It provided only that those who did believe in a Supreme Being should be allowed to give evidence and to hold office under the commonwealth.

Mr. M'CAHEN, of Philadelphia county, said that he was in favor of the adoption of this amendment, and that he would explain in a few words the reasons why he was so.

I believe, continued Mr. M'C. that under the existing provision of the constitution, honest and creditable witnesses are frequently denied the opportunity of giving their evidence in courts of justice. I am in favor of religious toleration all the world over, and I would do all that lay in my power to promote it. It is possible that in thus declaring my sentiments, I may be accused of infidelity. But to show that I am not justly open to such an accusation, I will here take leave to say that I have been educated in a sect which is regarded as consisting of the followers of the true religion; that I am entirely orthodox.

But, Mr. President, I will not, simply because I myself may entertain opinions which are considered by some portion of mankind as the only correct sentiments on the subject of religion, I say I will not deny to any other individual here or elsewhere the right to enjoy his own religious opinions. Why should I do so? Why may not men honestly and con-

scientiously entertain different opinions on religions. as well any other matters? Surely. they ought to be at liberty to do so without running the risk of proscription or disfranchisement. And more especially ought this to be the case in this land of free and equal laws. For I hold to be the true standard of a republican government that the civil, political, and religious rights of every individual should be alike free and sacred; that they should not be trammeled, abridged, or tied down by intolerant provisions of any description. I believe that the amendment of the gentleman from Susquehanna, if adopted by this convention and approved by the people, will enable many honest and good members of society to enjoy those rights to which, under the principles on which our government is founded, they are entitled equally with their fellow citizens; and which rights, if I correctly understand the representations which have been made by some gentlemen on this floor, are in the present instance, denied.

I will not reiterate the arguments which have been so ably urged by my colleague from the county of Philadelphia, (Mr. Earle)—that one man who declares his belief in a future state of rewards and punishments, is admitted on the stand as a witness—while the testimony of another man who frankly declares that he does not believe all that he is asked to believe on this point, yet does believes to a certain extent, is rejected. They are arguments, however, which ought forcibly to recommend themselves to the consideration of every intelligent and reflecting mind.

I think that the credibility of the witness should be a sufficient test of his competency to give evidence; that if his reputation and character for truth and veracity are without blemish, he ought to be received as a witness, whatever his opinions may be on the subject of religion. I believe that if this is denied to him, his property and his liberty will be at stake, and that he is not placed on an equal footing with his fellow citizens;—and I think we should not have a word in the fundamental law of the land which would leave a doubt as to that point, upon the minds of the people of this commonwealth. I think that the rights of every man, high and low, rich and poor, ought to be guarded equally and alike, notwithstanding the opinions he may entertain on matters which have divided mankind from the earliest ages of the world down to the present day. I do not think that the opinions of men touching religious questions, should be allowed to have any influence either on the decision of the courts, or on the characters of witnesses. This is not the age, nor this the land, in which such intolerance—to call it by no harder name—should receive countenance and sanction.

These are my opinions, and I do not hesitate to express them freely and without fear. And, entertaining such opinions, I shall vote in favor of the amendment of the gentleman from Susquehanna, because I believe that it will remedy an evil complained of, and that it will give to a portion of our citizens who have heretofore been denied participation in them, those rights which, in my view, are and ought to be inalienable.

Mr. Fuller, of Fayette, said that he was opposed to the amendment of the gentleman from Susquehanna, though he did not feel any disposition to enter into an argument upon it.

So far as concerns the section of country from which I come, continued Mr. F. I must say that I have no instructions from my constituents to make any change in this provision of the constitution, and that I do not

think any is wanted. I speak for myself and for those whom I represent. And if any demand for change has been made in other parts of the state, I know nothing of it.

It may be true that this provision operates harshly upon some of our citizens, who can not, with all their efforts in that behalf, reconcile their minds to a belief in a future state of rewards and punishments; yet I believe, at the same time, that it is a provision which is essentially necessary to the preservation of our institutions in their strength and purity. And, it was doubtless so regarded by the framers of the constitution of 1790—a set of men in whose judgment we are entitled to place great and implicit confidence, not only in regard to the liberality of their religious opinions, but also in regard to their experience in all matters essential for the security of our constitutions, and the promotion of the happiness and welfare of our people. To me it is a new idea, that attempts should be made to strike out this provision. I knew of no such intention and I shall vote against it without saying any thing more on the subject.

Mr. CHANDLER, of Philadelphia, said,

Mr. President, I intend to vote in favor of this amendment, and I will say a very few words in explanation of my reasons.

Whenever we can enlarge the rights of the people, without innovating upon the social compact, probably it is our duty to do so.

It had been agreed generally that the constitution of 1790 seemed to suppose the exclusion of that class of persons who call themselves universalists, but whose particular tenets—whose belief, he could not pretend to explain—for he would make but a poor exponent of them. It was to be recollected that about the year 1790, at the commencement of the French revolution, the most irreligious and destructive doctrines were proclaimed, subversive of all order and good government; and then it was that the fathers of this country saw the imperious necessity of providing against their introduction among us, and hence they required that man should acknowledge the being of a God, and a future state of rewards and punishments. He believed that at that time the doctrine of universalism was not known in the United States. He solemnly avowed himself to be a believer in rewards and punishments—in eternal happiness or misery. And, that his conduct in this world was influenced by that belief.

He believed that in the vote he would give on this amendment he would be acting under a solemn responsibility to that God, whose name was invoked. And, if he could believe that this amendment would weaken the attachment to the belief of those who profess it or would weaken the belief in those rewards and punishments, he should be careful to avoid offering the vote he was about to give. He understood that if an oath was given in courts of justice,—for he had seldom visited them—the witness swore by God. He was brought up where it was not the practice to swear on the bible. But, nevertheless, he believed that he would have to answer at the great day for his conduct. Here was an evident looking forward to the infliction of punishment, perhaps that influence has—as he professed it had upon him—had the most salutary effect.

But, it was now found at this day, and in this city, as we are told by

men conversant with law, that there were among our best citizens men who entertained such peculiar tenets as must, if openly professed, exclude them from the witness box of our courts of justice. If that were so, then we ask them to do one of two things, either to forego one of the rights of citizenship, or to profess their belief in the being of a God which they do not acknowledge. We invite them to the same species of hypocracy as Ananias and Sapphira practiced. While there would be cruelty in the one case, society would suffer wrong in the other.

He should, therefore, vote for the amendment, because it required in the individual a firm belief in the existence of a God, and an accountability to that Being by the oath which he takes in his name, whether it be right or wrong.

Mr. MARTIN, of Philadelphia county, said that he was desirous to vote for the amendment, and in doing so wished to relieve himself from any thing that might appear like sanctioning or giving encouragement to infidelity. However, he did not apprehend any such opinion being entertained. Even if, as some supposed, the present provision of the constitution was not sufficiently broad and comprehensive, and that evils had arisen out of it, on that account—he could see no good reason why the amendment proposed by the delegate from Susquehanna should not meet the approval of the convention.

Mr. DICKEY, of Beaver, observed that he would vote against the amendment, and in favor of the existing provision. There was very little difference between the language of that provision and the terms of the amendment proposed by the delegate from Susquehanna (Mr. Read.) The language of the present constitution was—

"That no person who acknowledges the being of a God and a future state of rewards and punishments, shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this commonwealth."

The language of the amendment was as follows:

"That no person who acknowledges the being of a God, and his own accountability to the Supreme Being, shall on account of his religious sentiments be disqualified to give evidence or to hold any office or place of trust or profit under this commonwealth."

He did not like the terms of the amendment so well as the existing provision of the constitution of 1790. He knew of no responsibility except to a future state. He himself believed firmly and implicitly in future rewards and punishments. He did not think that those whose belief did not go to the extent ought to have the extension given them as was proposed by the amendment of the delegate from Susquehanna. He did not know that the section of the constitution was the rule of evidence, Indeed, he was inclined to think it was not. And, for the reason that there were three forms of an oath taken Some made oath on the Evangelists; another simply affirmed, and there were others again, who affirmed by declaring that they would tell the truth, the whole truth, and nothing but the truth. He saw no necessity for adopting the rules of the constitution, as there were rules enough independent of the constitution. We had also, rules by act of assembly. There were rules laid down in the com-

mon law of the land. He recollected that there was a man at Williamsport, some years ago, who openly taught infidelity and blasphemy. But he was stopped in his career by an appeal to the common law of the state. We know that in an adjoining state infidelity is widely and openly preached. Now, he had no wish to see any such practice followed in Pennsylvania. He regarded the present provision, as an excellent rule, and therefore he would support it, and vote against the amendment of the gentleman from Susquehanna.

Mr. CURLL, of Armstrong, was opposed to any innovation on this section, and thought the amendment proposed by the gentleman from Susquehanna was rather a begging of the question—whipping the devil round the stump. He had heard talk here, of a future state in this world. Now, that was the first time he had ever heard of a future state here. If a man was not impressed with the belief that he was accountable to God at a future day for his actions and conduct, there was no restraint upon him. In his (Mr. C's.) opinion, the amendment was not so well calculated as the existing provision, to restrain men from doing mischief, and to preserve order in the community.

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

YEAS—Messrs. Biddle, Bigelow, Brown, of Philadelphia, Butler, Carey, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Coates, Darrah, Doran, Earle, Grenell, Hastings, Martin, M'Cahen, Myers, Payne, Read, Ritter, Scott, Serrill, Sterigere, Taggart, Thomas, Weaver—26.

NAYS—Messrs. Ayres, Banks, Barclay, Barndollar, Barnitz, Bedford, Bell, Brown, of Lancaster, Brown, of Northampton, Chambers, Clarke, of Beaver, Clarke, of Indiana, Cleavinger, Cline, Cochran, Cope, Cox, Craig, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Denny, Dickey, Dickerson, Donagan, Farrelly, Fry, Fuller, Gamble, Gearhart, Gilmore, Harris, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Ingersoll, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Maclay, Magee, Mann, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Miller, Montgomery, Overfield, Pennypacker, Porter, of Lancaster, Purviance, Rogers, Royer, Russell, Saeger, Scheetz, Sellers, Seltzer, Shellito, Sill, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Todd, Weidman, Woodward, Young, Porter, of Northampton, *President pro tempore*—85.

So the question was determined in the negative.

Mr. BIGELOW, of Westmoreland, moved to amend the section by striking therefrom the words "and a future state of rewards and punishments." where they occur in the second line.

The question being put on this motion, it was determined in the negative.

The report of the committee, as far as relates to the fourth section, was then agreed to.

The fifth section being under consideration, which reads in the words following, viz:

"SECTION 5. That elections shall be free and equal."

Mr. STERIGERE, of Montgomery, moved to amend the said section by adding to the end thereof the words as follow, viz: "The election laws shall be uniform throughout the state, and no greater or other restrictions

shall be imposed on the electors in any city, county or district, than are imposed on the electors of every other city, county or district."

Mr. STERIGERE stated that this amendment was offered in committee of the whole, and was rejected by a small majority. The object was to prevent the legislature, in any circumstances from limiting the right of suffrage, by making it a common privilege, imposed alike on all. He would merely ask for the yeas and nays on the amendment.

Mr. SCOTT, of Philadelphia, said this amendment was fully discussed in committee of the whole. It should be understood that its effect would be to destroy the registry law in the city and county of Philadelphia.

He did not propose to enter again into an argument on this question. But it would be remembered that, in the former debate, the evils which existed here before that law came into operation, were very emphatically pointed out. They were acknowledged, and after full discussion, a majority of the convention agreed that it was better not to interfere with the existing law. It was also acknowledged that these evils were felt in other parts of the state, and under the belief that something of the same kind was required for the peaceful exercise of the elective franchise, wherever there was denseness of population, the amendment was rejected. The law of registry may be altered and improved, but the existence of something of the kind is necessary where dense masses are collected. He hoped therefore, that the convention would suffer this matter to rest where it is, and leave the legislature to act according to its discretion, as circumstances may indicate, and not make it imperative on that body, in all cases, to enact the same legislation for a thin and a dense population—where there is but a single individual in a space of a quarter of a mile square, and where the population is crowded together.

Such would be the effect of the amendment of the gentleman from Montgomery. We have adopted provisions which may not be suited to all parts of the state, but they operated beneficially here, and he hoped they would not be interfered with.

Mr. BROWN, of Philadelphia county, knew no reason why the law should be different in one part of the state, from what it is in another, whether there are many thousands or a few hundreds, they are under the same laws. If there are too many together, the districts may be made smaller, that every man may be able to go to the window or door, and deposit his vote.

He hoped that special legislation would not be permitted here. Another clause in the constitution says that a voter must have been assessed not less than ten days before the election. The assessor's books must be the best evidence of this fact. He hoped the city and county of Philadelphia would not be singled out and made the cause for the imposition of restraints on the right of suffrage which have not been asked for by the people.

Mr. COATES, of Lancaster, demanded the previous question, and the number required by the rule having risen to second it, the call was sustained.

The question being "shall the main question now be put?"

Mr. M'CAHEN demanded the yeas and nays on this question, and they were ordered.

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

YEAS—Messrs. Ayres, Baldwin, Barclay, Barndoller, Barnitz, Bell, Biddle, Brown, of Lancaster, Brown, of Northampton, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Cleavinger, Cline, Coates, Chochran, Cope, Cox, Craig, Crain, Crum, Cunningham, Curll, Denny, Dickey, Dickerson, Farrelly, Fuller, Gearhart, Harris, Hayhurst, Hays, Henderson of Allegheny, Henderson, of Dauphin, Hiester, High, Keim, Kerr, Konigmacher, Long, Lyons, Maclay, M'Dowell, M'Sherry, Meredith, Merrell, Merkel, Montgomery, Pennypacker, Porter, of Lancaster, Purviance, Royer, Russell, Saeger, Scott, Seltzer, Serrill, Sill, Smith, of Columbia, Snively Stickel, Sturdevant, Taggart, Thomas, Todd, Young—69.

NAYS—Messrs. Banks, Bedford, Bigelow, Brown, of Philadelphia, Clark, of Indiana, Cummin, Darrah, Donagan, Doran, Earle, Fry, Gamble, Gilmore, Grenell, Hastings, Helffenstein, Hopkinson, Houpt, Ingersoll, Jenks, Kennedy, Krebs, Magee, Mann, Martin, M'Cahen, Miller, Overfield, Payne, Reigart, Read, Ritter, Rogers, Scheetz, Sellers, Shellito, Smyth, of Centre, Sterigere, Weaver, Weidman, Woodward, Porter, of Northampton, *President pro tempore*—42.

The following section being taken up for consideration, and no amendment being made thereto, the report of the committee was agreed to.

"SECTION 5. That elections shall be free and equal."

The sixth section was read, and being under consideration in the words as follow, viz:

"SECTION 6. The trial by jury shall be as heretofore, and the right thereof remain inviolate."

Mr. BIDDLE, of Philadelphia, moved to amend by adding to the end thereof the words as follow, viz:

"It shall be granted to all persons who may be arrested as fugitives from labor, and who shall claim to be freemen."

Mr. B. said the question which had been submitted to the consideration of the convention, was undoubtedly one of high importance, and he trusted that it would be considered calmly, and determined after that dispassionate reflection its importance demanded. Occasion had been taken, in the course of the debate in this body, to recur to the relative situation of the northern, western, and southern states. He never had, he never would utter a single syllable of unkindness towards that portion of our Union whose misfortune it had been to have inflicted on them the curse of slavery. He thought there was no section of the country where the flame of liberty was purer, or where it burned with a more ardent flame. Nor did he think there was any portion of the Union where there was cherished a stronger desire to improve the condition of the coloured race, and prepare them for their emancipation.

Having said thus much, he must say, that a disposition existed among the people of that section to assert their rights against other parts of the Union. And, he trusted that while we saw the people of other parts of the country jealous of their rights, we would be equally tenacious of our own, and careful to avoid wounding the feelings of citizens of other sections of our republic. It was not necessary that he should at this day and on this floor, pass any eulogy on the trial by jury—that best safeguard of the rights, liberties and lives of the citizens of this free country.

The principle was engrafted on the constitution of the United States. It was also contained in the constitution of the commonwealth of Pennsylvania, and he believed of every state in the Union. This universal acquiescence in the principle was the best proof of its excellence, and how dear it was to freemen, and how deeply they deemed it to be connected with the perpetuity of their rights.

Was there, he would ask, any necessity that an alteration should be made in the constitution in this particular? Was there any occasion for the insertion of this principle in the fundamental charter, unless it could be manifestly made out that the section, as it stands, is not sufficient to guard the rights, and to prevent men from being deprived of their liberty? In his opinion, then, a greater safeguard than now existed, was imperiously required.

This, however, was not a question which affected a peculiar class of the community alone; it was not a question which affected those only who had the misfortune to have a darker complexion than we have, but it was a question which might be brought home to all. There was no citizen here exempt from it. Every citizen was presumed to be free. Nobody in the commonwealth of Pennsylvania presumed another to be a slave. But, every man, at least *prima facie*, was a freeman. All he (Mr. B.) asked was, that every man who claimed to be a freeman—who claimed to be under the constitution and laws of Pennsylvania, a citizen, shall not be deprived of his liberty unless by the verdict of his fellow men, in his neighborhood, who shall have an opportunity of confronting his fellow men.

Did he (Mr. B.) ask any thing unreasonable? any thing that Pennsylvania was disposed to withhold? What! would any man in Pennsylvania have another deprived of his liberty—have the inestimable right of freedom taken from him, without a fair, open, and impartial trial by a jury of his peers? He could not—he did not believe it.

On motion of Mr. MEREDITH, of Philadelphia,

The convention adjourned until half past nine o'clock to-morrow morning.

SATURDAY, FEBRUARY 3, 1838.

Mr. BALDWIN, of Philadelphia, presented a memorial from citizens of Philadelphia county, praying that the right of trial by jury may be extended to every human being:

Which was laid on the table.

Mr. FOULKROD, of Philadelphia city, presented a memorial of like import:

Which was also laid on the table.

Mr. SCOTT, of Philadelphia, presented a memorial of like import:

Which was also laid on the table.

Mr. CHANDLER, of Philadelphia, presented a memorial of like import:

Which was also laid on the table.

Mr. COPE, of Philadelphia, presented a memorial of like import:

Which was also laid on the table.

Mr. EARLE, of Philadelphia city, presented a memorial of like import:

Which was also laid on the table.

Mr. COCHRAN, of Lancaster, from the committee to whom were referred the amendments made to the constitution in convention on second reading, made report:

That they find the amendments to the second article correctly printed, with the exception of the word "up," in the sixth line of the eighth section, which they recommend to be stricken out as superfluous. The remaining sections of the said second article are submitted as they stand on the printed files.

And the said report was laid upon the table, and ordered to be printed.

Mr. HIESTER, of Lancaster, from the committee to whom was referred the communication from the committee of the house of representatives, of the 31st ultimo, on the subject of furnishing each of the members of the legislature now in session, and its officers, with a copy of the Debates of this convention, made report:

That inasmuch as the subject of the distribution of the debates of the convention had been disposed of by this body before the receipt of the said communication, it would lead to difficulties again to open the subject; and much disposed as this body might be to extend the desired courtesy to the members of that body, they could not do so without reconsidering, and thus undoing the action of the convention heretofore had on that subject. Your committee therefore recommend the adoption of the following resolution: viz:

Resolved, That the Secretary transmit a copy of this report to the honorable the House of Representatives, and that the committee be discharged from the further consideration of the subject.

Mr. FRY, of Lehigh, offered a substitute to the report, which he afterwards withdrew.

Mr. CRAIG, of Washington, thought it uncourteous to refuse the request of the legislature. The reasoning of the report did not seem to sustain the conclusion. The copies are asked for by the legislature. They will not be ready for this legislature, but may be for the next.

Mr. COX, of Somerset, thought the reasons for not complying with the request of the legislature were sufficient. The object seemed to be to obtain the copies for this legislature. He was not disposed to grant the request, because he was satisfied that the copies were desired for the benefit of the members individually, and not of the legislature.

Mr. CUMMIN, of Juniata, asked if there was any resolution which directed the manner in which the reports of the debates should be distributed?

The CHAIR replied, that a report had been adopted, reconsidered, and adopted again.

Mr CUMMIN, of Juniata, said that the books ought to be distributed in accordance with the views of the resolution, and that no change in regard to it should be made. The members of the present legislature who put in their claim for copies, were not better entitled to them than would be those of the next legislature. Copies of the debates would be distributed among the different prothonotaries' offices in each county of the state, where they would be open to every one. He would therefore vote against the amendment proposing to make a different disposition of the copies.

Mr. HIESTER, of Lancaster, found that he was in error, and the gentleman from Somerset (Mr. Cox) right—that each member of the legislature wanted a copy for himself. The delegate from Washington (Mr. Craig) if he could obtain a copy from each delegate of the convention, could have them distributed among the members of the legislature. But we could not take them from the delegates, unless we succeeded in obtaining a reconsideration of the resolution. This was the opinion of the committee. He thought as good a disposition had been made of the copies as could be made, and that the legislature had no right to claim any copies of us.

Mr. CRAIG, of Washington, moved to amend the resolution by striking therefrom all after the word "resolved," and inserting in lieu thereof the following, viz: "that the subject be recommitted to the committee with instructions to report in favor of the application of the state legislature."

Mr. SMYTH, of Centre, said he was not inclined to give up his share of the copies, as he was the only representative of four thousand taxables. The number of copies required to be distributed among the members and officers of the legislature would amount to one hundred and forty-six copies. He wanted all his share of the copies, and therefore could spare none.

Mr. JENKS, of Bucks, hoped that the subject would not be recommitted. He approved of the report of the committee, and believed that a most judicious distribution of the copies had already been made by the resolution already adopted. The principal object in view was, to have the copies placed in some public station, where the people of the commonwealth

could have access to them. Seven copies would be his share of the distribution, and he should be at no loss how to dispose of them among the lyceums and libraries in his county. If the convention granted the request of the legislature, the copies given to them would most probably be locked up in private libraries, and thus would the public be excluded from the perusal of them. He wished that the amendment would not prevail, and that the report of the committee would be adopted.

Mr. CLARKE, of Indiana, asked for the yeas and nays, which were ordered.

Mr. FULLER, of Fayette, said the object of having the debates was to give information to the people, and would put it to gentlemen, to say whether thirteen copies in the state library would not be a sufficient number, and which the members would have an opportunity of consulting whenever they chose.

Mr. DENNY, of Alleghany, was inclined to support the amendment of the delegate from Washington, because men occupying the high and public station of legislators would have a good opportunity of making a judicious use of their copies, by placing them within the reach of their constituents, and spreading the information they contain among the people generally. He thought the request of the legislature ought to be granted. If there were copies deposited in the lyceums, libraries, and other private institutions, they would be in the reach only of subscribers. But, by giving copies to those who occupied prominent public stations, they would be accessible to all.

Mr. RUSSELL, of Bedford, hoped the convention would act with some consistency, and determine to adhere to the report which was originally made, and which had the general approbation of the body. He apprehended that the legislature were not informed of the terms of the resolution as it passed the convention, in relation to the distribution of the copies of the debates, or they would not have made this request.—They would have been satisfied. He could not see how we could comply with the request of the legislature. It would be, perhaps, two years before the work was completed, and we ought not, he thought, to give copies to the present legislature. The third legislature, from this time, if any ought to have them, would be better entitled to them than the present legislature. He had been told, from good authority, that the printers would have five hundred extra copies, and public bodies and individuals might furnish themselves.

Mr. THOMAS, of Chester, rose and said:

Mr. President: I wish to make an observation or two upon the subject now before the convention, in which I trust I shall be able to satisfy the gentleman from Allegheny, (Mr. Denny) as also the gentleman from Bedford, (Mr. Russell,) as to the means by which the gentlemen, members of the present legislature may severally be gratified with the use of a copy of the debates and journals of this body, which appears to be so great a desideratum. By way of illustration, I shall mention the case of one gentleman, now a member from my own immediate district, who is an active friend of science and the dissemination of useful knowledge, and as such was instrumental in establishing a lyceum in his district, and

furnished an apartment for meetings of the society and the preservation of their collection of plants, minerals, &c., as well as such books as might be procured by the society or presented to them. Now, under the resolution annexed to the report of the committee upon the subject of distributing these books, I shall feel bound to present this lyceum with a copy of each, and they will be placed in the immediate custody of this gentleman, and where he can at all times have access to them; and I would recommend to every gentleman who is a member of the legislature, and who is not already a member of a library or lyceum association, to attach himself as early as possible to some one of these institutions most convenient to himself; and where none such exist. let him exert himself to procure the establishment of the one or the other, whereby he may at all times have access to these volumes while at home, for they certainly are not necessary for his information while at the seat of government, after the ample provision which has been made in the report of the committee for supplying the state library, and the book-cases in the halls of the legislature. By so doing, each member may have the satisfaction of aiding those institutions, which this body, by the adoption of the resolutions of the committee, have decided to be useful agents in the dissemination of knowledge; and certainly the consideration alluded to by the gentleman from Allegheny, that no person but a member of the institution could have access to these books, ought to be no barrier to their disposition as reported by the committee, when a trifling sum in aid of the institution will entitle any person to all the privileges of membership, and give him the use of these Debates and Journals, although they may not be his own private property to dispose of at his pleasure.

This method, whereby every member of the present legislature may be supplied with all the advantages which he could desire from the possession of a copy in his own proper person, appears to me to be so very appropriate, that I shall oppose the amendment of the gentleman from Lehigh, and vote in favor of the resolution of the committee as reported by the gentleman from Lancaster.

Mr. M'DOWELL, of Bucks, wished to know whether the resolution provided that the legislature should have those volumes only of the Debates already published, or the whole work when completed? He would go for giving them those published, but the remainder would belong to the next legislature.

The question being taken on the adoption of the amendment, it was decided in the negative—yeas 31 : nays 83.

YEAS—Messrs. Chambers, Clarke, of Indiana, Cleavinger, Cochran, Cope, Craig, Denny, Dickey, Dickerson, Doran, Dunlop, Earle, Farrelly, Forward, Fry, Hastings, Helffenstein, Henderson of Dauphin, Hopkinson, Keim, Kerr, Martin, M'Cahen, Merrill, Read, Riter, Rogers, Saeger, Sterigere, Taggart, White—31.

NAYS—Messrs. Ayres, Baldwin, Banks, Barndollar, Barnitz, Bedford, Bigelow, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Carey, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Coates, Cox, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Darragh, Dillinger, Fleming, Foulkrod, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hayhurst, Hays, Henderson, of Allegheny, Hiester, High, Houpt, Hyde, Ingersoll, Jenks, Kennedy, Konigmacher, Krebs, Long, Lyons, Maclay, Magee, Mann, M'Dowell, M'Sherry, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Pennypacker,

Porter, of Lancaster, Purviance, Ritter, Royer, Russell, Scheetz, Sellers, Seltzer, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Thomas, Todd, Weaver, Wooodward, Young, Porter *President pro tem.*—83.

Mr. CURLL, of Armstrong, moved to amend the resolution by striking therefrom all after the word "resolved," and inserting in lieu thereof the following, to wit: "that five copies of the Debates of the convention, when executed, be placed in the office of the secretary of the commonwealth to be distributed as shall be directed by law."

Mr. KONIGMACHER, of Lancaster, said—Where are you to get them from? We have disposed of all that we are to receive.

Mr. CURLL was in favor of placing the one hundred and thirty-three copies in the office of the secretary of the commonwealth for distribution. He regarded these books as public property, and that delegates ought not to appropriate them to themselves.

The question being taken on the amendment, it was decided in the negative.

And the report of the committee was adopted.

NINTH ARTICLE.

The convention resumed the second reading of the report of the committee to whom was referred the ninth article of the constitution.

SECT. 6. That trial by jury shall be as heretofore, and the right thereof to remain inviolate.

The question pending was on the following amendment offered by Mr. BIDDLE, to be added to the above section:

"It shall be granted to all persons who may be arrested as fugitives from labor, and who shall claim to be freemen."

Mr. BIDDLE resumed his remarks. He said that he had taken occasion in his remarks, last evening, to be as clear and explicit as possible, in order to guard against any misapprehension in regard to the effort he was making to have the people of Pennsylvania protected in their rights, their liberties, and their lives. While there was so much sensibility at the south with respect to their peculiar rights, they must not complain if we also be alive to the maintenance and protection of those of the citizens of the north, especially of the commonwealth of Pennsylvania. The amendment that he had offered did not contemplate any interference with the rights of the south, or to prevent them from reclaiming their fugitive slaves in the commonwealth of Pennsylvania. His amendment only provided that if an individual arrested claims to be a freeman, he shall not be pronounced to be a slave without the decision of a jury of his fellow-countrymen. He would ask to whom this question applied? He would answer that it applied to every citizen of the country, that all were deeply interested in it—that it affects all alike. It was very true that none of us could be slaves to the colored race! but it did not follow that none of us could be claimed as slaves—as fugitives from labor, and as much, be made amenable to the existing laws as an individual whose complexion was of the deepest black. It was for us to say whether any individual in this

land—in this great, broad commonwealth of Pennsylvania, boasting that all, living within its limits, are not only free, but secure in the enjoyment of their freedom; it was for the people now to say whether this liberty may be wrested from them, and not only during their own lives, but also that slavery may be transmitted to their posterity, and that without the decision of a tribunal of their fellow men: by the mere voice of a single individual. He, for one, would say, even if this question were only applicable to the coloured race, that they ought to be protected in their rights—that no free black, or coloured man, should be unwarrantably deprived of his liberty. We are told that there is a prejudice existing against them so strong that it is necessary to deprive them of the right of voting. Now, if prejudice was strong against them, did it not furnish a very good reason why we should guard them—protect them against danger from this wrong? He trusted that there was not a man present but what would assent to the coloured race being protected by the law of the land, and who would say that they ought to be protected. The question which we were about to determine was widely different from that decided a few days ago. Many gentlemen on that occasion, who were against giving them the right of suffrage, expressed their determination to protect them in their civil rights. If he could make it manifest that it was necessary to the protection of their rights that trial by jury should be granted them, unless there was something paramount in the laws and constitution of the United States which would prevent us from acting on the subject—and, that there was not—he flattered himself that he could demonstrate clearly to the satisfaction of every man's mind.

I yesterday (said Mr. B.) took occasion to ask the question, whether there was any reason why we should interfere with the existing provisions of the constitution, and should insert an additional clause. I will now answer that, in the first place, there is a reason why we should give this subject a careful and attentive consideration, to be found in the petitions and memorials which have come from almost every quarter of the state, signed by upwards of three thousand inhabitants, praying this body to throw around them the protection of the trial by jury in all cases where life or liberty may be at stake.

If that large portion of our fellow citizens feel themselves insecure, or if any portion of our fellow citizens are in fact insecure, is not that a sufficient reason why we should give our calm, and deliberate and unbiased attention to a subject of such momentous import.

But, Mr. President, independent of this consideration, I apprehend that we have abundant proof that insecurity does exist. And I will here ask the attention of the convention to the following points:

First—What is the existing state of the law?

Secondly—What is the mischief complained of?

And, Thirdly—What is the remedy demanded at our hands?

First, then, what is the existing state of the law?

In the fourth article of the constitution of the United States, section two, paragraph three, we find the following provision;

"No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regu-

lation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due."

It is no part of my desire, continued Mr. B., to disturb a single word or letter of this clause in the constitution of the United States; on the contrary, I ask that every word and letter of it may be strictly construed, and that its due force may be given to it.

There is not an individual in this body who would more ardently sanction the supremacy of the constitution and laws of the United States, or who would more indignantly frown down every attempt at nullification, than the humble individual who now addresses you.

This then, is the clause of the constitution of the United States; and under it the act of congress of the 12th of February, 1793, was passed. I will not at this moment enter into the question of the validity of that act, though I hope to be able to show, before I close my argument, that it was passed in utter violation of the constitution of the United States.

Of this hereafter; at present I will ask what are its provisions?

The third section is as follows:—

"When a person held to labor in any of the United States or in either of the territories north-west or south of the river Ohio, under the laws thereof, shall escape into any other of the said states or territories, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labour, and to take him or her before any judge of the circuit or district court of the United States, residing or being within the state, or before any magistrate of a county, city, or town corporate wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such state or territory, that the person so seized or arrested doth under the laws of the state or territory from which he or she hath fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney which shall be sufficient warrant for removing said fugitive from lab r to the state or territory from which he or she fled."

Thus, continued Mr. B., the party claimed as a slave may be dragged before any one of the magistrates of the county in which he may be found. In some of the counties we know that these magistrates are very numerous; and for the character of some among the number, for the extent of the confidence which is to be placed in any thing they may do, or the credit which is to be given to any thing they may say, I can refer to the testimony which has frequently been borne by members on this floor.

The party, I say, may be dragged before any one of these magistrate, even though his character may be such that no man would trust him to pass on his most paltry civil right, much less on a question involving his life or liberty.

It matters not; the agent or attorney has a right to take him from his humble home, in the dead of night, and to carry him before a magistrate of his own selection. And when he gets him there, what has the magis-

trate to do? He has to hear the case. In what manner? Either upon oral testimony or upon affidavit.

Yes, sir, these are the very words of the act of congress. An individual within the commonwealth is to be seized without process of law—is to be carried before a magistrate of the selection of the man who claims him—is there to be tried, not in a public court house, but probably in the private office of the magistrate. And tried upon what testimony? Either upon oral testimony or upon affidavit.

If any individual be charged with an assault and battery which may involve a penalty, perhaps, of five dollars, he has a right to confront his accuser—to look his witnesses full in the face. He has a right to secure the services of able counsel to throw protection around him; while the unfortunate individual whose liberty or life may be at stake, is to be tried either upon oral testimony or upon affidavit.

Affidavit, sir! How taken? Taken in his absence—taken without cross-examination—taken without any opportunity having been afforded him to show the character of the witness who may be brought to testify against him, or that the statement of that witness is not entitled to any credence.

And this magistrate thus selected by the party claiming, and upon such testimony, is to pass the irreversible decree, which must consign a human being to the hands of an agent who has then the power immediately to remove him beyond the jurisdiction of the commonwealth.

It has been decided that no writ of habeas corpus—no writ *de homine replegiendo*—no process which your highest court can grant, can rescue this unfortunate being from the grasp of the agent, into whose hands he is thrown on such testimony, and after a trial before such a magistrate.

Am I stating the law, as it now exists, correctly? Is there any thing I have said which the record does not fully sustain? Let the members of the convention examine the law for themselves, and if I have in any manner stated it inaccurately, I ask that I may be corrected.

If I am correct, as I do not doubt, what a state of things is presented to our view? Sir, can it be possible that we hold our liberties and our rights by a tenure so frail?

But who is the plaintiff? Here we have an important question—*who is the plaintiff?*

Do the generous, the chivalrous, the patriotic, the benevolent inhabitants of the south come among us in pursuit of their fugitive slaves? It is true that they have on some occasions done so—but the instances are rare. The trust is generally conferred upon an agent; an individual, probably, whose occupation is that of slave-hunter.

He is the man who comes among us armed with these high powers. And is not the very nature of the office odious, disgusting, and degrading in itself—such as almost the humblest individual would scorn to hold? And is it to such an agent that you would entrust powers so high, calculated as they are to subject the rights and the liberties of your fellow citizens to tyranny and oppression, and to make them slaves?

But I have said that the agent of the claimant, from the moment in

which he gets the certificate, cannot be prevented, by any process of law, issued by any court, from carrying the individual beyond the jurisdiction of the commonwealth.

What then becomes of the individual when he is thus carried away? Is this agent even bound to make any return of his fate? Is he bound to render to the law of the commonwealth an account of the person to whom the victim has been delivered, where he may have been left, or in what manner he may have been disposed of? Not at all. The last we hear of the unfortunate being is that he is delivered over to the agent to take him out of the jurisdiction of the commonwealth. Beyond this all is ignorance, all is darkness.

We may indeed be told that the laws of several of the southern states grant him a trial, if he should demand it. But what security have we that he will ever be carried to any southern state? What security have we that he will not be forthwith put on shipboard and conveyed to the West Indies?

Where, I ask, is our security? or is it such as any man within the sound of my voice would be willing to risk his most trifling right upon? Sir, there is no security. Is the agent, then, bound to render no account? None at all. The victim is carried away beyond the jurisdiction of the commonwealth, and there is nothing more to be heard of him afterwards.

Now, is it not enough, simply to state the fact that such is the condition of the law of congress at the present time, to make every citizen of the commonwealth believe it to be his bounden duty to place around his fellow men some security against the abuses of such an injurious and oppressive law? Ought not every citizen to turn his attention to it, with a view to devise a remedy for the abuses that are naturally incidental to a law of this description.

But we are not without legislation upon this subject in our own commonwealth. The legislature of Pennsylvania felt that this was a subject of engrossing importance, and upon the 25th of March, 1836, they passed an act of assembly.

The time within which my remarks must be confined will not permit me to read this act, but I will refer to its provisions for a moment. I ask gentlemen who may feel desirous of information, to turn to Purdon's Digest, title negro, and there they will find it.

The act provides that no individual shall seize upon another without process first obtained, or an application to a magistrate, on the oath of the agent, and the affidavit of the claimant.

This, it is true, was a sort of security, and improved the condition of things—but feeble was the security and partial the improvement. And upon this state of the case, a warrant is to be issued. And what is to be done with the warrant? The fugitive is to be arrested—and before whom is he to be carried? Before *any* judge; still leaving it optional to the party to apply to a magistrate who would designate a judge of the county of his own selection. And what next? The claimant is to prove his case to the satisfaction of the judge; the judge is thereupon to grant his warrant, and the individual is to be delivered over to the agent.

Does this remedy the evil? By no means. The law leaves to the plaintiff the power to select his judge. And then without a jury—without the publicity which a just and equal administration of the laws require to be given to such proceedings, and without confronting the witness—the judge is to pass upon the question of the liberty or slavery of the individual claimed.

It is true, that the act does provide, that if the individual claimed as a slave asks for delay and shows some ground on which it should be allowed, the magistrate shall grant it. But what security is there in this. The security of the individual is the judge. But who is the individual just brought before the judge? Will those filling eminent stations—will those who have a knowledge of their rights and an ability to assert them be the individuals upon whom the operation of this law is to fall? No, sir; it will be upon the humble, the weak, the unfortunate, the destitute, and the ignorant. They are the persons who are to be brought before the judge, terrified, dismayed, bowed down to the earth.

Are the wealthy here to assert their rights, to say that they are oppressed and persecuted—that they want time—and that they will not be judged and condemned in a corner? No, sir, it is the heart-broken being—desolate—dismayed—his judgment almost driven from its seat; he it is who is to be brought before the magistrate on the question of his freedom or his bondage. He it is whose rights are thus to be passed upon, finally and irreversibly.

This then is the existing law of the United States, as controlled out by the laws of the commonwealth of Pennsylvania. I say "controlled," because the act of assembly of this state, provides that any magistrate who shall proceed upon the act of congress in violation of the provision of the act of assembly, shall be guilty of a misdemeanor, and on conviction of the offence, shall be punished in the manner therein prescribed.

Here then, Mr. President, we have evidence before us that the state of Pennsylvania *has* legislated upon this subject. We have evidence before us that the legislature of Pennsylvania has undertaken to say that she *will* control the act of the congress of the United States, at least so far as our own magistrates are concerned. And such is the state of things at the present time.

Is there an individual here present who is willing to go home to his fellow citizens, and to say—"thus we found you—thus we leave you, and thus your rights and your liberties are to be passed upon? You may be deprived of the right of trial by jury—you may be carried into bondage in which you and your children way be held to the latest posterity. We knew all this—we had warning of all this—but we refused to aid you."

I repeat the question, is there one member of this body who is prepared to go home to his constituents, and to render to them such an account of the trust which they have reposed in his hands?

But as an answer to this, it is said that the party claimed as a slave, is to be taken to the south for trial. In reference to the trial which he may expect to have, I will say in the words of the late Chief Justice M'Kean, of this state—honored and beloved as he was by all of us—that "in some cases trial is but a cruel mockery."

What is there to guard an individual thinking he is secured by the protection which our laws throw around him, against the devices of the kidnapper? What mode of kidnapping so easy as for one man to fabricate the oath of the supposed owner, and thus to seize upon an individual and carry him before a magistrate.

A man who would be guilty of the crime of kidnapping in any shape, would not hesitate much as to the means by which his object was to be attained. He would not hesitate to swell the catalogue of his crimes by super-adding forgery to perjury. And where, under our existing laws, is security to be found against the kidnapper? I will suppose a further case.

Suppose that a foul conspiracy should be formed,—and I regret to say that such an instance has been known in our country—to carry away from among us one of the fairest and loveliest of women. And suppose that an agent should come to seize upon her, under process of law—from a magistrate of his own selection—such a magistrate as we have had described to us on this floor—should appear before a judge, exhibit overwhelming affidavits and certificates fabricated for the purpose—and should succeed in carrying her beyond the limits of your commonwealth. What security, I ask, is there, that the case thus hypothetically put, may not be realised in Pennsylvania?

Has there not been such a conspiracy in our country? All sexes and classes are liable to be thus dragged away; and, probably, none more so, than the class to whom I have just alluded—with the view, probably, of being forced into some hateful marriage. And are we willing, at this time of day, to drag on our lives under the fear that such an occurrence is possible, and that it may take place under the colour of law?

I propose, now, Mr. Chairman, to turn again to the constitution of the United States, with a view to show that that constitution invades no right of state sovereignty;—that it grants to no government, either to our own general government, for which Pennsylvania feels a most devoted attachment, or to the government of any state, the power to come within the limits of our commonwealth, and to assert claims so obviously inconsistent with the security of the rights and the liberties of all our citizens.

At the outset of my argument, I brought to the notice of the convention, that clause of the constitution of the United States, which speaks of persons held to service or labor. That the convention may better understand my positions, I will here read it again:—

It provides that "no person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due."

Now, continued Mr. B., I will ask whether the words "delivered up," have not a legal signification? And I ask the learned judge of the United States court, who has a seat on this floor, (Mr. Hopkinson) and to whose legal acquirements and research no gentleman defers more respectfully than myself; I say I will ask him whether turning to the laws of nations—whether turning to judicial history, these words have not

received an interpretation; and whether under that interpretation, the words are held to mean that the citizens of one sovereign state may come into another, and seize whatever he may think proper? The right of delivering up is an attribute of sovereignty; or under our peculiar form of government, of him who stands in the place of the sovereign, as the executive magistrate—the representative for that purpose, of the sovereignty of the people.

I ask, then, whether the only distinction which exists between the two cases is not this:—that in the case of a fugitive on account of crime, the executive demands the criminal; whereas in the case of a fugitive from labor, the individual, or his agent or attorney, demands him. And why? Because the flight is from the outraged laws of the commonwealth, and there is no individual injured, except so far as he is a component part of the whole; but when he is a fugitive from an individual, what is that individual to do? Is he to be entitled to do that which the executive magistrate dare not do? If an individual flies from the insulted laws of the commonwealth, that commonwealth dare not send her officers among us to carry him away, but must respectfully apply to the executive magistrate for his delivery. And then the executive, in fulfilment of the compact contained in the constitution of the United States, surrenders the party to the commonwealth from which he has fled. And is it not to be said, that in the case of an individual all these guards which are thrown around us against the improper action of the sovereignty of a sister state, are to be dispensed with; that a power is to be conferred upon an individual, or the agent of an individual, which is denied to a sovereign state?

I contend that the words "delivered up" and the words "seized and carried away," are not synonymous. No, they are not synonymous, but, on the contrary, they are in direct contradiction to each other. The former imply that he shall be delivered up, by whom?—by the sovereign of the state to which he has fled.

But are the laws silent on this subject? It was considered long before the constitution was adopted; and the right under the law of nations to claim a fugitive from justice, is one which gives rise to great discord of opinion. Grotius, and some other writers on the law of nations, held that when a criminal has fled from justice, the government of the country into which he flees, is bound either to punish him according to his crime, or force him to leave the country, or detain him. Other writers on international law hold a different opinion. And the late chief justice of this commonwealth says, that they are not bound to do anything of the kind, but that the matter rests on the discretion of the governor of the state to which the person may have fled. I wish that time was allowed me to advert to the books, and to read conclusive proof, as I might do, to shew what is the true meaning of the words "delivered up."

But, Mr. President, this is not all. I am about now to advert to an authority for which I do not feel quite so much reverence as some gentlemen feel; although, as to the illustrious dead, I do not design to say a word in disparagement. I refer to the authority of Thomas Jefferson, who denies the existence of such a right. His authority, given as secretary of state, at the time the illustrious Hamilton was secretary of the

treasury, and when the first, and best, and greatest of men presided in the supreme executive chair of this Union—I mean the father of his country. And not only is this a law upon the subject, but it has been practiced on. The case of Jonathan Robbins is familiar to all of us; and the great speech of Chief Justice Marshall must be in the remembrance of all who are acquainted with the history of the country. But, upon what ground did Chief Justice Marshall place the surrender of Robbins? upon the ground that it was made obligatory to do so by treaty. And this clause in the constitution of the United States is nothing more nor less than a perpetual treaty between the different sovereign states which constitute this confederacy.

But by whom was he to be delivered up? Was a foreign nation to send an agent to grasp him—to carry him off, as it were, by force? No—if such an attempt had been made this whole nation would have risen in indignation to repel the outrage; from one end of our Union to the other, there would have been a universal cry that the honor of the country should be vindicated. But this is not all. We know that there have been two cases in which peremptory demands have been made; that is to say, in the case of the chevalier Delanson, and the case of the sailors of the ship Jupiter. It was in this latter case that Mr. Jefferson expressed his decided opinion that, unless bound by treaty to that effect, there was no ground for delivering up a fugitive from one sovereign to another. In all these cases, in all the works upon the subject, the delivering up of the fugitive is to be made by the executive of the country to which he has fled.

And how is this delivering up to take place? Is it to take place under the will, or according to the rules prescribed or dictated by the country from which the individual may have fled. No—but it is to take place subject to the laws of the country into which he may have fled. It is their own right of this latter country; the safety, nay, it may be, the existence of the people of that country may require that this should be so. What, sir! a foreign people send emissaries to take away our citizens under the pretext that they are to be delivered up! Such a doctrine is unheard of in any other quarter. I trust it is not for the free people of this commonwealth tamely to surrender so important a right. I trust that she will always be so distinguished for her love of liberty and the love of her citizens, as never to turn recreant to the sacred trust which has been reposed in her.

But, Mr. President, I may be told that to interpose the trial of a jury is equivalent to a refusal to deliver up. I deny the position. It is no such thing. A trial by jury may take place within twenty-four hours after the individual has been seized. Let a general law be passed requiring the sheriff when such a claim is made, to summon a jury, and that no delay shall be interposed, and thus to provide that no human being shall be deprived of his liberty or rights without being heard before a jury in his own defence.

But it is said that the commonwealth has no right to legislate on this subject. Have we not already done so? The same law which denies our right to pass a law providing for the trial by jury, is entirely inconsistent with the existing provisions of the act of assembly. I trust there

is no one here, whatever may be the validity of the act of congress, (and I have yet many more vital objections to urge against it) or whatever may be our objections to declaring the act of congress unconstitutional, which, as we all know, can only be done by means of our courts; I say, I trust there is no gentleman here who will raise any objection against the exercise, on the part of the commonwealth of Pennsylvania, of a proper control over the magistrates who hold their appointments under her constitution and her laws, as she has heretofore done. I wish very much to hear the opinion of my venerable friend, the judge of one of the United States courts, on this question.

I will now read an extract from an opinion given by the late Chief Justice Tilghman, in the case of the commonwealth against Deacon, and which is to be found in the tenth volume of Sergeant and Rawle's Reports.

"Having now gone through all the European opinions and authorities, I will make a few observations on them, before I consider what is far more important: the opinions and authorities in our own country.

"That no crime should go unpunished, and that the government which protects a fugitive from justice, becomes the abettor, and in some measure the partner of his crime, is a beautiful theory, but attended in practice with many difficulties. If all nations had the same idea of crimes, and of punishments, and if all were equally upright and impartial in the administration of justice, there could be no cause of complaint if the accused were always sent for trial to the place of his offence; indeed that would be the most proper place, because in general, there the evidence is to be sought. But it is not so. What some consider as a slight offence, is by others deemed worthy of death. In some, an impartial trial may be expected. In others, trial is but a cruel mockery. For these and other reasons, the theory of Grotius has not been adhered to in practice. He says himself, that for ages it has not been the custom to demand the delivery of a fugitive, except in case of crimes against the state, and other heinous offences. And all who have adopted his opinion, mention crimes against the state, as peculiarly those in which an offender should find no protection.

"Now, it must be confessed, that in a mild, paternal government, treason is the greatest of crimes. But when government becomes oppressive, the best citizens, with the best intentions, may be implicated in treason; and therefore it is, that the very crime which Grotius denounces as that which should be cut off from all asylum, is precisely the one, to which, at the present day, an asylum is always granted by liberal and enlightened nations."

"There are at this moment, both in England and America, fugitives from France, Spain, Portugal, Savoy and Naples, all guilty of treason by the law of their respective countries; yet all living in undisturbed quiet, all trusting with undoubting confidence to the protection of the government to which they have fled. To say nothing of ourselves, would England give one of these people up? Or rather, would it not be deemed almost an insult to demand a delivery? The most heinous crime, next to treason, is murder; yet there, the degrees of guilt are so widely different, that the nature of each case should be well considered before a fugitive is given up," &c.

"In short, a crime can scarcely be conceived in which the degrees of guilt are not so various, that the sovereign on whom a demand is made, ought to exercise his own judgment, and determine, according to the circumstances of the case, whether or not the fugitive should be surrendered."

This then, continued Mr. B., is the case as left by the law of nations. But what does it say? That the delivering up is to be made by the sovereign, and that he is to exercise his discretion. Where there is a treaty, that treaty is law between the parties, and both sovereigns are alike bound by it. In this case, as in the case of Jonathan Robbins. the constitution of the United States gives no right to invade, but provides, just as the treaties here provided, for the delivering up.

I pass on. The chief justice continues:—

"The more deeply the subject is considered, the more sensibly shall we feel its difficulties; so that upon the whole, the safest principle seems to be, that no state has an absolute and perfect right to demand of another the delivery of fugitive criminals, though it has what is called an imperfect right, that is a right to ask it, as a matter of courtesy, good will, and mutual convenience. But a refusal to grant such request, is no just cause of war. No nation has a right to ask the delivery of a fugitive, for the purpose of wreaking its vengeance on him."

Thus again, continued Mr. B, you find the opinion of this great judge to be in accordance with the letter of the law of nations. In throwing out his opinion he treats this act of delivering up as an attribute of sovereignty."

I now read the opinion of Mr. Jefferson, as quoted in the opinion of Chief Justice Tilghman.

"The laws of this country take no notice of crimes committed out of their jurisdiction. The most atrocious offender, coming within their pale, is received by them as an innocent man, and they have authorized no one to seize or deliver him. The evil of protecting malefactors of every dye, is sensibly felt here, as in other countries; but until a reformation of the criminal code of most nations, to deliver fugitives from them, would be to become their accomplices. The former is viewed, therefore, as the lesser evil. When the consular convention with France was under consideration, this subject was attended to; but we would agree to go no further than is done in the ninth article of that instrument, where we agree mutually to deliver up, captains, officers, marines, sailors and all other persons being part of the crew of vessels, &c. Unless, therefore, the persons before named be part of the crew of some vessel of the French nation, no person in this country is authorized to deliver them up, but on the contrary, they are under the protection of the law."

In the conclusion of Mr. Jefferson's letter, he says:

"I have not yet laid this matter before the President, who is absent from the seat of government, but to save delay, which might be injurious, I have taken the liberty, *as the case is plain*, to give you this promissory answer. I shall immediately communicate it to the President, and if he shall direct any thing in addition, or alteration, it shall be the subject of another letter. In the meantime, I may venture to let this be considered as a ground for your proceeding."

The CHAIR here announced that the hour had expired.

Mr. Woodward, of Luzerne, said he could not deny that this question presented a strong appeal to our sympathies. It would be grateful to his feelings to place the coloured people on a footing with the whites, if there were not objections to his mind insuperable. The gentleman from Philadelphia had promised to show that this was not the case.

Mr. Biddle explained. He had not shewn it, because he had not reached that part of his remarks.

Mr. Woodward resumed. He wished to shew that this could not be done without a violation of the fundamental law which is the supreme law of the land. If it should be found that such provisions as the present must have that effect, then there is an end of the question, and it is in vain to invoke our sympathies, and to appeal to the feelings of men. There is an end of the question. Let us see how matters stand. The fourth article of the constitution of the United States contains this clause: "No person held to service, or labor, in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

Allow me said (Mr. W.) to say in answer to all which gentlemen have said of the inability of one power to take their property from another, here is a treaty by mutual compact which secures to the citizen of a state the right to have delivered up to him any servant to whose services or labor he is entitled. This is the language of the constitution of the United States. Under this constitution was enacted by congress the act of congress of 1793; the third section of which is as follows:—

"Section 3. *And be it further enacted*, That when any person held to labor in any of the United States, or in either of the territories in the north west or south of the river Ohio, under the laws thereof, shall escape into any other of the said states or territories, the person to whom such labor or service may be due, his agent or attorney, is hereby empowed to seize or arrest such fugitive from labor, and to take him or her before any judge of the circuit or district courts of the United States, residing or being within the state, or before any magistrate of a county, city or town corporate, wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony, or affidavit taken before, and certified by a magistrate of any such state or territory, that the person so seized or arrested, doth, under the laws of the state or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing said fugitive from labor, to the state or territory from which he or she fled."

The next section of this act imposes a penalty of five hundred dollars on any one who shall knowingly obstruct the seizure of a fugitive from labor, or shall conceal such fugitive. The act of congress therefore provides that a fugitive from labor shall be delivered up, "upon proof to the satisfaction of such judge or magistrate." He would ask then these members who are called on to vote for this amendment, and whose sympathies have been as painfully as eloquently appealed to attend to the constitutional law on the subject. The fugitive is required to be deliver-

ed up on proof to the satisfaction of the judge or magistrate. The amendment would make the sixth section of the constitution read thus:

The trial by jury shall be as heretofore, and the right thereof remain inviolate. It shall be granted to all persons who may be arrested as fugitives from labor, and who shall claim to be freemen." Incorporate this amendment into your constitution, and you say fugitives from labor shall be delivered to the master on proof satisfactory to a jury; not the magistrate or judge, which is all the constitution of the United States requires, but to a jury under the law of Pennsylvania. He asked gentlemen to say if here would not be a direct collision between the act of congress to which he had referred and the act of the state. The master might repossess his property on satisfying a magistrate under the act of the United States, and where does this convention obtain the power to go further, and say he shall satisfy a jury of our citizens? This then is the question: Can we demand more of the owner than the law of the United States demands? I say not. The act of congress is the supreme law of the land. The second clause of the sixth article of the constitution of the United States is in these words:—

"This constitution and the laws of the United States which shall be made in pursuance thereof: and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."

What then is proposed by the amendment of the gentleman from the city? That which every judge and magistrate in the state is bound and sworn to disregard. What is the use of putting into the constitution what must fall still born? Is this a fit subject for an exciting discussion—for eloquent and inflammatory appeals to the passions—to rouse the feelings of the north and the south? No. The question ought to be looked at calmly and dispassionately, and when we find such a clause in the constitution of the United States, it is our duty as citizens, as statesmen, as men, to bow to that sovereign provision, and not do what must be void as regards the officers of this commonwealth. There is one way only of getting through this difficulty, and that is by meeting the issue boldly, and declaring the law of the United States to be wrong, and this must be done before we can admit this amendment into our constitution. An act of congress, passed only four years after the constitution of the United States was framed, under which thousands and tens of thousands of fugitives from labor have been restored to their owners, must now be ascertained and declared to be unconstitutional and void, and we are called on to put this clause into our constitution, because it is unconstitutional and void! He agreed, that if it was so, it is competent for us to provide to carry our own views into effect by state legislation. But he denied that it was so. The constitution of the United States was a compromise between the people of the slave holding states and the people of the non-slave holding states. The compromise was evident through the whole of that instrument.

Every gentleman who hears me knows that the wise framers of the constitution of the United States, with singular delicacy, avoided the use of

the term slaves throughout the whole of that instrument. It declares, for instance, that "representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, *three fifths of all other persons.*" This you find in the first article of the constitution; and in the very basis of representation you find an evidence of this compromise with slaves who constitute a part of the compromise, and a part also of the basis of representation.

I refer also to the ninth section of the same article of the constitution of the United States, which provides that "the emigration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person."

There was another concession made by the people of the states to the slave-holding interests of the country. And let me here remark, that the state of Pennsylvania, in the convention which framed the federal constitution, was opposed to this principle, and that she voted against it along with the states of New Jersey, Delaware and Virginia. It was carried, however, by the votes of the other states, all the non-slave-holding states of the east voting in favor of it.

The provision which has been referred to in the fourth article of the constitution of the United States, is another of the concessions made to the slave-holding interests. Thus this constitution was formed upon the principle of forbearance—made between the people of the slave-holding states and the people of the non-slave-holding states; and one of the evils suffered by the people of the slave-holding states was the escape of their slaves and their flight into territory over which the constitution and the laws of the slave-holding states did not operate. It was necessary, therefore, in this compact, this bargain—for such it was—to insert a provision which should secure to the people of the slave-holding states some mode of asserting their rights and of re-claiming that which, according to universal consent, was their own. And then it was that the provision was inserted in the constitution that "no person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due."

Now, the question presents itself by whom was this power to be carried out? By congress or by state legislation? It could not most assuredly be carried out by the legislative power of the slave-holding states, because the laws of those states could not operate in the territory of another sovereign—an independent and republican state. Of that there can be no question. It could not be carried out by the law of the state to which the fugitive fled, because the sentiment of the people of that state might be, as the sentiment of the people of some of the states has since that time become, entirely opposed to the institution of slavery in all its forms and aspects, and to such an extent as to make them disregard all

the constitutional provisions which were thrown out for the protection of the slave-holding interests, and deny to those interests that which absolutely belonged to them under the constitution.

By whom, then, could this constitutional provision be carried out? I answer by no power, but the superintending power of the Union; that is to say, the congress of the United States. It was the general government whose peculiar province it was then to stand between the slave-holding state from which the fugitive might have fled and the non-slave-holding state into which he might have fled—a sort of *daysman* between the two, whose province it was to say to the non-slave-holding state, we shall deliver up to his rightful owner, the slave who has fled from the slave-holding state.

This, Mr. President, was the most appropriate power either in the general government or throughout the whole of our confederacies to carry out this provision of the constitution. When, therefore, it is said that in the act of the twelfth of February, 1793, congress has acted without power, I ask gentlemen whether that power was not conferred by one of the clearest of all possible implications? I ask if it is not absolutely necessary to that constitutional provision, which secures to the owner of the slave the right to claim and demand his re-delivery? But, more than this; the act of congress has been the subject of judicial decision in many of the states, and those, too, non-slave-holding states. Mr. Sergeant, in page 398 of his constitutional law, says:

"From the whole scope and tenor of the constitution and act of congress, it appears that the fugitive is to be delivered up on a summary proceeding without the delay of a formal trial in a court of common law. If certificate be given by a state judge agreeably to the act of congress, after a hearing, such certificate is a legal warrant for removing the slave; and no writ of *homine replegiendo* afterwards lies on the part of the slave in a court of the state where such certificate is given, to try his right to freedom. Such writ is a violation of the constitution. If the slave in such a case has a right to freedom, he may try it in the state to which he is removed."

I have this morning looked to the case of Jack and Martin (as reported in 14th Wend.) and it appears from that report that although Chancellor Walworth delivered his opinion one way and Senator Bishop another, the case turned upon a point in the pleadings, and was not decided at all upon the constitutional provision. A paper, however, which has been laid upon our table under the title of "facts for the people," gives us the opinion of Walworth without that of Bishop, and has not the candor to state that the supreme court of the United States, after a full argument on both sides of the question, decided that the act of congress of 1793 was constitutional; and that the high court of error and appeals, of New York on the review of that case, affirmed that judgment. And I must here say, that whoever is the author of the anonymous publication thus gratuitously thrust upon us, gives us under the title of "*facts* for the people" an entirely mis-represented and perverted view of the legal authorities of the state of New York, in relation to the act of congress of 1793. Their opinion was that that act was constitutional, and the opinion of the court of error, so far as delivered, is a divided opinion; but

yet the judgment of the supreme court was affirmed. If the people want any facts upon this subject, I would say to the author of this publication that they want all the facts, and not such imperfect and garbled statements as he has placed before them.

A case also came before the supreme court of the state of Massachusetts—to be found 2 Pickering 11; and the court in that case held the act of congress to be constitutional.

Thus, sir, we find it has been solemnly settled in some of the northern states, by the highest judicial tribunals, that the act of congress of 1793, is constitutional, and that slaves have been delivered up under its provision. But it is too late in the day for us, in the state of Pennsylvania, to call in question the constitutionality of that law. The question has been directly decided in Pennsylvania many years since—and that decision never has been disturbed—that the act is constitutional and is binding and obligatory.

In the case of Wright alias Hall, vs Deacon:—5th Sergeant and Rawle, page 62:—

The plaintiff was claimed as a fugitive slave by a citizen of Maryland, who had caused him to be arrested and carried before a magistrate who committed him to prison, until evidence could be procured by the person who claimed him. The plaintiff took out a habeas corpus and was brought up before Judge Armstrong, who, having heard the case, gave the master a certificate adjudging the plaintiff a slave and authorizing his removal. Whereupon, he was remanded to the custody of the jailer under the magistrate's commitment, until the master should remove him. A *homine replegiendo* was sued out against the jailer, the object of which was to obtain a jury trial. The supreme court held that the certificate of Judge Armstrong was comformable to the act of congress, and, therefore, the person claimed as a fugitive could not maintain the *homine replegiendo.*

This is the point decided in that case, and let gentlemen shew that the case is not law; let them shew either that it is founded upon wrong principles, or that the decision upon it has since been over-ruled. I ask with what countenance we, a convention of the state of Pennsylvania, can raise or receive an argument that the act of congress of 1793, is unconstitutional, null and void? Do we not all know, that slave after slave has been delivered up to his owner under the provisions of that very act, and upon the authority of that case? But, moreover, do we not know that the case has not only been adjudged by the highest courts of our state, but that the legislature of Pennsylvania has, on repeated occasions carried out the provisions of the act?

And, here allow me to call the attention of the convention to another of these "facts for the people." I find this gravely asserted as one of the facts for ths people:

And first, if we look into the laws of Pennsylvania we find this state as long ago as 1820, sternly maintaining her sovereignty and protecting the liberty of her citizens, in direct opposition to the law of '93.

Thus the law of March 26, 1820 (Purdon's Digest, 653) enacts,

"That no alderman or justice of the peace of this commonwealth shall have jurisdiction or take cognizance of the case of any fugitive from la-

bor from any of the United States or territories under a certain act of congress of 12th February, 1793, respecting persons escaping from the service of their masters; nor shall any alderman or justice of the peace issue or grant a certificate or warrant of removal of any such fugitive from labor as aforesaid under the said act of congress or under any law, authority, or act of the congress of the United States, under penalty of being declared guilty of a misdemeanor and subject to a fine of not less than five hundred dollars, or more than one thousand dollars, according to the discretion of the court in case of disobedience."

The author then goes on to remark:

This provision is clearly in conflict with the law of congress of '93, and shows unerringly, in what repute that law was then held in Pennsylvania.

Now, (said Mr. W.) I propose to examine the law of 1820, and here is section three (which I have just read) and here is section four.

"It shall be the duty of any judge or recorder of any court of record of this commonwealth, when he grants or issues any certificate or warrant of removal of any negro or mulatto, claimed to be a fugitive from labor to the state or territory from which he or she fled, in pursuance of an act of congress, passed on the 12th day of February, one thousand seven hundred and ninety-three, entitled "an act respecting fugitives from justice and persons escaping from the service of their masters," he shall make a fair record of the case, in which he shall take the name, age, sex and a general description of the person of the negro or mulatto, for whom he shall grant such certificate or warrant of removal, together with the evidence and the names of places of residence of the witnesses, and the parties claiming such negro or mulatto, and shall within ten days thereafter file a certified copy thereof in the office of the clerk of the court of general quarter sessions of the peace, of the city or county in which he may reside."

There is the fourth section of the act of 1820; and the very preceding section I have quoted here is said to be in conflict with the law of congress. The fourth section provides for the execution of the act of congress by the officers of Pennsylvania, superadding some duties as to the making of a record of the proceedings, and filing it within ten days, all for the security and protection of the slave.

Mr. Biddle explained, that he had not intended to be disingenuous. If he had been allowed to proceed with his remarks, he would have commented on the next section. But, being cut off, he was prevented from giving his interpretation of the section. He now made this explanation in justice to himself.

Mr. Woodward resumed. I beg leave to assure the gentleman, that in all I have said, I have made no reference to him. I am speaking of the author of the paper, whoever he is. But I must confess that I do not feel grateful to the author for thrusting on us this paper with the captivating title of "facts for the people," introduced with Scripture, Shakespeare &c. "Come let us reason together" says he, and he brings forward these facts as the foundation of his reasoning. Now, I would ask, what is the use of cheating the people into opinions which are not founded in law and in

facts for the people? It is perfectly true, as the section I have read shows, that the legislature did pass an act prohibiting the aldermen and justices of the peace—the inferior magistracy of the commonwealth from executing warrants for the arrest of fugitives. But, why? Was it from a conviction that the law of congress was unconstitutional? No, it was because the inferior magistracy of Pennsylvania had lent themselves to kidnappers—that wrong and injustice had been done to coloured persons. The security of the officer inflicting that wrong was too great. The legislature deemed it necessary to make the proceedings more public, and to bring them before a higher officer. They, therefore, provided that they should be brought before a judge or the recorder, and that the aldermen or justices of the peace should not, in future, take cognizance.

That was the law, and the reason of the law. Now, that section intended to prevent the recurrence of evil, is spread before the people, and called facts for them. Is there any evidence that the legislature in 1820, denounced the act of congress of 1793, to be unconstitutional and void? The act of 1820, was supplied by a law passed in 1826, and one section of which expressly confers on the justices and aldermen the power to issue their warrant for the arrest of the fugitive, and requires the warrant to be returned within a given time, and the hearing is to be before a judge, not a justice. And, the act of 1826, which I shall revert to presently—in the ninth section, prescribes the mode of proceeding upon arresting fugitive slaves from labor, and causing them to be removed. I am, sir, referring to these acts of assembly for the purpose of showing that the legislature have, in all their legislation, proceeded upon the assumption that the act of congress of 1793, was constitutional; and that, if they have superadded an obligation on the officers to execute that law, it has been for the benefit and security of the slave, not for the purpose of defeating the provision of the act of congress. The act of 1826, of which I have just spoken, is entitled "an act to give effect to the provisions of the constitution of the United States, relative to fugitives from labor—for the protection of free people of colour, and to prevent kidnapping."

Those are the three objects of this law—humane law, which forms a part of the body of the wise and philanthropic legislation, which constitutes the glory and pride of Pennsylvania, in regard to the unfortunate coloured race. As I have already said, the objects of the law were three. The first was, to give effect to the constitutional provision; the second, to protect the free people of colour in their rights; and the third, to prevent kidnapping. And the third section of the act goes to provide that—

"When a person held to labor or service in any of the United States, or in either of the territories thereof, under the laws thereof, shall escape into this commonwealth, the person to whom such labor or service is due his or her duly authorized agent or attorney, constituted in writing. [And here let me say that the act of congress confers the same power on the owner or agent to do as the act of Pennsylvania authorizes,] is hereby authorized to apply to any judge, justice of the peace, or alderman, who on such application, supported by the oath or affirmation of claimant, or authorized agent or attorney, as aforesaid, that the said fugitive hath esca-

ped from his or her service, or from the service of the person for whom he is duly constituted agent or attorney, shall issue his warrant under his hand and seal, and directed to the sheriff or any constable of the proper city or county, authorizing and empowering said sheriff, or constable, to arrest and seize the said fugitive, who shall be named in said warrant, and to bring said fugitive before a judge of the proper county, which said warrant shall be in the form or to the effect following."

Then, section the ninth is an amendment of the section of the act of 1820, to prohibit the justices of the peace from having the final hearing in regard to fugitive slaves. Thus you will see that the act of 1826, which is the last law passed on the subject, is in exact accordance with the act of congress, and carries out the provision of it in the manner proposed by congress. We have seen then, that the legislature of Pennsylvania, in 1820, passed an act recognizing the act of congress of 1793, and that they also passed another act in 1826, fully recognizing and carrying out the provision of the act of 1793. That has continued to be the law ever since, and the decision of the supreme court, to which I have referred, is now the law of Pennsylvania. And, sir, standing upon that decision and upon that legislation, may I not assert that in the commonwealth of Pennsylvania, the act of congress of 1793, is regarded as constitutional? Is it not too late, I submit to the gentleman from Philadelphia, (Mr. Biddle) for us as Pennsylvanians, sitting in an organic convention, to array out selves against the act of 1793, when that act has been adjudged by a supreme court to be constitutional, and different legislatures have deemed it to be within the sphere of their duties to pass acts in accordance with, and fully recognizing and carrying out its provision.

Sir, it seems to me that the constitutional question is settled, at least in Pennsylvania. And, I repeat, it avails nothing to say that congress ought to have passed a more humane law and to have given the negroes more open, fair, and deliberate hearing. All this avails nothing. There is the law; and to the law and the testimony we must come at last. Congress can impose duties upon, or authorize judicial action by the state courts, or state officers.

In Pennsylvania, however, it has been held by the judges of the courts, that a penalty under an act of congress, where that act confers authority on the state courts, may be recovered in a court. And this seems to be the better opinion of the present day and most convenient to the citizens, our supreme court holding that it did not conflict with the constitution of the United States, and that it would be an intolerable inconvenience and grievance in an action for a petty penalty to drag a man from the most remote corner of the state, to the seat of federal judiciary—as vide Buckwalter v. United States—II. Sergeant and Rawle, 196;—and our state courts daily carrying out this principle in the naturalization of foreigners.

If then, the act of congress authorizes the action of our state judicial officers on the subject of fugitives from labor, it authorizes it in the manner prescribed by that act of congress and no state legislature could change it. There is no doubt but that in all cases where exclusive legislation is delegated to congress, and congress exercise the power granted to them, the state legislature can not constitutionally make enactments. But in all other cases, the states retain concurrent authority with congress not only

upon the letter and spirit of the tenth article of the amendments to the constitution of the United States—which declares "that the powers not delegated to the United States, by the constitution, nor prohibited by it to the states, are reserved to the states respectively, as to the people;"—but upon the soundest principles of general reasoning (vid op. Story J. 5 Wheaton 48; Houston and Moore.)

There is, however, this reserve; that in cases of concurrent authority, where the laws of the state and of the United States are in direct and manifest collision, those of the United States, being the supreme law of the land, are paramount. And the state laws so far, but so far only, as such incompatibility exists, must yield, (Ibid.) Sergeant constitutional law, 276, 6 Wheaton 396, Cohens v. Virginia, per Marshall, c. j. and Story J. as well as Johnson J. in Houston v. Moore incline to the opinion that to confer the power of determining such causes—causes arising out of the national constitution—upon the existing courts of the several states, would be as much to "constitute tribunals, as to create new courts with like powers." See Federalist, numbers 45 and 81. Tinbet's Blackstone vol. I. p. 1. page 182.

Mr. Sergeant in his treatise on constitutional law, at page 278, lays down this doctrine:—

"By various acts of congress, duties have been imposed on state magistrates and courts, and they have been vested with jurisdiction in civil suits and in complaints and prosecutions for fines, penalties and forfeitures arising under laws of the United States. And in civil suits, the state courts entertain such jurisdiction. Thus bonds given to the United States for duties may be sued in the state courts, where the act of congress prescribes that they may be sued in the proper courts having cognizance thereof," &c. And, in a note subjoined to this paragraph, a number of judicial decisions and acts of congress are referred to, and among them this very act of 12th of February, 1793, relative to fugitives from labor. (See note to page 279.)

The rule as finally settled on this subject seems to be that the state courts may decline the exercise of such a jurisdiction, where the cases are criminal or penal in their nature; and it would be clearly within the power of the several states to prohibit any class of their magistrates, or courts, from acting under such acts of congress.

But, sir, the legislature of Pennsylvania, has carried out this law of congress, by an act passed the 25th of March, 1826, prescribing the course of providing for the arresting fugitives from labor, and causing them to be removed. This act is entitled "an act to give effect to the provisions of the constitution of the United States, relative to fugitives from labor, for the protection of free people of colour, and to prevent kidnapping." Its enactment was occasioned in consequence of complaints made, that justices of the peace and other inferior magistrates had, in some cases, under colour of granting certificates for fugitives, lent themselves to the encouragement of kidnapping.

The third section of this act provides that warrants shall be issued, founded on oath, by any justice of the peace, alderman, or judge, for the arrest of any fugitive from labor, and for bringing him before a judge of the proper county—prescribing the form of the warrant.

The fourth section prescribes the kind of evidence which shall be adduced before the judge, and the mode in which it shall be authenticated.

The fifth section requires the record of the proceedings on issuing the warrant to be filed with the clerk of the sessions, and imposes penalties on the judge, justice, or alderman for neglecting to do so, and also on the sheriff or constable for neglecting to execute the warrant.

The sixth section provides "that the said fugitive from labor or service, when so arrested, shall be brought before a judge as aforesaid, and upon proof to the satisfaction of such judge that the person so seized or arrested doth, under the laws of the state or territory from which he or she fled, owe service to the person claiming him or her, it shall be the duty of such judge to give a certificate thereof to such claimant or to his or her duly authorized agent or attorney, which shall be sufficient warrant for removing the said fugitive to the state or territory from which he or she fled. Provided, that the oath of the owner or owners, or other person interested, shall in no case be received in evidence before the judge on the hearing of the case."

The seventh section provides for the adjournment of the hearing in the abscence of material testimony, &c. and for the commitment of the alleged fugitive in default of bail until the time of hearing, and requiring bail of the claimant to prosecute, if the postponement be at his instance.

The ninth section prohibits justices from taking any cognizance of cases of fugitive slaves from labor, &c. except to grant the warrants for arresting and carrying them before a judge.

The tenth section requires, the judge to make a fair record of the proceedings, and to file the same with the clerk of the quarter sessions, or mayor's court, of the county or city.

Thus, sir, we see that the legislature of Pennsylvania has expressly given the power to our courts to carry out this act of congress—that the courts have undertaken to execute that law, and that they now do execute it. And whatever may be the decisions in other states, as to the power of congress to devolve duties upon state courts, the question here may be regarded as settled. Those duties have been prescribed and regulated by our legislature, and have been allotted to our magistrates.

It appears to me, then, that here is an act of congress, made in pursuance of a provision in the constitution of the United States,—which is the supreme law of the land—entirely in conflict with the amendment now proposed to be introduced into the constitution of Pennsylvania; and that it would be entirely in conflict with that provision, that we should give to the person claimed as a slave, the right to try his case before any other tribunal than before a magistrate or a judge—and upon any other testimony than that of an oral oath or affidavit by a competent witness.

It seems to me further, from the best reflection which I have bestowed upon the subject, that the act of congress is constitutional on all principles, acknowledged and received in the commonwealth of Pennsylvania at least, and that whatever may be the opinion of the lawyers in the state of Massachusetts, or New Jersey, or even of Chancellor Walworth, of New York, whose opinions I acknowledge, are entitled to respect; still,

I say, that in this commonwealth the question is settled; it is no longer an open question.

The act of 1793, in the judgment of our courts, in the judgment of our legislature, and I trust I may be able to add, in the judgment of this convention, is constitutional; and if so, the compact made between the different states of this Union, as set down and recorded in the constitution of the United States forbids you to contravene it.

It is superior and supreme as to any law which our legislature may adopt, and as to any provision which we may place in our constitution. And thus I come again to the point from which I started—that if this is so—if the state of the case is such as I represent it to be—if I apprehend correctly the principles which govern it—then this amendment is nugatory—it is absolutely null and void, even if it should pass this body by a unanimous vote; though I have very different hopes as to the extent of the support which will finally be accorded to it.

And what, I will ask, would be the consequence if such an amendment were to go into effect to day? Let your Maryland slave escape under this lure—let him come to the city of Philadelphia, and your magistrates and judges are bound, in the face of your new constitution, by the irresistible force of a supreme and paramount law, to restore that slave to his master. There is no escape. We are bound down to this conclusion, whether we will or not; and however, the feelings of our nature may rebel, we can not alter the bond. Well, but the gentleman from the city of Philadelphia, (Mr. Biddle) tells us that it is not intended by this amendment to interfere with the rights of the south, and he repudiates the opinion that such provisions can operate injuriously on the integrity of the Union. Sir, I acquit the gentleman of any intention of the kind; but I say that the eternal agitation of a question which, like this, is unalterably settled, is calculated to excite the jealousy and arouse the fears of the south; that it is calculated to shake the permanency and to undermine the foundations of this Union.

I trust that Pennsylvania is true to the Union; I trust that Pennsylvania is true to her plighted faith—that she is true to her vows as they have been solemnly recorded in the constitution of the United States. She sought this Union with the slave-holding states; she entered voluntarily into it; and, among other things, she stipulated that those states should have the privilege to recapture or reclaim the slaves that might flee from them. By this compact, thus voluntarily entered into, she is bound; all that she has pledged herself to do, she is bound to do—and I trust that this, her convention, will never propose to her a wanton violation of vows thus solemnly, and deliberately and voluntarily assumed upon herself. They should be as sacred as the nuptial tie; they should never be violated. And, if there be a man who, in view of all the facts and circumstances of the case would deliberately propose to us to nullify this act of the congress of the United States, and thus in effect to deny our duties to the Union, and to trample her plighted faith in the dust—if there be such a man, let us at least hold him to be no Pennsylvanian. Let us refuse that communion to him which is due from each of us to our fellow-citizens.

He is not a Pennsylvanian at heart—he understands not the interests of Pennsylvania—he understands not her policy—he understands not her true position who would propose to her to repudiate and cast off the obligations by which she has bound herself in the constitution of the United States, and none of which is more sacred than that which secures to the citizens of the slave holding states, the right to capture a fugitive coming within our borders. I do not intend to say, nor do I suppose, that those who agitate this subject in the state of Pennsylvania, design, or desire, dissolution of the Union. But I do think that the measures here contemplated tend to that result. Is it to be supposed that if you should compel the owner of a slave from a southern state to come here before a sympathetic jury—and a gentleman of precisely such powers as the delegate from the city of Philadelphia, (Mr. Biddle) should appear with all the skill of a lawyer to resist the claim of that individual to his property —if you subject him to all the expense, trouble and delay incidental to a trial before a jury, in relation to a mere matter of claim of that which is his own—is it, I ask, to be supposed that you can subject a gentlemen to all this, and that he will still adhere to his compact? Is it to be supposed that he will regard you in any other light than as men who had violated their compact, and that he would thus hold himself free? Sir, he would most assuredly do so; and it will be in vain to tell him that he is wrong, or that the people of his southern latitude ought to have northern feelings on such a matter.

This would be the feeling of the whole southern states; and what under heaven, could be the result but a dissolution of the Union? Never will they perform their duties to us, if we thus wantonly disregard and trample upon our duties and obligations to them; and neither in the opinion of mankind nor of posterity, would the southern states be blamed. The southern states would say, you agreed in the constitution of the United States, that our fugitive slaves should be delivered upon demand; and you agreed to establish a super-intending power in congress to carry out this provision among the states. Here is my bond-slave fled from me and come among you—he is my property. In the north, it may be immoral to talk of him as my property; but, nevertheless, he is my property—I have paid my price for him—I have a vested right in him. Now you, having thus bound yourself by solemn constitutional provision, to deliver up our property—you may not obstruct us—you may not alter the terms of the contract by requiring us to come before a jury. No sir, there would be a dissolution of the Union. There would—there must be a dissolution of the Union. Is this convention ready to take this step? Are we ready to reverse the judgment of our supreme court? Are we ready to reverse the judgment of the legislature deliberately expressed? Are we ready to dissolve this Union, and to say it is enough?

If we are ready for such results, let us adopt the amendment of the gentleman from the city of Philadelphia. But if not, if we are disposed to be true and faithful to our vows, let us cling to this Union as it is, and let us keep Pennsylvania as she is. Let us reject this amendment.

Mr. INGERSOLL, rose and commenced some remarks. After he had proceeded for some time, he gave way; and,

On motion of Mr. HOPKINSON,

The Convention adjourned.

[Mr. INGERSOLL's remarks of this day will be found connected with the residue, in the proceedings of the next day.]

MONDAY, FEBRUARY 5, 1838.

Mr. CHANDLER, of Philadelphia, presented a memorial from citizens of Philadelphia, praying that a jury trial may be granted in all cases where liberty is at stake; which was laid on the table.

Mr. COCHRAN, of Lancaster, from the committee appointed to prepare, engross and report the amendments made to the constitution on second reading, for a third reading, made report as follows, viz:

That in consequence of the several amendments introduced at different times, and on motions of different delegates, into the first section of the third article of the constitution, the composition of the section has assumed a somewhat awkward shape, and requirss for its improvement, in this particular, some transposition of phraseology.

The committee therefore recommend that the section be made to read as follows:

ARTICLE III.

SECTION 1. In elections by the citizens, every white freemen of the age of twenty-one years, having resided in this state one year, and in the election district where he offers to vote, ten days immediately preceding such election, and within two years paid a state or county tax, which shall have been assessed at least ten days next before the election, shall enjoy the rights of an elector. But a citizen of the United States, who had previously been a qualified voter of this state, and removed therefrom and returned, and who shall have resided in the election district and paid taxes as aforesaid, shall be entitled to vote after residing in the state for six months. *Provided*, That white freemen, citizens of the United States, between the ages of twenty-one and twenty-two years, and having resided in the state one year, and in the election district ten days as aforesaid, shall be entitled to vote, although they shall not have paid taxes.

The remaining sections of the third article not having been altered by the convention, are not referred to the committee—which was laid on the table and orderod to be printed.

UNFINISHED BUSINESS.

The convention resumed the second reading and consideration of the resolution read on the 1st inst., in the words as follow, viz:

Resolved, That the committee appointed to superintend the printing of the Debates of this convention, be instructed to make such arrangements as will hereafter prevent the insertion of reports and documents not intimately connected with the debates of this body or amendments proposed to the constitution.

Mr. KERR, of Washington, said he had no other wish, in bringing forward this resolution as to reports and documents, than to save useless expenditure. It was said that the printing of the report of the auditor general on the banks, would cost one hundred and fifty dollars, and including the German, three hundred dollars. The second volume of the debates, including the debates up to the 21st of June, was all he had yet received. The document respecting the taxable inhabitants was already printed. On looking over the journals, he found a large number of documents since that time, many of which are tabular statements, and occupied a great deal of space on the journal. As they are printed in that form he thought that was sufficient. The resolution refers to the committee on debates. There was no such committee. Two members had been added to the committee on printing, but they had no power over the debates. He did not know what documents were embraced in the third volume. He would modify the resolution to read as follows :—

Resolved, That the Auditor General's report containing a statement of the affairs of the several banks in Pennsylvania, and other similar documents not already printed in the debates of this convention, be omitted in the volumes yet to be printed.

Mr. CURLL, of Armstrong, said he understood most of the bulky documents were contained in the third volume, and were already printed.

Mr. FULLER, of Fayette, offered an amendment, but withdrew it.

Mr. DICKEY asked for the yeas and nays on the resolution, and they were ordered.

The question was then taken, and the resolution was agreed to by the following vote.

YEAS—Messrs. Ayres, Baldwin, Banks, Barclay, Barndollar, Barnitz, Biddle, Bigelow, Brown, of Northampton, Carey, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cochran, Cope, COX, Craig, Crain, Crum, Cummin, Cunningham, Curll, Darrah, Denny, Dickey, Dickerson, Donagan, Dunlop, Farrelly, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Harris, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Hiester, High, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Kennedy, Kerr, Konigmacher, Krebs, Long, Maclay, Magee, M'Sherry, Merrill, Merkel, Miller, Montgomery, Myers, Payne, Pennypacker, Porter, of Lancaster, Read, Riter, Ritter, Rogers, Royer, Russell, Saeger, Sellers, Seltzer, Shellito, Smyth, of Centre, Snively, Stickel, Taggart, Thomas, Todd, Weaver, White, Young—87.

NAYS—Messrs. Dillinger, Fleming, Grenell, Martin, M'Cahen, Nevin, Overfield, Smith, of Columbia, Sturdevant, Woodward, Porter, of Northampton *President pro tem.*—11.

Mr. INGERSOLL, of Philadelphia, asked leave to offer a resolution to suspend the forty-fourth rule, restricting the time allowed a member to one hour, during the discussion of the sixth section.

Mr. FULLER, of Fayette, asked for the yeas and nays, and they were ordered.

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

YEAS—Messrs. Ayres, Baldwin, Bedford, Biddle, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clarke, of Indiana, Coates, Cochran, Cope, Crain, Cunningham, Curll, Denny, Dillinger, Donagan, Doran, Dunlop, Farrelly, Fleming,

Grenell, Hays, Helffenstein, Henderson, of Dauphin, Hopkinson, Ingersoll, Jenks, Maclay, Martin, M'Cahen, M'Sherry, Merrill, Porter, of Lancaster, Read, Riter, Rogers, Russell, Shellito, Woodward, Young, Porter, of Northampton, *President pro tem.*—43.

NAYS—Messrs. Banks, Barclay, Barndollar, Barnitz, Brown, of Northampton, Brown, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Craig, Crawford, Crum, Cummin, Darrah, Dickey, Dickerson, Earle, Foulkrod, Fuller, Gearhart, Gilmore, Harris, Hastings, Hayhurst, Henderson, of Allegheny, Hiester, High, Houpt, Hyde, Keim, Kennedy, Kerr, Konigmacher, Krebs, Magee, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Pennypacker, Ritter, Royer, Sellers, Seltzer, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant. Taggart, Thomas, Todd, Weaver, White—59.

NINTH ARTICLE.

The convention resumed the second reading of the report of the committee to whom was referred the ninth article of the constitution.

The following section being under consideration:

"SECTION 6. The trial by jury shall be as heretofore, and the right thereof remain inviolate."

And the question pending on the amendment offered by Mr. BIDDLE, in these words:

"And shall be granted to all persons who may be arrested as fugitives from labor, and who shall claim to be freemen."

Mr. INGERSOLL said that the great importance of this question, moved him to break the silence he had observed since the regulation restraining debate. This is the question of the Union—of our country, on the determination of which depends whether all our proceedings here shall be of any avail; for it matters little how we may regulate the state, if the United States cease to be such. When, as citizens of one confederated state, we deal with institutions involving the welfare and the supreme authority of states united, it becomes us to act with peculiar circumspection, and to suffer no impulse of mere feeling to get the better of the sober reason and lofty patriotism which ought to prevail. To the American union of states we owe it that this nation is the comfort, the refuge, the admiration and the envy of all others; that this convention is sitting here, the legislature at Harrisburg, and congress at Washington, each in its sphere deliberating the will and the good of one great people; and he must be insensible of the advantages we enjoy over other people, who does not acknowledge and feel that, slavery and all—domestic slavery and the foreign slave trade, while the federal constitution allowed it, taken into the account—still the American condition of free white men, slaves and free blacks, is not to be rashly risqued for any modern notion of the right of immediate emancipation of slaves, or political equality of blacks; or that notwithstanding the slavery lawful in some states of the Union, it is the happiest allotment of mankind—slaves included.

The federal constitution, built on the basis of this concession, guards it with abundant caution by many provident provisions. The first clause of the ninth section of the first article stipulates for twenty years continuance of the slave trade, both foreign and domestic, prohibiting the states from stopping it. The fourth article, in all its several clauses, is appropriated to this and analogous objects. By the first clause of that article full faith and credit is secured in each state to the judicial proceed-

ings of every other, and congress is empowered by general laws to prescribe their effect. By the second clause the privileges and immunities of citizens in the several states are allowed to the citizens of each state, necessarily excluding black freemen. The third clause provides for the extradition of criminal fugitives from one state to another. And the fourth clause declares that no bondsman escaping from the state by whose laws he owes service, shall be discharged from it by any law or regulation of another state, but shall be delivered up on claim of the master. Soon after such a frame of federal government was settled by and among the states and the people; the act of congress of February, '93, became a law, making particular arrangements for the manner of carrying into effect these provisions of the supreme law. And we can not doubt that the framers of that law supposed they had guarded against every possible difficulty, contingency or feeling on this delicate and critical subject, when, to the forementioned provisions they superadded the power conferred on congress by the eighteenth clause of the eighth section of the first article, to make all laws necessary and proper for carrying the granted powers into effect, and all others constitutionally vested in the federal government or any of its departments, and finally the solemn injunction of the second clause of the sixth article, to all judges in every state to be bound by the constitution and laws of the United States, as the supreme law of the land, notwithstanding any thing in the constitution or laws of any state.

Every emergency that could be foreseen or conceived was thus provided for. The power is given to the federal government in express terms, with much auxiliary authority for its enforcement and security. The power is an exclusive power; it is so in its terms and it is so in its nature. It has been acted on by a federal law exercising the whole power; and nothing is left to the state either in principle or practice.

I ask gentlemen, adverting to this foundation, to recollect the time and the circumstances of the act of '93. Washington signed it without hesitation. I do not invoke the sanctity of his name for any reverential impression: but because he was a member of the convention which so shortly before organized the government, of which this law was one of the fundamental and earliest acts. As soon as the government could be arranged by the indispensable acts of legislation that attended its origin, this law was one of its first duties. No hesitation or doubt attended it. Jefferson was in the department of state, Madison, another framer of the constitution, a leading member of congress, Jay was chief justice; and, if I mistake not, his successor in that office, Ellsworth, who contributed largely, it is understood, to the early laws of the federal government, together with many other eminent statesmen who would not have sanctioned an unconstitutional act, were likewise in congress; Bradford, of this state, I think, was the attorney general.

Can we suppose that the imperfections, now, after forty years unquestioned enforcement of it, imputed to the act of '93, escaped the attention of these statesmen and magistrates, as much alive as we can be to all legitimate aversion to slavery, and familiarized with the true meaning of the constitutional provision concerning it, by either membership in the convention, or in the congress that established the frame of government it organized? No act of congress has higher claims to be deemed the supreme

law than that of '93, enacted less than three years after the constitution was ratified; with such advisement, and executed ever since by all the judicial officers of every state, without the suggestion of a doubt of its constitutionality. I shall not expatiate upon it, but content myself with much more authoritative argument, the judgment of all the courts of this and other states that have passed upon it. In 1795, when a prosecution was instituted under our act of '80, against Gen. Sevier, of Virginia, for the unlawful abduction of a slave, Chief Justice M'Kean said "But we are unanimously of opinion as soon as it was proved the negro was a slave, that not only his master had a right to seize and carry him away, but that in case he absconded or resisted, it was the duty of every magistrate to employ all the legitimate means of coercion in his power, for securing and restoring the negro to the service of his owner, whithersoever he might be afterwards carried."

In this early case Chief Justice M'Kean (and his successor, Chief Justice Shippen, was on the bench concurring with him, together with the rest of the court,) acts on the grounds that a master may seize a slave as soon as he is proved to be such; and that it is the duty of every magistrate to employ coercion, if necessary, to restore the slave to his master, to be taken where he would. On such grounds, fortified by primeval authority, the right has stood ever since, exercised every day, and never disputed till very lately. Many years afterwards the subject came before the supreme court of Pennsylvania again, by an attempt to replevy a slave when Chief Justice Tilghman, (the present Chief Justice Gibson associated and concurring with him, and Judge Duncan,) declared that "from the whole scope and tenour of the constitution and act of congress, it appears that the fugitive is to be delivered up on a summary proceeding, without the delay of a formal trial in a court of common law. If a certificate be given by a state judge, agreeably to the act of congress, after a hearing; such certificate is a legal warrant to remove the slave, and no writ of *homine replegiendo* afterwards lies, on the part of the slave in a court of this state, where such certificate is given, to try his right to freedom. Such writ is a violation of the constitution. If the slave in such case has a right to freedom, he may try it in the state to which he is removed." "When, therefore, a judge of a state court, after a hearing on *habeas corpus*,' says Judge Sergeant, in his treatise on constitutional law, "gave a certificate agreeably to the act of congress, and the slave sued out of the supreme court a *homine replegiendo* aganist the keeper of the prison where he remained, the court quashed the writ;" referring to the decision given by Chief Justice Tilghman, and the supreme court as I have cited it.

Thus from the first Judge appionted, Chief Justice M'Kean, to the last, Judge Sergeant; including all the chief justices and other judges, the act of '93 has always been taken in Pennsylvania in a correct execution of the constitution. Not a lawyer on the bench or at the bar has ventured to call it in question; and with such an unbrokon series of high authorities, he must be a bold lawyer, if not a rash man, who now, in this state, denies its conformity to that instrument. Yet the argument has no option but to do so. That law must be set aside as void by unconstitutionality, or the trial by jury to a fugitive slave cannot be.

Other judicial acknowledgements of that act, of the most convincing

kind, abound. Chief Justice Parker, of the supreme court of Massachusetts, and the supreme court of New York, as their elaborate view of the whole subject is to be read in the twelfth volume of Wendell's Reports, page 311, (the judgmant of Chief Justice Parker is in the second volume of Pickering's Reports, page 11,) affirm what I now assert, and show what the constitution, the act of congress, and the proceedings under them, have always been in fact and in legal acceptance. Judge Story, in his commentaries on the constitution, says, treating the two clauses together, concerning fugitives from justice and from bondage. "It is obvious that these provisions for the arrest and removal of fugitives, contemplate summary ministerial proceedings, and not the ordinary course of judicial investigations, to ascertain whether the complaint be well founded, or the claim of ownership be established beyond all legal controversy. In the case of fugitive slaves there would seem to be the same necessity of requiring only *prima facie* proof of ownership, without putting the party to a formal assertion of his right by a suit at common law. Congress appear to have acted upon this opinion; and accordingly in the statute on this subject have authorized summary proceedings before a magistrate, upon which he may grant a warrant for removal." And Judge Story cites the other authorities I have mentioned to support him.

Judge Baldwin, in a case tried before him, in the course of a very extensive review of the propriety,—the constitutionality of the law not being questioned—says, "This right of a master to arrest his fugitive slave is not a solitary case in the law; it may be exercised towards a fugitive apprentice, or redemptioner to the same extent, and is done every day, without producing any excitement. An apprentice is a servant; a slave is no more. Though his servitude is for life, the nature of it is the same as apprenticeship, or by redemption, which though terminated by time, is during its continuance as severe a servitude as that for life. Of the same nature is the right of a parent to the services of his minor children, which gives the custody of their persons. So where a man enters special bail for the appearance of a defendant, in a civil action, he may seize his person at his pleasure, and commit him to prision; or if the principal escape, the bail may pursue him to another state, arrest and bring him back, by the use of all necessary force, and means of preventing an escape. The lawful exercise of this authority in such cases, is calculated to excite no sympathy; the law takes its course in peace and unnoticed, yet it is the same power and used in the same manner as by a master over his slave. If the enforcement of the right excites more feeling in one case than in the other, it is not from the manner in which it is done, but the nature of the right which is enforced; property in a human being for life. If this is unjust and oppressive, the sin is on the heads of the makers of laws which tolerate slavery, or in those who have the power, in not repealing them; to visit it on those who have honestly acquired, and lawfully hold property, under the guaranty and protection of the laws, is the worst of all oppression; and the rankest injustice toward our fellow men. It is the indulgence of a spirit of persecution against our neighbors, for no offence against society or its laws, for no infringement of the rights of others, but simply the assertion of their own, in a lawful manner. If this spirit pervades the country, if public opinion is

suffered to prostrate the laws, which protect one species of property, those who lead the crusade against slavery, may, at no distant day, find a new one directed against their lands, their stores and their debts; if a master cannot retain the custody of his slave, apprentice or redemptioner, a parent must give up the guardianship of his children, bail have no hold on their principal, the creditor cannot arrest his debtor by lawful means, and he who keeps the rightful owner of lands, or chattels out of possession, will be protected in his tresspasses. When the law ceases to be the test of right and security, when individuals undertake to be its administrators by rules of their own adoption, the bonds of society are broken as effectually by the severance of one link from the chain of justice, which binds men to the laws, as if the whole was dissolved. The only permanent danger is in the indulgence of the humane and benevolent feelings of our nature, at what we feel to be acts of oppression, towards human beings, endowed with the same qualities and attributes as ourselves, and brought into being by the same power which created us all; without recollecting that in suffering these feelings to come into action against rights secured by the laws, we forget the first duty of citizens of a government of laws; obedience to its ordinances."

Then, after re-affirming the judgement of Chief Justice Tilghman, and the supreme court of Pennsylvania as I have before mentioned it, Judge Baldwin adds: "This is the spirit of the law, policy and feeling of Pennsylvania as declared by the supreme court. The supreme court declares that the constitution of the United States would never have been formed, or assented to by the southern states, without some provision for securing their property in slaves. Look at the first article, and you will see that slaves are not only property or chattels, but political property, which confers the highest and most sacred political rights of the states, on the inviolability of which, the very existence of this government depends."

These adjudications and authorities of our own state and other northern states upon the very point in question, are confirmed by others equally respectable, though not upon that precise point, yet respecting the character and rights of our coloured people, all tending to the same conclusion, that they are not entitled to political, as they never have been allowed social equality with white freemen. Chancellor Kent, in an extensive and instructive note, to the last edition of his valuable commentaries, states this as the result of all his learned investigations of the subject. Among other authorities he refers to, is that of a temperate and well reasoned essay, on the political grade of the free coloured population by John P. Denny, Esq., of Chambersburg, Pennsylvania, who shows conclusively, that none but white men have since the declaration of American independence, been contemplated as sharing our American sovereignty, equality, or rights, and that from that declaration till this time, none of our public acts, institutions, or laws, any more than our private and social habits, have recognized them as our equals. Besides Mr. Denny's argument his pamphlet is prefaced by a letter from Chief Justice Marshall, written in 1834, in which that eminent magistrate, who though a southern man, entertained many northern political opinions, adds his authority to what I have already cited, by declaring that he read Mr. Denny's essay with the more pleasure because the sentiment it conveys appeared to the Chief Justice to be perfectly sound. It is cause of real gratification to perceive,

he says, that in the northern and middle states, the opinion of the intelligent on this delicate subject, on which the slave-holding states are so sensitive, accords so entirely with that of the south.

Having thus shown the highest sanction for the constitutional lawfulness of American slavery, and for the political inequality of all coloured men, whether bond or free, in the United States, recognizing property in slaves, and a right to assert it as our supreme law without question of that right by the law of states disclaiming to hold slaves, I will next show by the authority of our late very respectable fellow citizen, William Rawle, president of the abolition society of Pennsylvania, that the modern extravagance of the zealots of a new doctrine, was deprecated by him, as it should be by every reasonable friend of the blacks—as much so as by every good American, friend of that Union which is our country. I have been permitted to make public a letter written by that gentleman to a relative of mine in congress, who had not an opportunity of publishing it there as I will here. Those who know Mr. Rawle, and how forbearing he was of strong language at all times, will appreciate the force of expression with which he bears his important testimony against this pernicious assault on the rights of others and detriment to the object of it.

"I became a member of the Pennsylvania society for promoting the abolition of slavery—for the relief of free negroes held in bondage, and for improving the condition of the African race, on the 6th of November, 1792.

"I was afterwards elected one of the vice presidents and on the 22d of March, 1818, I became the president of it.

"The objects of this association were temperate, legitimate and correct —they were substantially confined to the limits of our own state—much individual good was done—coloured people suffering by reason of fraud or unlawful violence were relieved—the pursuits of them by persons falsely claiming rights to their service were judiciously repelled—their youth were educated—their industry assisted—in sickness they were aided—and in the hour of death they were solaced and supported.

"In all this, no offence was given to the citizens of other states. Their boundaries were respected, and their laws and constitutions not attempted to be violated. A belief was entertained that an abhorrence of slavery would gradually work its way, and that it was the duty of the society patiently to wait the event.

"It was not till the year 1833, that some well meaning men, chiefly north of our city, exhibited indications of dissatisfaction with the slow progress that had been made in the work of general emancipation. Societies were formed with the express object of producing—if possible—an immediate and total extinction of slavery throughout the United States, not by force, but by reasoning, and by endeavoring to convince the holders of slaves that their conduct was inconsistent with morality, religion, and even their own interest."

"It appeared to me that however fair and promising in the abstract, this course might be, it could not be long pursued without exciting jealousy, suspicion, and dissatisfaction, on the part of the slave-holders of the southern states. Conviction was less likely to be produced than opposition. The condition of slaves was in my opinion likely to be rendered more oppressive and severe, in proportion as apprehensions arose, and

that the dissemination of these principles would extend beyond the masters to the coloured population in general. In short I foresaw, exactly as it has happened, that the blind zeal which actuated so many of these respectable and well meaning gentlemen in the north, would meet with a new counteraction; the first result of which would be to impose greater restraints upon the slaves, and the eventual effect to postpone, and not to promote, an enlarged emancipation, so much the object of desire.

"It struck my mind that our greatest enemies could not devise a better scheme to delay or defeat our views and wishes than this, and I expressed my opinions without disguise to those of my friends who called and conversed with me on the subject.

"In testimony of the early formation of my opinion, I attach a copy of a letter to a friend who had promised to deliver a discourse before the anti-slavery society at New York, and who had received an intimation from that quarter, that he would be resisted if he attempted so to do. He wished to know whether I would approve of his withdrawing from the task, which,—notwithstanding our close intimacy—he had assumed without any communication with me and a concise statement of my sentiments was immediately returned to him. The event tended to verify my anticipation. He was not permitted to deliver the discourse.

"I conclude by saying, that I do not and will not relinquish the principles on which the Pennsylvania abolition society was founded, and has been uniformly conducted; and I trust that the members of it will never abandon its banner, nor shrink from doing all the good they can within its constitutional pale.

(Signed) W. RAWLE."

LETTER FROM MR. R., TO —— ———, ESQ:

"MY DEAR SIR:

"The conduct and proceedings of the general anti-slavery society have not met with my entire approbation. The members appear to me to be actuated by a blind and injudicious zeal, productive of measures, the effect of which will be to awaken alarm, create a determined opposition among the slaves holden, and delay the progress of conscientious emancipation.

"That day—the day of general emancipation—will, I trust and believe, hereafter arrive. But I fear it will be delayed by the institution of societies so warm, and so imprudent.

"June 27. 1834."

To these admonitions on the flagrant and wicked impolicy of slave propagandism, I must add one—analogous—caveat from Clarendon, who thus deprecates that original sin of men of one state to interfere with and aggravate whatever they may deem the infirmities of others.

"There is not a sadder consideration—and I pray God the Almighty Justice, be not angry with, and weary of the government of kings and princes, for it is a strange delusion that monarchical government is fallen to, in the opinion of the common people within these late years—than

this passion and injustice, in christian princes, that they are not as solicitous the laws should be executed, justice administered and order preserved within their own kingdoms, as they are that all three may be confounded and disturbed among their neighbors. And therefore there is no sooner a spark of dissension, a discomposure in affections, a jealousy in understandings, discerned to be in or to be easy infused into a neighbor province or kingdom, to the hazarding of the peace thereof, but they, though in league and amity, with their utmost art and industry, make it their business to kindle that spark into a flame, and to contract and ripen all unsettled humours, and jealous apprehensions, into a peremptory discontent, and all discontent to sedition, and all sedition to open and professed rebellion. And have never as ample satisfaction in their own greatness, or so great a sense and value of God's blessing upon them, as when they have been the instruments of drawing some notorious calamity upon their neighbors, as if the religion of princes were nothing but policy, enough to make all other kingdoms but their own miserable: and that because God has reserved them to be tried only within his own jurisdiction, and before his own tribunal, that he means to try them too by other laws and rules that he hath published to the world for his servants to walk by."

I must not quit the authorities on the constitutionality of this question without refuting the hacknied attempt continually made to enlist the declaration of independence, in support of the universal equality of all mankind. Mr. Denny's argument relies on Mr. Rawle's treatise on constitutional law for this purpose as follows:

"In collecting the various authorities upon the construction of this clause of the constitution, we cannot omit that of the learned Mr. Rawle in his "view of the constitution," a work of very superior merit. "The citizens of each state," he informs us, "constituted the citizens of the United States when the constitution was adopted. The right which appertained to them as citizens of these respective commonwealths accompanied them in the formation of the great compound commonwealth which ensued;" he adds, "*every person* born within the United States, its territories, or districts, whether the parents are citizens or aliens, is a natural born citizen, according to the sense of the constitution and entitled to all the rights and privileges appertaining to that capacity." We have here a lucid exhibition of the true doctrine—the phrase *every person* being limited to the *white* population; and that this limitation was intended by the writer is obvious from the general proposition with which the passage is introduced, viz:

"Those only who compose the people and *partake of the sovereignty* are *citizens*. They alone can *elect* and are *capable of being elected to public offices*, and of course they alone can exercise authority within the community."

"It is extremely doubtful that the coloured freeman has ever been elevated by legal provision, to unqualified citizenship, in any state of the Union; and we have met with no one who is prepared to maintain that he has, in the sense of this author, so shared in the sovereignty of any of the American governments—general or state—as to *entitle* him to that rank."

The declaration of independence is the favorite text of the ardent abolitionist among ourselves who in the height of a laudable, but misdirected zeal, is striving to achieve what the voice of nature and the impotency of his best efforts unite in proving to be unattainable: and the choice theme of agitators under a foreign government, who are seeking the renown of philanthrophists by malignant tirades against the institution of slavery here, while the working classes of their own land are quietly suffered to remain in a state of subjection to their employers, threefold more galling than the bondage of the American negro.

The declaration of independence was the act of the *white* population, performed by *their* representatives: and although the general propositions which it proclaims in favor of human freedom, *liberally* embraces the *whole race af man*, yet, it is evident, as well from the tenure of the instrument itself, as from the tone of public feeling prevalent in the colonies at the time, that its *true constructive reference* is to the relation between the American people, *nationally considered*, or any other political community, and the form or principles of government which they have by nature a right to adopt.

The subject of domestic relations or of private property was not within the design or authority of the body that framed and published the paper, and had any act been done by it, with a clear tendency to the alteration or disturbance of these objects, it would certainly have met with a speedy and unequivocal reversal from the constituent powers.

I am not aware of any judicial or authoritative contradiction of the adjudications and authorities I have thus presented. A lawyer of Ohio, with portions of whose views the convention has been treated, in a printed paper anonymously laid upon our tables, whose argument insists, but as I think without right, that Chancellor Walworth of New York has pronounced judgment the other way, and Mr. John Jay, also of that state, are the only opponents of the constitutionality of the act of '93, sanctioned as I have shown it is. We have had indeed several petitions and memorials presented to this convention, mostly, if I am not mistaken, proceeding from the agitation of one member of it more remarkable for the strength of his prejudices than the extent of his attainments.

The arguments as I understand them, are these, first, that the clause in the constitution contains an interdict upon the action of the states, because, the prohibition is not there in terms. Secondly, that if there is any power given to the Union by the constitution, it is at all events nothing more than the power of compact, without any coercive sanction, to which objections the member from the city, (Mr. Biddle) has added a third, that the clause in the constitution concerning fugitives from bondage is like that concerning fugitives from justice, only international, and therefore, the extradition can be accomplished only by means of the voluntary agency of the supreme authority of the state from which the individual is surrendered. The obvious answer to this last objection is, that the two clauses differ in their terms, spirit and object, requiring in the one, the necessary agency of a state power, and in the other no such agency at all; wherefore the various authorities cited by that gentleman applicable to sovereign states, have no application. Such a suggestion is a resort to nullification. My answer to the argument that the clause in the constitution is inoperative because it does not in so many words take the power from the states, and confer it

upon the Union, is that such an objection, if valid, would annul many of the most unquestionable grants of the federal constitution. Nearly all the judicial power of the United States is held by clauses not more explicit than the clause thus called in question. The plain meaning of the term is that a power is conferred upon the Union which must be exclusive in its nature to be available at all; and if it be a sufficient objection to such power that it is not conferred by direct interdict upon the states, that objection would repeal the federal constitution in many of its indispensable articles.

The last of these objections, that the constitution is only a compact between commonwealths without sanction to enforce it, is the argument of one who breaks the bargain by which he is bound. To contend that a state is not bound by compact because there is no penal sanction to enforce it, is carrying nullification farther than was ever attempted, and superadding the disgrace of promise breaking, The noblest of state rights is to do right, to permit no wrong but comply with the concessions and stipulations of the federal compact. For a state after having had the benefit of that compact, to assert that it is only a compact which cannot be enforced, would be a dishonest subterfuge not only discreditable but unavailing; for congress are empowered, as we have before seen, by general laws to prescribe the effect of the judicial proceedings in each and every state to which full faith is to be given in all the states.

After all, however, the whole argument of the right of state judicatures to construe the federal constitution or declare void the act of congress in question, comes to nothing unless the federal judiciary concur in such adjudications. It is extremely improbable that such will ever be the case.

The supreme court of the United States, has never declared an act of congress unconstitutional and void: until it does so, the act of '93, must stand in full force unaffected by such objections as have for the first time been latterly made to it. No state court or magistrate as far as I know, or believe, has ever affirmed those objections; and should it be done it comes to nothing. All the laws of all the states, with all their magistracy cannot repeal the supreme law of an act of congress without the concurrence of the federal judiciary.

Finally, it is insisted that each state has a constitutional right to act by its laws upon its own judicial officers, who cannot be compelled by the federal government to officiate in the enforcement of a federal law. Chief Justice M'Kean and the supreme court of this state seem to think otherwise, in Generel Sevier's case before mentioned.

I will not, however, argue the constitutionality of such anti-republican legislation, because a readier answer is at at hand which is beyond all question. Granting, for argument's sake that the states have a right to refuse the services of their magistracy in the administration of a law of the United States, what is the inevitable result? The creation by act of congress of federal officers enough in every state to carry into effect the act of '93, or any similar act, so that consolidation would be the consequence.

Upon the various acts that have proceeded from several states of late, for the regulation of this matter, it is unnecessary to say whether they conform to the constitution, because, wherever the state authority is sup-

posed by congress to trench upon that of the United States, the latter always have their remedy at hand. It rests with the federal judiciary to determine finally whether an act of congress can be revoked by state authority, and it rests with congress to add such other acts as the federal government may require.

I proceed to discuss the policy or reason of this measure, with the promise I once heard the late Mr. Lowndes introduce an argument with, that the policy or reason of it is more important than even the constitutionality—solemn as that may be.

These United States are the freeest and happiest of nations; a model and the envy of all others. That American who does not think and feel so, does not deserve what he enjoys beyond all the rest of mankind. But it is the lot of humanity to be chequered with disadvantages. Life is a thread of mingled yarn, good and ill together; and our American condition is embittered by unfortunate connexions with the original inhabitants of this country—the Indians, and the Africans who, from humane motives, were brought here to substitute them as our vassals. Equality of condition never having been allowed by the whites to either of these coloured races, but both being conquered or cheated and subdued, they were sacrificed to the force of circumstances. The coercion of Pizarro is more shocking, but in a just estimate what are the purchases of Penn—when tracts of fine land were acquired from their savage owners in what was called exchange for a trinket or hatchet? That the Indians might be conquered or bought out of their possessions for trifles, and the Africans brought by force from their own country to serve in this—are, however wrong, at least such ordinary transactions, in all ages, by all people, that history abounds with similar acts. To hate wrong is to hate mankind, says a philosipher. It is the chain of events; the weak must master the strong; while, undoubtedly, justice is always strength, as honesty is policy. The slave trade, now punished as piratical by most of the nations of Christendom, was vindicated in a letter from the representative of the Spanish government to ours, by argument that it gives a fair equivalent for slavery in wholesome food, clothing, dwelling, education, marriage and religion, exchanged for a state of naked barbarism, not much better than that of the wild beasts of the same uncultivated forests from which the Africans are taken. The foreign slave trade, however, once freely practiced by all nations, is now generally condemned, although it is said that it is at this time more prevalant, as certainly its clandestine perpetration is much more shocking, than before it was denouced as piracy. But the foreign slave trade, once freely practiced by all nations, is now *universally* condemned, while menial slavery has become so inveterate that no hasty, much less violent, measures will eradicate it. The evil is palpable: but the remedy inscrutable. Immediate or pragmatic abolition would be worse than the slave trade or slavery for both slaves and masters: and colonization—except from slave holding states—I hold to be a futile if not cruel experiment. We must put our trust in the same overruling Providence, which has suffered the evil to be inflicted on us, to remove or mitigate it. Castes are an evil in some form of every nation in every age. Patience, and forbearance, and kindness, are our duties to the blacks; and that faith in improvement which is the substance of things hoped for, and the evidence of things not seen, is a reliance for ourselves. When we call to mind the modern miracles of those now

familiar enjoyments, gas, fuel, and steam, inconceivable but thirty years ago; while here in this hall we are kept in comfort by a fossil till lately unknown; as evening closes upon us, restored in a moment to the light of day by the magical ejaculations of gas from distant reservoirs; and the tidings and the inhabitants of all parts of the earth brought to us every hour by steam, is there not rational ground for confidence from such wonderful novelties, that the dark ignorance of slavery may also be enlightened and comforted, and that soon, in the course of human events? There was a time when men and women in England were exported for sale in Ireland as slaves, as freely as cloth is now from England to America, and not thirty-five years ago English slave ships were as common at Liverpool as American cotton ships now.

Shall we then do nothing but hope? By no means. Our faith should be accompanied by good works. Much may and should be done, and great meliorations accomplished. Instead of attempting to break up the federal constitution, that ark of our political salvation, or to reverse the order of creation in the distinction of the African and European race—let us maintain the Union, even with slavery in some states; and while submitting to it, do all we can to mitigate its inevitable disadvantages, by raising the condition of the free blacks, and inculcating the utmost kindness and humanity to slaves, without persecuting their masters by lawless and unconstitutional interference with their rights. Such has always been the policy, and such must ever be the true glory of Pennsylvania. To the act of '80, that foundation of African freedom, within our own borders, and by our example—but no more—I bow with cordial reverence;—an act for imparting as it declares, a *portion* of the blessings we enjoy, by the *gradual* abolition of servitude *within* the commonwealth of which we have the honor and the happiness to be citizens. There is nothing in the benignant forecast of that generous act at all congenial with the fell spirit of modern abolitionists, which would tarnish the memories of the authors of that noble code, by the wanton aspersion that slavery is a sin! when probably every man of them who had the means was a slaveholder. Nearly all the members of the society of friends then owned slaves. To talk, as was done in the former discussion of this subject, of the sinfulness of slavery, and the death-bed repentance it incurs, is to stain the character of the most respectable forefathers of the present generation with odious immorality. The father of the respectable judge near me,—Judge Hopkinson,—to whose course on this subject the state and the Union are much indebted, was a slave-holder when he signed the declaration of independence, without an idea that either black slaves are born equal to white freemen, or that the latter were guilty men for owning the former. So were many of the other illustrious signers of that declaration. The survivor of them all, whose serene old age was cherished by universal America, and admired by the whole civilized world—that pious and exemplary christian and patriot, was one of the largest slave-holders in America, when he put his hand to the great charter of human liberty. The gradual abolition of slavery within a state, is not the humanity of some meddling demagogues, and too many of their dupes in the old world and the new, to sunder this Union and drench it with desolation. The exemplary, the many illustrious Americans, whom as slave proprietors they dare to villify, are not more abused by these agitators, than the

unfortunate beings whose bondage they aggravate and whose slavery they perpetuate. Slavery was gradually receding from Delaware, from Maryland, from Virginia, from Kentucky, and from the Carolinas; and its hardships were every where undergoing many softenings, when this abomination came upon us from abroad, with that perpetual influx of colonial misrule by which we are forever subjugated. Then and thence came those dreadful laws of self defence and retaliation which strike the African race down from the platform of humanity. Then and thence, as Mr. Madison on his death-bed stated to me, such men as Governor McDuffie, of South Carolina, and Professor Dew, of Virginia, were provoked to propagate the theretofore unheard of dogmas that slavery is a blessing, and that communities cannot be well governed without its regulating balance. The solitary calumniator of Washington, the only living creature to utter detraction of that unspotted being, puts the whole American nation out of the pale of political and social tolerance, because parts of it hold slaves; and an ex-president of the United States leads a crusade against the Union—the good name and very existence of the country of which he has many titles to be one of the most honorable illustrations. Residence too long abroad must have blunted that keen edge of American susceptibility, which with intense and irrepressible resistance, would otherwise repel all foreign interference and domestic disparagement.

Petition is a right which can hardly be overruled, and, well understood, should always be treated with great respect. But I do not hesitate to affirm that *female* petitioners concerning political affairs—a perversion, like all the rest of this abolition infatuation, descended upon us from England —present one of those unnatural, anti-social and deplorable errors of the times—the unsexing of the gentler part of the community, which, in time, will prove a greater evil than slavery can ever be described to be.

What a predicament at once audacious and preposterous, is that of any citizen of Massachusetts railing at negro degradation, and contending for coloured equality, till he repeals the law of his own state, declaring marriages between whites and blacks absolutely void, and bastardizing their issue! Gentlemen from Connecticut on this floor, the member from Allegheny, (Mr. Forward) and from the city. (Mr. Chauncey) insist on the right of blacks to be equal to whites, while the law of their native state punishes as a malefactor, the white instructor of a black, and lately Chief Justice, Mr. Dagget, was constrained by the stern obligation of law to pronouce a respectable female guility, for endeavoring by instruction in her school to reclaim the poor blacks from ignorance and infamy. An Ohio lawyer makes a bold argument against the federal constitution recognising slavery, in a state whose laws expressly confine its school system to white persons, forbid a black to give testimony against a white, and prohibit all coloured persons from even inhabiting the state. Such laws at home are flagrantly inconsistent with attacks on slave property elsewhere. Let these northern champions of negroes reform their own laws before they assail slavery in the south. Chancellor Kent, in the last edition of his excellent commentaries, declares as the result of his deep researches on this subject, that "in most of the United States, there is a distinction in respect to political privileges, between free white persons and free coloured persons of African blood; and in no part of the country do the latter in point of fact, participate equally with the whites in the exercise of civil and political rights."

"The African race are essentially a degraded caste, of inferior rank and condition in society. Marriages between them and the whites are forbidden in some of the states, and when not absolutely contrary to law, they are revolting and regarded as an offence against public decorum. By the revised statutes of Illinois, published in 1829, marriages between whites and negroes or mulattoes, are declared void, and the persons so married are liable to be whipped, fined and imprisoned. By an old statute of Massachusetts, in 1705, such marriages were even declared void, and they were so under the statute of 1786. And the prohibition is continued under the Massachusetts revised statutes of 1835, which declare that no white person shall intermarry with a negro, indian or mulatto. Such connexions, in France and Germany, constitute the degraded state of concubinage, which was known in the civil law; but they are not legal marriages, because the parties want that equality of *status*, or condition, which is essential to the contract." 2 *Kent, p.* 258.—*Note.*

This, be it remembered is northern doctrine, as is all I have produced on this occasion. This digested view of the character and condition of coloured people is the result of the researches of a learned man, writing under no impulse but that of truth, with no feeling but for the blacks. The contrary doctrine is not a wholesome feeling; it is not natural, is not American, is not even English, or European till very lately, and is a stab at our common welfare and national character which every American should repel.

It is against our nature, habits and feelings, against the laws of civilized nations, especially against those of the American states most fruitful of abolitionists, to attempt to equalize blacks and whites politically, and, while socially there are impassable barriers between them, to tantalize the blacks with vain hopes of political franchise. All social equality is denied; and not to them alone. A large, respectable, and irreproachable class of our own fellow countrymen, our equals in every respect, the Jews, are now degraded in England, and were till lately in two, if not more, of the United States, North Carolina and Maryland.

Declamation and indignation are vented on the alleged hardship and cruelty of denying to the blacks political equality withheld from white men. This view is applicable rather to the question of citizenship than to that of fugitive slaves, I confess; but it bears directly and forcibly on the whole subject of the misdirected efforts to remedy the imagined political wrongs of the coloured population. The questions of slavery in the slave holding states and of black equality with whites in the other states, are intimately connected, and one principle settles them both.

Let philanthropists fit them for political freedom by social fellowship first, and afterwards, if needs be, bestow the rights and benefits of equal citizenship. I desire to be considered the sincere friend and warm advocate of such improvement—I call upon the pious and the benevolent of Pennsylvania, especially members of the true abolition society, to remove or soften the impracticable demarcation between them and us, if possible; and I call upon the false abolitionists, till then, to forbear to aggravate their condition and disturb ours, by vain struggles to render them our equals as citizens before they allow them to be like us in any social respect whatever. The school, the church, and the graveyard—there let them be associated with those white friends who now keep them seg-

regated and aloof. These are practicable associations short of bed and board. Why is it that while our school law opens its doors to *every individual*, directors exclude all blacks, and almost within sound of my voice, have lately erected a large seminary for the separate education of coloured children. Why do not those who *say* they are our brethren and equals, take them into the same schools with their own children, and let them all learn to be instructed together. Why do they exclude them from their places of worship? Why not at least let them worship and pray with themselves? Why not, if they cannot be married, condescend to permit them even to be buried together—to be laid in the cold earth under the same ministration? I *reproach* their friends, but in no unkind spirit, their forward and enthusiastic supporters, that they have not so much as attempted some system of education and of worship, in which blacks and whites shall be blended without distinction of colour. I am sensible of the difficulties and the odium of all such undertakings; but till they are tried it is worse than idle for shrinking friends of the blacks to complain of and condemn those whom they accuse as their enemies. The frightful disparities of crime and pauperism which now disgrace the blacks, might and certainly would be mitigated by this the only right way of beginning to equalize the two species. Let those who assert equality impress it on the blacks in social relations first, and then political and civil emancipation and elevation may follow. Let them set the example—make the beginning. But as it is, they begin wrong. Indeed, they make no beginning at all. They do but deepen prejudice, aggravate degradation, and provoke superiority.

On a former debate, we were told with much fervid eloquence, that even at the communion table, blacks and whites take the holy sacrament together. Yes, sir, the slaves do so, I understand, with their masters, in the southern churches. But how is it here, and generally at the north? A poor solitary *domestic* may occasionally be seen on these occasions; but as a general rule I believe there is no communion of whites and blacks. The blacks are obliged by custom and example to abstain from association with their betters as they esteem themselves; in all the services of every congregation, every seminary of learning, every graveyard—every where, in every thing.

Abolition should therefore stay at home and labor at home, and it may do much good. Its propagandism is as unjust to slaves as to their masters. It should confront the prejudices which reduce the poor blacks to most absolute vassalage here, as marked, as hopeless and as cruel as that of the slaves elsewhere. Our champions of black liberty and equality can preach and rail at bondage at a distance and in theory; but when its victims are brought to their own doors, and coloured equality to their own families, their school and their church, and their place of interment, not to mention board and bed, they shrink from the first duties of humanity as shocking. In no taunting temper, but in all sincerity, I allege this utter inconsistency, with a public declaration of my perfect readiness to unite in all reasonable endeavors to remove or reduce the social barriers which separate and segregate the two races. I must in candor acknowledge prejudices too.

The example of Hayti, one of the most fertile and desirable spots on the globe, where for many years the coloured supremacy has been estab

lished, affords proof that the black is unequal to the white, and the decree of Providence making a broad distinction between the two, necessarily superadds strong apprehension as to the complete success of any experiment that may be made to equalize them. But let us try. Let us not be discouraged. Let us see if social prejudice may be overcome on our part, and social degradation on theirs. Till that attempt is made, all attempts at political privilege must fail, while the very attempt continually aggravates the hardships of servitude.

In the northern part of Philadelphia, an edifice is now building, which is said to be the temple of abolition. If of abolition within Pennsylvania, its dedication must be to folly, for there are no slaves to be freed; if abolition elsewhere, it should be desecrated to the demon of national discord and destruction; a place in which poor slaves will be put to torment; a modern Ergastulum, worse than the Roman structure for that purpose. Let its founders give it better destination, than idle, if not wicked intermeddling with the neighbors we should love, by making it a school house and a church, in which the blacks may be taught to read and to worship, instead of being maddened by agitators.

As a native of Pennsylvania, I consider my fellow-citizen wanting to the policy, the honor and the government of this commonwealth, who would not support the principles of gradual abolition within this state. And after having adduced the authority of the late most estimable president of the abolition society of Pennsylvania, against the reckless infatuation and wickedness of those who from within one state, by violent, rash and unconstitutional movements strive to uproot slavery in others, contrary to their laws; I pronounce such men traitors to the American Union, and that country by whose institutions we are all republican freemen, although some of our fellow countrymen are the masters of slaves. Such abolition is a wicked violation of duty as Americans, of mercy to the slaves themselves. There may not be at this moment such a man in this convention; but abolition has become a common cloak for domagogues, striving to connect it with party, and rule or ruin by its abominable madness. Of every such agitator, in this hall or out of it, I say *hic niger est, hunc tro Romane, caveto.*

Trial by jury for fugitive slaves! for blacks by whites! What a solecism, an absurdity. From Magna Charta down, trial by jury has been a trial by peers, by equals; vassals, says Blackstone, by their fellow vassals, lords by their brother lords. If this trial is to be conferred on blacks by their friends, let us at least carry out the true spirit of the grant, and give the blacks a jury of their own colour; give them at any rate a jury *de medietate*, half of the kind of the party to be tried. Otherwise, we violate the very principle of equality consecrated trial by jury as heretofore, and pervert it to the prejudice of those we pretend to befriend.

Any such provision moreover is merely functional, not organic. There is no occasion for it in a constitution. Its place, if any where, is in a law. Confederated as we are with sister states no such provision should be part of our code, offspring as it would be of that meddling animosity of the men of one nation towards others which has always been a principal cause of strife, bloodshed and disturbance, eloquently reprobated by Clarendon, in a passage I before read from his history.

Mr. President, the most acceptable act of this body is that which incorporates the word *white* in the fundamental law, and puts an end to the agitation of this exciting topic in Pennsylvania. The provision now proposed, is a contradiction of it, and if acceded to, would unsettle what has been so well done. In spite of nearly the whole city press against us, the course of the convention respecting this important matter has been popular beyond my anticipation. I do not mean in any party or local acceptation; but agreeable to the intelligence and right feeling of the community. No reform we have made will be so effective in recommending all the rest to the people as this; and I cannot close without saying that the gentleman near me (Judge Hopkinson) will be honored now and hereafter, here and elsewhere, for his independent course on this occasion. It will do good in the north as much as the south, abroad as well as at home.

I learn that a respectable merchant, who took a very active part in getting signatures to a petition which conveyed to us a very able and temperate argument against the attempt to advance the coloured people to political privileges, found but three persons who hesitated to unite heartily in that petition. I take my leave of the subject with the conviction that this is the time and the state to follow up its lead in legitimate abolition, by rebuking effectually that false and perilous counterfeit which would assume, dishonor, and destroy its advantages, and endanger the Union of these prospering states. Here, in central Pennsylvrnia, is the true meridian for maintaining the federal government against all assailants. Let us mitigate the lot of inevitable degradation by the utmost kindness and every practicable amelioration. But let us confront and put down the disastrous influence of meddling abolition, nor suffer it to contaminate Pennsylvania. Let us cleave to the American Union, which has rendered us happier and greater than other nations, in spite of all foreign detraction. Let us not suffer such disparagement to set us against our brethren, and our institutions. And if all of us think that slavery is an evil, let us trust to Providence for its eventual disappearance.

Mr. BIDDLE rose and said, that there was no gentleman in that body who would have been more gratified than he should have been, if the delegate from the county of Philadelphia could have proceeded, and if his vote could have availed any thing, most freely would it have been accorded to him.

He (Mr. B.) had felt the inconvenience of this rule on Saturday, and he, therefore, when the gentleman asked the convention this morning to rescind it during the discussion of this deeply interesting question, manifested his sentiments by seconding the gentleman's motion.

Gentlemen had strangely misconceived the whole scope and tendency of the argument which he had the honor to address to this body on Saturday last. If they had attended to it, he thought they might have spared themselves the trouble of listening with such breathless attention to the impassioned argument of the gentleman from the county of Philadelphia—to the great display of argument which they had all heard this morning.

What, he (Mr. B.) asked, was that argument? Was it an argument in favor of a disregard of the constitution of the United States? Was it an

argument in favor of nullification, and of subverting this greaat and prosperous Union? No. Gentlemen should have known that the whole argument rested on the supremacy of the constitution of the United States; and he (Mr. B.) endeavored to show that the law of 1793 was not obligatory, because it was in contradiction of that great charter which he prayed might last long—very long, and be an instrument in infusing blessings not only among us, but in cementing into one nation this great people.

Was it not strange that learned gentlemen should stand on this floor and ask, were we not seeking to rend the Union asunder—to separate the commonwealth of Pennsylvania from the rest of the Union, and to overturn the constitution of the United States; when the very argument addressed to this body was founded altogether upon the paramount obligatory character of that instrument.

When gentlemen were obliged to resort to such means, they must indeed, have a cause that would not admit of fair discussion. It was true that the gentleman from Luzerne, (Mr. Woodward) had told the convention that he meant none of his allusions to be personal to himself (Mr. Biddle.) Yet, he had spoken of an appeal to angry and mad passions—of a general convulsion, and of Pennsylvania struck from the confederacy. And, he had asked, who had stirred up this commotion? Who, he asked, was it that had stirred up this commotion? What was the object of such an appeal? Was the gentleman who addressed this body, desirous that this subject should be calmly and deliberately considered? We are asked if this subject is to be everlastingly agitated?

Yes! he (Mr. B.) would say—agitated everlastingly, at least until the free people of this commonwealth have obtained their rights. And he hoped that the voice of no freeman would be st ll until all those claiming to be free-born sitizens of Pennsylvania, should be secured in their rights and not dragged from the commonwealth without trial or without safeguard, and carried into bondage for life.

And because we had asked that men should be thus protected, were we to be told that we were everlastingly agitating a question which was fraught with the most dreadful consequences? He did not seek to invade the rights of the south, nor to disturb their institutions. And while he sought not to disturb them in legislating for Pennsylvania and the protection of her citizens, yet, forsooth, it seemed that we must pause, lest the south should complain.

We were told, when a mere question of property was at stake in the south, that we must not discuss it—that it was dangerous to do so! But when a question connected with the people of the north came up here, it was not a voice from the south that should bid us be still, and yield up our voices, but it was the voice of Pennsylvanians on the floor of a Pennsylvania convention.

Gentlemen had asked whether any true hearted Pennsylvanian would deny the paramount obligatory character of the constitution and laws of the Union?

He (Mr. B.) would answer—"No." But it was an abuse—a misapplication of the argument to suppose that there was any thing in it calculated to have that tendency.

The whole argument before the body was—that the constitution of the United States—that compact which all were bound to respect—that compact asked nothing of the kind. All that it required was, that a fugitive from labor should be delivered up. It claimed not the right to come among us, and with a ruthless hand seize and carry him from the commonwealth.

He (Mr. B.) would say let them be delivered up. But at the same time he would say, let us not break down every safe-guard, and render any man liable to be seized, and carried away, and made a slave of. There was no one but what would assent to the proposition that the compact by which the Union is bound together compels us to surrender a fugitive slave to his hard fate.

He was somewhat surprised that those individuals who had rallied in favor of human rights should be taunted with the interrogation—"Are they true-hearted Pennsylvanians?"

Pennsylvania was settled by William Penn and a band of heroic patriots who came to this then savage wilderness, to enjoy liberty of conscience. And those very men proclaimed to all the earth universal toleration. These settlers treated the red man with kindness and justice.

If time permitted he would enter into a vindication of the course of the first settlers of Pennsylvania, for he was Pennsylvanian enough to feel an honest glow of exultation at the early settlement of the commonwealth. But the time to which he was limited was fast passing away, and he dare not enter upon a field so broad.

He would say that the early settlers of Pennsylvania sought to enjoy that liberty of conscience which was denied to them in their native land, and desired that all others might enjoy it.

Among the most extraordinary things that had happened within these walls, was that these very people—the quakers—who are identified with every thing Pennsylvanian, should have been held up to scorn and contempt, and as destitute of the feelings which should animate citizens of Pennsylvania, by an adopted citizen!

He (Mr. Biddle) trusted that he was a true-hearted Pennsylvanian, and he would not yield to any man, he cared not whence he came, in the ardor of his attachment to Pennsylvania interests—to Pennsylvania happiness. And he thanked God that he was a friend to Pennsylvania universal liberty.

We had been told that the constitution of the United States settled this question; and at the time he was interrupted on Saturday, he was endeavoring to show that the constitution of the United States recognizes no principle so monstrous as that an individual may invade a sovereign state, and carry a human being away, from under its protection, without process of law—without the consent of the sovereign power of that commonwealth.

But, we were asked by the gentleman from Luzerne, (Mr. Woodward) whether a man had not a right to seize and recapture that which is his own? He (Mr. B.) would ask, if the delegate meant to put the question seriously, as a lawyer, that a man has a right to seize his property where-

ever he could find it? What a state of society should we have—we should be put into endless confusion, if every man was permitted to seize upon every thing which he claimed as his own!

What! could the Virginian come into the city of Philadelphia and take his tobacco? Shall the South Carolinian come and demand his barrel of rice? Shall the Mississippian come and demand his cotton? And shall, too, the Louisianian come among us and demand his sugar, seize it and carry it away?

The gentleman had furnished him (Mr. B.) with an analogy. He would ask him, whether, in each and every of these cases there was not to be a trial by jury—a full and impartial *hearing*, and the whole matter to be subject to the correction of a higher tribunal? And, he would tell the gentleman that the analogy held good—that where liberty was at stake, and where a man asserted that he was a freeman of Pennsylvania, he shall not be deprived of those rights which apply to mere chattel interests.

The gentleman had asked if we were prepared to be perjured, by refusing to obey the oath they had taken to support the constitution and laws of the United States. Now, he (Mr. B.) would say again, that this was not an argument, it was sophistry; for we all maintain—every man was bound to obey them.

The question is—what is the constitution? What are those laws? What are the rights of the states? They all go hand in hand—all go on harmoniously together, and there was no inconsistency between one and the other. But not satisfied with what he had referred to, it was said that we held out a lure to the southern slave—an invitation for him to desert his master and come among us.

Did he (Mr. B.) not, in the course of the argument that he had addressed to this body—for he must suppose the questions which had been propounded here were intended for him—say, that he offered his amendment if no one else spoke on the subject? Did he not, he asked, concede that the south should have their runaway slaves surrendered to them, and every facility given to the recovery of their property, compatible with the rights of the freemen of this commonwealth. He had suggested that trial by jury might be had in a few days, and that it ought to be resorted to.

The whole argument was admitted that fugitives from labor are to be given up; the only question being as to the manner in which it should be done. There was no denial made by any individual with regard to the rights of the master. They were as fully conceded as the warmest southerner could desire. They had been recognized and acknowledged. And he would not be deterred, and he hoped that others would not, from doing their duty to the people of Pennsylvania, by any attempt to denounce them as seeking to dissolve the Union, and as a people with whom no communion should be held. If the confederacy was to be rent asunder, let us see whence the disorganizing blow proceeds from.

Let us revert to the history of Pennsylvania. Was it, he would inquire, in Pennsylvania—or the northern states that the cry of disunion has been raised? No, it was in the south. And if the north should ever be alien-

ated in its affections from the rest of the Union; it would be when northern men shall feel that without process of law, their homes can be invaded, and their children and families torn from them and carried into hopeless and irrevocable bondage.

When that time should come, then would the north rise in the majesty of her strength, and do herself justice. Nothing could compensate us for the loss of the blessings of liberty—that liberty which had been purchased by our fathers at so great a price. He apprehended no such catastrophe—he feared no such result. He believed that the north would be faithful to her engagements to the south, while she, at the same time, would take care to have her own rights respected.

The gentleman from Luzerne had asked whether congress, or the states are to legislate on this subject. He (Mr. B.) had endeavored to show that the subject was one properly appertaining to the states, and that the words "deliver up," so far from being synonimous with seize, were wholly irreconcilable with that word. He trusted that he would not again be misunderstood, nor charged with seeking to kindle a flame not to be extinguished until desolation should be spread far and wide throughout the land.

We sought reconciliation, by letting the south feel that while we are her friends and upholders, and are ready to discharge every obligation under which we are laid as a member of this confederacy, yet, that we respect ourselves too much to suffer any invasion of our rights, and therefore would not yield up that which was due to our own citizens.

Before he entered upon his argument—and he had not resumed the thread of his discourse, where he left off on Saturday—he felt that it was necessary that he should advert to what had been said by the learned gentleman (Mr. Woodward) on Saturday. And did time permit, he (Mr. B.) would avail himself of the opportunity of replying to the able argument of the gentleman from the county of Philadelphia, (Mr. Ingersoll.) He however begged leave to observe, that he utterly denied the position taken by those gentlemen, that if we grant the constitutionality of the act of 1793, we surrender the whole argument. It was not so.

It might be that the act of congress was valid and obligatory; it might be that the United States officers were bound to respect it, yet this provision proposed to be inserted in the constitution might be fairly made without any violation, or in any degree interfering with the constitution of the United States.

What, he asked, was the constitution of Pennsylvania designed for? It was intended for the government of the commonwealth. All the courts, all the tribunals, all the magistrates appointed under that constitution were officers of this commonwealth, to perform their duties in pursuance of its provisions.

Had we not a right to declare the holding of an office under the state was incompatible with holding an office under the general government? Had we not done so? Had we not a right to demand the time and attainments of all the officers we call into being? Had officers, he would ask, appointed under a law of congress, a right to come into the courts of Pennsylvania, and compel her officers to perform their duties under the

constitution of the United States? Had any such doctrine been contended for any where? Would any one go so far as to contend that the states have not a right to regulate their own magistracy?

In the states of New York and Pennsylvania,—and the legislation of Pennsylvania had been pointed to by the gentleman from Luzerne, the terms were prescribed how the magistrates shall act. If then, the right exist with the legislature, does it not possess the power to say that there shall be trial by jury? If congress could impose one restriction on the magistracy of a state, they could interdict them in any particular.

He would now turn to the act of 1826, passed by the legislature of Pennsylvania, in relation to fugitive negroes. After, in the first section declaring that no person shall be seized without process of law—and the act of congress says they shall be seized without law—and carried out of the state without first being brought before a judge. The act takes away all jurisdiction from the inferior magistrates, except the power to grant a preliminary warrant for the arrest of the fugitive, who is to be taken before a judge.

The gentleman had referred to this law, and said it proved the understanding of Pennsylvania on the subject. He (Mr. B.) would ask, if the legislature had a right to pass a law that no inferior officer should be allowed to exercise jurisdiction. Now if an act of assembly could do this, he must say that he was only surprised it had been suffered so long to remain on the statute book in violation of the constitution of the United States.

Now, he would ask, could not the convention or rather the people themselves who are to pass upon their amendments, regulate this matter, if the legislature could do it? Most assuredly they could. He had not a doubt of it.

With regard to this subject, he could only say that the tribunals of the state are under the control of the constitution and laws of Pennsylvania. He would read the opinion, not of a state court, but of the supreme court of the United States, and then it would be seen whether the argument of the gentleman from Luzerne, (Mr. Woodward) or of himself, was most in accordance with the pre-eminent authority of the supreme court of the United States, as the exponent of the constitution and laws of the United States.

He (Mr. B.) would say that the federal jurisdiction had never passed upon this question. But, he entertained not the least doubt that they would not sanction such doctrines as had been contended for here by some gentlemen. He would quote the opinions of Judge Story, from Wheaton's Reports, vol. 1, p. 313.

[Here Mr. B. read a portion of the opinion which was to the effect that congress could not vest any powers of the United States except in courts ordained or established by itself.]

And yet (continued Mr. B.) we are told that any individual who denies the authority of Congress to regulate the matter, and prescribe the jurisdiction, is guilty of a disregard of the constitution and laws of the United States.

[Here Mr. B. also read another extract from the opinion.]

Now, it was proper that it should be so in order that the tribunals of the United States may be responsible for the use of their powers to those who create them. The Judges were responsible for the manner in which they performed their duties, and were liable to impeachment for abusing their powers.

Mr. B. said that his argument went to show that neither the constitution nor the laws of the United States granted such powers as were contended for in regard to the act of 1793. He found that his time was very limited, and he must make the most of it. He had risen to answer the arguments of the gentleman on the other side; and he did not intend to occupy the body another hour. He could not commence his argument where he had left off, nor proceed in regular order. He felt this rule, restricting members to speak only a certain time, very hard, particularly on so important a subject as this was—affecting life and liberty—at not having an opportunity to go at full length into an argument on it.

He would now ask the attention of the convention to a memorial which had been presented to congress from eleven hundred inhabitants of the District of Columbia, during the present year, complaining that they have not power to protect northern freemen. The District of Columbia had been made the great slave market of our country. And we should see whether this power has been abused, and whether the free people of the northern states are not called upon to guard their rights.

[Here Mr. B. read the petition.]

Now, when a voice came from the south regretting their inability to protect the free citizens of the north,—were we, he asked, of the north, to be denounced for rising in our places and saying—the time has come when we must protect ourselves. He (Mr. B.) might be denounced as a rash man—as a bold lawyer, for raising his voice against the act of 1793. But so long as the love of liberty throbbed in his bosom, he would not be deterred from doing his duty by any denunciations like these, when it was consistent with his obligations not only to the constitution of the United States, but the state of Pennsylvania. We are told that higher authority may be quoted to show that the matter has been decided. We have been told that the act of 1793 is constitutional, and that thousands have been delivered up under it.

Permit me to say, (continued Mr. Biddle) that this question has never been discussed before our tribunals. Why then should we not endeavor to raise the question? It is not the intelligent and the rich, but the poor and the ignorant, who are brought before the tribunals of the United States. But we are told that M'Kean and Shippen settled the question. I wish to look more narrowly into this matter. What ground do they take? Do they not say that the restoration of a fugitive to the owner claiming shall depend on the proof of slavery? Do they say that any, on the mere suspicion that he is a slave, without trial by jury, shall be carried into slavery? But it had been indicated that the trial by jury is unsatisfactory, because it is not prompt enough. What! The trial by jury unsatisfactory because not sufficiently prompt—the process by which all charges against the citizens of Pennsylvania are decided, not prompt enough to determine the claim of a fugitive! I have already said that the certificate of the magistrate determines not only the colour of the individ-

ual, but also if he shall be a slave: and if he decide against the individual, no person can rescue the fugitive from the hands of the agent, by whom he may be kept in such way as his tender mercies may dictate. There is no process of law by which the agent may be prevented from using the slave according to his pleasure. In regard to the case, 5th Sergeant and Rawle, the case was not argued. The cruelty of the law was not brought into question and the opinion of the court, where there is not the specific point before them, does not settle that point. Where it is not clearly brought before the court, and argued, the opinion of the court does not settle the point. Judge Sergeant, in his Constitutional Law, does not raise the question. A case in Pickering's Reports has been alluded to, but the gentleman who referred to it, forgot to say that of the two judges on the bench, one decided one way, and the other differently. We have been told of Judge Parker, but we have not been told of Thatcher's opinion, that this is a question for the states themselves to settle. We have also the learned opinion of Chancellor Walworth on whom the gentleman from Luzerne passed so high and deserved a eulogium. Then I am not the only asserter of the doctrines I have advanced, because I am sustained by others. Chancellor Kent, the gentleman assured us, has expressed no opinion on the subject which would sustain me. This, however, is not a point of law, much as I defer to the opinion of Chancellor Kent, on which I am prepared to receive it. But we have been told that the introduction of such an article in our constitution would be preposterous. On this point I could wish to hear the eloquent voice of the learned judge (Hopkinson) on the other side of the hall, and I am sure that nothing will deter him from giving his opinion. There is nothing to be found in Story's Commentaries. The learned judge speaks of the law, but the question was never raised and brought directly before him. If any thing could have been found in the books to sanction the decisions of Chief Justice Marshall, the gentlemen would have brought it to the notice of the convention. A number of cases have been adverted to, but they are altogether different in their character. In the case of apprentices, bail-pieces, &c., there is an act of the state; but there is nothing to prevent the agent of the owner, on the certificate of the judge, from carrying away the slave.

Mr. B. went on to express his regret to hear some expressions of the gentleman from the county of Philadelphia, (Mr. Ingersoll) reflecting on Judge Chase, of Ohio. I have heard (said Mr. B.) our profession held up to ridicule by those who do not belong to it, but I am sorry to hear that gentleman endeavor to depreciate a member of that profession second to none, and foremost in the ranks where human liberty was brought into question. But, it had been said, put this amendment into the constitution, and it will be a dead letter. We have been told that the courts of the United States would disregard the provision. If the United States have the right to erect tribunals of such arbitrary powers among us, let the responsibility be upon them; and let us not lend ourselves to any act which will stamp on us the deep dyed odium of refusing to carry out our own laws.

Having thus shewn, or endeavored to show, that he had no disposition to disturb a single relation in which we stood to the United States, but on the contrary to surrender those powers which had been conferred upon

them, he would now resume his argument, that no construction of the constitution of the United States, by which power has been conceded to it to interfere with our state tribunals, has ever been sanctioned by the judicial authorities of the states. He would commence with a reference to New Jersey, and to a decision pronounced by Chief Justice Hornblower of the supreme court of that state.

[Here the CHAIR announced that the hour to which members were restricted in speaking, by the rule recently adopted, had expired; and Mr. Biddle thereupon took his seat.]

Mr. MERRILL, of Union, said that the question was, whether the law of 1793 was constitutional or not. He confessed, that after all the reflection he had bestowed upon it, he could not bring himself to believe that it was unconstitutional. He thought it was constitutional. He could not believe, as some did, that it was a mere compact, and not a law that could be enforced in the states by the government of the United States. He thought it could, and that the general government could use the necessary measures to carry it into effect. If he did not think so, he would be obliged to go with the south, and oppose the first judiciary law that might be passed in reference to a state. He should feel himself compelled to denounce the language of Mr. Madison, in regard to the constitutionality of the Bank of the United States, although the wording of the constitution is not such as to place the power beyond a doubt. All the official authorities he had seen, bearing upon the law of 1793, all concurred in showing that it was unconstitutional. He thought, however, if we were to go upon the strict construction of the words of the act, there would arise some doubt in regard to its constitutionality. But, when it was considered that the law had been so long in force, and never once questioned, and that there had been legislative action upon it in almost all the states, he, for one, was free to declare that he could not at this late day, allow himself to question the constitutionality of the act.

The next question, then, was,—does the law cover the whole ground? Have congress the exclusive control over the matter? They may have; but they have no right to require that our officers shall perform duties which are contrary to the constitution and laws of Pennsylvania. And, it was admitted by the gentleman from Luzerne, that the states have a right to say that their own officers shall not do so and so. It was laid down in Sergeant's Constitutional Law, that state officers are not compelled to accept offices under the government of the United States. The question now is, have we a right to prescribe the manner in which the law shall be carried into effect by our own officers? We have done so—we have provided that justices and other persons shall perform certain duties. We have assumed the control to a certain extent, and we have a right to keep it. The law of 1793 obliges the magistrates to give certificates, and our law says they shall not do it, &c. This, however, has nothing to do with the constitutionality of the law. What are our powers in this convention? Why, they are to do what may be expedient in the matter. We have a right to put in an law that fugitives shall be tried by a jury. But whether we should do so, or not, is a question of expediency.

He had no desire to wound any man's feelings; but he must say that the gentleman from Luzerne (Mr. Woodward) paid a poor compliment to the south, when he said that the south would not understand what we were doing in reference to this law.

Since the year 1704, the influence of England over Portugal had been greater than that of any one state over any other state in this confederacy; yet, the slave trade had been carried on by Portugal ever since, notwithstanding all the influence of England to the contrary. When the Holy Alliance met in 1815, England brought the question of the slave trade before them, with a view to come to some understanding as to its total abolition. Nothing, however, was done. But, he would ask, if England had refused any alliance with those nations that had continued the slave trade? No, she had not. It was idle—it was folly for gentlemen to refer to England, as setting us an example worthy of emulation, when she could have ended the slave trade in Brazil years ago by a single breath.

Now, he would inquire, what was best to be done for the security of the coloured people? for we ought to do what we think right and proper for them. We have refused them all political power, either in the formation or administration of our government. It was said the other day by the gentleman from Mifflin, (Mr. Banks) that no man would go further than himself to secure the blacks in their power and property. He (Mr. M.) would reiterate the remark as to himself, and would add, that he would throw every protection around the blacks, which their condition required and humanity suggested.

The law of 1793 had been proved not to be unconstitutional—had never been doubted, and must be conceded, to be a good and valid law. Under that law the slaveholder had a right to seize the slave himself, and without a warrant. The act of 1826, passed by the legislature of Pennsylvania, was for the purpose of suppressing kidnapping, and to protect the slaveowner against that charge, and the person claimed as a slave, against being unjustly taken away. Now, if they had the right claimed under the law of congress, and of which we could not deprive them; then the question would arise how far we should restrain our officers in reference to that right? If we did so, then the slave would probably be taken by violence; or else congress must appoint a set of officers to perform the duties under that law. But who would accept the office? They would have to ferret out the hiding places of the slaves. Who would make up his mind to give a certificate that the fugitive was a slave? Would any respectable man—a man of character, take the office? He apprehended not. Such an office as this would become no man of any standing in Pennsylvania. These, then, would be the consequences of taking the existing power out of the hands of our officers. He asked if gentlemen desired such a state of things? By adopting the proposed restriction, we should throw every thing over into the hands of the southern man; for, in his (Mr. M.'s) opinion, the slaveholders would not come to avail themselves of the jury trial. The citizens of Maryland and Virginia had given up acting under the law of 1793, and he did not think it would be politic or wise to drive the southern people to act under the law of the

United States: especially when the act of 1826, passed by our legislature, had been found to work beneficially, and as the slave would then lose all the security he now enjoys, under that law.

Do we not still, under the law of 1826, gain a great deal for the black man; as also under the act of 1793? He was not willing to give up that gain. All of us remember the wars and fightings on the frontier before the passage of the act of 1826. That act was called for imperatively by circumstances. He had turned to the Journals of the legislature at that time, and had found the following record:

"A motion was made by Mr. Heston and Mr. Clarke, to amend the same by striking therefrom these words:

"'A judge as aforesaid, and upon proof to the satisfaction of such judge, that the person so seized or arrested doth, under the laws of the state or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge to give a certificate thereof to such claimant, his or her duly authorized agent or attorney, which shall be sufficient warrant for removing the said fugitive to the state or territory from which he or she fled.'

"And inserting in lieu thereof these words: "the said judge, justice of the peace, or alderman, who shall bind the said fugitive to appear at the next court of quarter sessions of the proper county; or if the said fugitive shall not be able to obtain sufficient and satisfactory security for his appearance as aforesaid, that then it shall be the duty of the said judge, justice of the peace, or alderman, to commit him to the common jail of the county in which he shall have been arrested, so that he may be and appear at the court of quarter sessions as aforesaid, and that the said fugitive, before he shall be delivered up, shall be entitled to the full benefit of a trial by jury, under all the forms and regulations which are observed in criminal prosecutions, and that no person shall be delivered to any other person claiming his service, until the verdict of a jury shall find him to be a slave, and that he has or shall have absconded from the service of his master.'"

This was rejected by a single vote—42 to 43. The gentleman from Indiana and the gentleman from Philadelphia county were among the ayes, and it was only saved from being part of the law by the vote of the person who is now the governor of the state. If that clause had been inserted in the act of 1826, would the south have abided by it? If the law had conferred any such authority, would the south have borne it? On this ground he remained to be convinced that the protection of the black man could be improved. Let him be convinced that such would be the effect, and he might vote for the amendment. He would not say what would be his course if the slaveholder would go back to the law of 1793. Whatever might be the cost to us, of protecting men in their rights against oppression, he was willing to risk the penalty. But when he believed that the adoption of this amendment would be injurious to those whose protection we desire, he felt that if he gave his assent to it, he would be lessening the means of securing to them freedom in practice. If the gentleman would show him that the slaveholder would come into the

state, under the law of 1793, for the purpose of cruelty and oppression, he would be disposed to restrain him. He would refer to a remark of a gentleman from Philadelphia, not now in his seat, who said that we might, by driving back on the south, induce them to multiply laws by which the condition of these persons might be made worse. That would be a good answer if we were sure of the fact. But the south may submit. He would not say she would not. Would any gentleman say that the south would adapt herself to the new policy of Pennsylvania, and reclaim her fugitives under this provision? He trusted gentlemen were not influenced by the consideration of what the south would do. Whether they are influenced by the consideration of what the south would do was the question. If the south say they will destroy the Union, that is one thing; but whenever they can find a shorter mode of recovering their slaves, they will use it; that is another matter. How has the system operated hitherto? We have been told that free blacks have been taken from among us It may be so, but has there been produced any proof of the fact?—There is no proof of any such fact. Can we prevent perjury? How can this be done by means of a jury? Although the fear of its commission may be diminished, the crime cannot be remedied. We ought to do nothing which will bring us in conflict with the constitution and laws of the United States, and that may have the effect of driving every southern man to go to the provisions of those laws. He was sorry to hear any gentleman here branch off into an abolition speech. It mattered not to him what was to be the effect of this clause on that portion of the people who sustained the doctrine of abolition. Let gentlemen show that the interests of the black people would be protected by the adoption of this amendment, and they should have his vote. It has been said that whatever Pennsylvania decrees her action to be, it is within the competence of her legislature to adopt. We ought then to leave it to the legislature. No man can say with certainty, that this provision will improve the condition of the coloured man. Why then try it, if we cannot be certain what will be its effect?

As at present advised, he was indisposed to vote for the amendment. And, as he did not consider this to be a party question, he would ask of the gentleman from Philadelphia to show him that the provision would secure the prosperity and happiness of the blacks, and he might then be induced to vote for it.

On motion of Mr. EARLE, of Philadelphia county,

The convention then adjourned.

MONDAY AFTERNOON, February 5, 1838.

NINTH ARTICLE.

The convention resumed the second reading of the report of the committee to whom was referred the ninth article of the constitution.

The question being on the motion of Mr. Biddle to amend the sixth section of the said article by adding to the end thereof the following, viz: "It [trial by jury] shall be granted to all persons who may be arrested as fugitives from labor, and who shall claim to be freemen."

Mr Earle, of Philadelphia county rose and said, that in the remarks he was about to offer he wished to be understood as offering nothing in opposition to the observance of the provisions of the constitution of the United States in relation to this matter, while at the same time he was friendly to abolition, and to colonization properly understood and rightfully accomplished, although his colleague (Mr. Ingersoll) had avowed himself hostile to colonization. In expressing his views, he (Mr. E.) would endeavor to make no indecorous charges against the gentlemen on the other side; he would not charge them with falsification; he would not allege that they were all either dupes or dupers; he would not assert that they were traitors; nor would he say that the arguments which they employed were those of the thief, the robber, or the scoundrel. Were he to use such expressions he might afford temporary gratification to ill regulated minds if such might happen to be on the same side with himself; but he could not thereby give pleasure to minds judicious and reasonable. He desired to shew that the question of the power of congress to legislate on the subject of the restoration of fugitives from labor, had nothing to do with the question of our right to adopt the proposed amendment, at least if modified, in the manner in which he hoped it would be.

He would inquire in the first place what we ought to do in relation to this subject, if it were ascertained that we had full power over it. It would be necessary, in settling this inquiry, to look carefully into the primary principles of moral duty, upon which its solution must depend. It would be necessary to determine whether it would be possible to commit perpetual injustice, without sin. We have been told, here, that we may in some cases do injustice, and yet be guilty of no sin. He did not know how casuistry might settle this point, as he was not expert in such matters. It is said in the second chapter of the Epistle of James the apostle, that "If ye have *respect for persons* ye commit sin." He did not know whether professed casuists would decide that to give the right of jury trial to one class of persons, and withhold it from another, is a manifestation of respect for persons. When that shall be determined, it will have been decided whether we commit sin, if we oppose the principles contained in this amendment.

When it shall be determined whether to refuse to others the forms and

privileges of trial, that we claim as highly important for ourselves, is to do unto others as we would that they should do unto us, then we can decide whether, voluntarily and without necessity, to reject this amendment is to commit sin.

He (Mr. E.) had said that he would endeavor to offer hints for the settlement of some of the points of morality on which the question rests. He would first inquire whether the same rules of right and wrong, which apply to individuals, may be taken as applicable to communities.

Can it be wrong, in an individual, when acting by himself, on his sole responsibility, to deprive another of his liberty or his property, and yet justifiable in the same individual to join others in the commission of the same act? He thought not. What was morally unjust, in an individual, was equally so in a nation. He believed there were few who would dispute this point.

He would next ask if it was right for an individual, or a nation, voluntarily to assist others in the commission of acts of injustice and oppression? And is the plea that they do it, not of their own mere notion, nor for their own peculiar profit, but at the request of others, and for the profit of others—is this plea available? He took it for granted, that the books would all answer this question in the negative. He would ask, if having contracted to do a good work, it was right for us to do good, even beyond the requisitions of the contract? Every one will answer this question in the affirmative. It is right to do good, according to promise, and also to go farther and make the measure heaped up and running over. Again, if we have contracted to do a thing contrary to abstract justice, and wrong, on general principles, is it then our duty to carry the commission of that wrong farther than we are required to do by the letter of the contract? He took it that this question would also be answered negatively:—That if the existence of a contract can be a good plea for the commission of a thing which is wrong, upon general and abstract principles, still it is not a good plea for the carrying of that wrong farther than the contract clearly demands; and that no state ought to commit more wrong or oppression than it is required to commit by the obligations it has undertaken.

If we have bound ourselves to furnish two sacrifices to Juggernaut, or to Moloch, let only two victims be taken. If, while we hold that liberty is the birthright of all, we have nevertheless contracted with a despotic ruler, to furnish him a regiment of troops for the purpose of aiding to keep his subjects in subjection; then let us send no more than the one regiment. Let us not do evil, or injustice, beyond the letter of our obligations. In taking this view of the case, he had assumed as correct, all which the other side could claim, viz: that that which is in general wrong in its nature, may be excused occasionally, upon the plea that we, or our ancestors, have contracted to commit it—a position that might well be questioned, but which it was not necessary for the purpose of this argument, to controvert at this time.

Supposing then, for the argument's sake, that temporary injustice may be excused, on the plea of expediency and contract, he would then inquire whether a perpetuity of injustice could be excused in the same manner. Whether any circumstances whatsoever could justify a state, or a

community, in contracting for the everlasting commission of injustice and oppression, by themselves and their posterity? He thought not. If wrong is to be palliated, on the ground of temporary necessity, such wrong ought to cease, with the cessation of such necessity; and such necessity, if it ever exists, can never be permanent. If an act of legislation be yielded to, which violates justice, it should be rescinded after a reasonable time. "Cease to do evil, learn to do well," is a maxim, as applicable to states as to individuals.

It being conceded, that we ought to conform, in this matter, to abstract right, except so far as we have bound ourselves by compact to depart from it, he would ask what does abstract right require in relation to a people born or residing in this state but of different blood or descent from the mass of the population. Is there one species of abstract right for persons of English, and another for those of German, Irish or Turkish descent? Is there one species of abstract right, for one complexion, and another for every different shade of complexion? If so, where is the evidence of the fact? and where the rule by which justice for the various classes is to be graduated? Suppose we concede, that those of pure African blood have no rights at all, while we assert that all of European blood, have the inalienable rights to life, liberty and security, which are affirmed in our declaration of independence, and in our state bill of rights which makes a part of our constitution of government. Suppose this to be so, then will it not clearly follow that a mulatto by virtue of his portion of European blood is entitled to be free one-half of the time; a quarter breed, three-fourths of the time; one of the next cross seven-eights of the time, and so on? If blood or complexion gives rights, then such rights should be proportioned to the degree of the pure blood or pure complexion possessed.

Then as to the mode to be adopted for consigning to slavery those, who by law are to be subjected to it; ought it, in the case of persons of African descent, to be attended with the same formalities, as if we were about to enslave white men? If so, would the formality and security of a jury trial be proper? If the right to a jury trial, in questions of property, is so sacred, that no man can be deprived of it in Pennsylvania, in a pecuniary suit where the sum in controversy exceeds five dollars and thirty-four cents, is it just and requisite to secure the enjoyment of that right, in cases where the decision involves, not only the present freedom of an individual, but also that of his or her posterity, for an unlimited time? And if there be any force in the argument, that a jury may be packed or bribed, as has been insinuated, then ought we not to abolish jury trials altogether? If the argument proves any thing, it proves this. He thought the convention was not prepared to condemn the principle of jury trials; and he hoped that such trials might ever prevail. If, however, we are to sustain the principle, that no jury is requisite, to condemn a pure African to slavery, while the unanimous agreement of twelve jurors should be required for the condemnation of a European, then would it not follow, upon the principle already stated, that the agreement of six out of twelve jurors should be required, to condemn a half breed, nine jurors to condemn a quarter breed, and so on?

Gentlemen ask us to refuse the right of jury trial, out of regard to the

rights and the wishes of the south. Now without entering into an argument to show the soundness of my position, I will assume, that those Virginians—those men of the south—Washington, Jefferson, Henry, Pendleton, Wythe, Mason, Rives, &c., have been right, in their expressed opinions, that slavery is unjust, whether of white men or of coloured men; and that both classes have a natural right to liberty; also that the Scriptures are correct in teaching, that of one blood are made all nations of the earth, and that it is our duty to do unto others as we would that others should do unto us. In this opinion I believe I shall be sustained by a great majority of the people of the south, themselves, whatever contrary views may be advanced by over-zealous northern advocates of southern privileges. Upon this supposition, it would follow, that if we had entered into no compact with other states on the subject of slavery, it would then be our moral duty to surrender no man into slavery, who should have escaped from it; because such person, whether white or black, and whether escaping from Turkey or from Louisiana, would be justly entitled to freedom; and no one would be justly entitled to his services as a slave. But inasmuch as we have entered into a compact, or our ancestors for us, which is asserted to be in some measure inconsistent with natural rights, we ought carefully to study the instrument, and weigh its purport, ere we make the assertion, that it requires of us to deny, to persons guilty of no moral offence, the opportunity of fair investigation and those privileges of trial which are guarantied to the most heinous criminal.

A few days since, we were told that the national constitution required of us that we should deprive the coloured people of the right of suffrage, as being a *political right*; but that we might permit them to enjoy all *civil* rights, as fully as the whites. Now the note is changed, and we are told from the same quarters, that the same national constitution requires also that we should deprive them of their civil rights, which are deemed by white men, to be among their most valuable inheritances. His colleague had said, in substance, that so long as a single state of the Union should sanction slavery, all the other states were morally bound to continue to assist her in upholding it, and from this obligation there was no means of honorable escape. He (Mr. E.) could not admit the soundness of this conclusion. He would not acknowledge, as a fact, a thing so derogatory to the honor of the great men who framed the constitution of the Union, as well as to the people of the several states who adopted it.

We have been told, on this floor, that O'Connell has slandered our country; but surely O'Connell has never said any thing so derogatory to us as this. If gentlemen feel a zeal to defend the honor of the country against the alleged slanders of O'Connell, they must expect that I shall also feel some zeal in defending it against what I deem greater slanders. So defending it, I do here deliberately and solemnly assert, that the states of this Union never entered into a compact, binding themselves to perpetual slavery; and furthermore that they never entered into one which was intended to have the effect of perpetuating it, nor of depriving, perpetually, certain men of the right of jury trial. From such a compact the patriots who framed the constitution, and the patriotic people who ratified it, would have recoiled with horror. Our ancestors never contracted that

their posterity should, forever, without the privilege of withdrawal from the engagement, assist in holding men in slavery, or in returning into slavery those who should have escaped from it. The people of this state, at the time when they ratified the constitution of the general government, were radically opposed to slavery, as they had made manifest, by the passage of the abolition act, as well as by forming a state constitution which made no discrimination of rights between the white and the coloured man. They would not have ratified the United States constitution, if they had supposed it to be of the character here contended for. Cotemporary history shows, that it could not have been of that character, for the people, and the framers of the constitution from all the states but one or two, were opposed to slavery; and the internal structure of the constitution proves it to be such as was to be expected from such a people, a constitution intended to promote the extinction of slavery, and the equality of mankind. It was framed so as to tolerate, and for the time being, uphold the claim of the slaveholder; but yet so as to prepare the way for the extinction of that claim. It was framed so as studiously to avoid the recognition of any difference in rights, arising from complexion: hence the clauses for delivering up fugitives are as applicable to white persons, bound to service, as to persons of colour. The book read by my colleague (Mr. Ingersoll) strives to maintain that the constitution of the United States does not recognize people of colour as citizens; but the authorities quoted by the author do not sanction that position. One of them, viz: Mr. Rawle, says that every person born in the United States is to be considered a citizen.

I assert that the constitution of the United States recognizes people of colour as citizens.

First, because it says not a word, from beginning to end, making the least discrimination of rights, directly or indirectly, between a white and a coloured man.

Second, because it expressly bases representation, among other things, upon the whole number of *free persons* excluding Indians not taxed." Of course persons of African descent, as well as Indians who might be taxed, were to be reckoned equal to the whites, for the purposes of representation; and such has always been the practical construction of the constitution.

Third, because the states which combined to form the national constitution had generally, if not universally, formed their local constitutions upon the same principle, of giving to counties or districts the same representation for free people of colour for the like number of whites. Such is the constitution of Pennsylvania; and the city and county of Philadelphia have two out of the number of their delegates on this floor, who sit purely by virtue of their coloured population.

Fourth, because the people of color assisted to achieve our national independence.

Fifth, because they assisted in electing the delegates who framed the United States constitution, and also in choosing the state conventions which ratified it. Even in slave-holding Virginia, a coloured freeman was then, and has been since, until quite recently, entitled to a vote upon the same terms as a white man.

Sixth, because the congress which called the convention to frame the constitution, recommended that representation should be proportioned to "the whole number of *white and other free citizens*;" thus, by the general act of the representatives of the whole Union, expressly recognizing the people of colour as citizens.

I assert that the constitution of the United States was intended not to perpetuate, but to abolish slavery, or to promote its abolition.

First, because those who made it were most of them notoriously opposed to slavery, as is shown among other facts, by the act passed immediately before, and removed immediately after the adoption of the constitution by which slavery was for ever prohibited in the vast territory, now composed of the states of Ohio, Indiana, Illinois, Michigan and the territory of Wisconsin.

Second, because it carefully shuns the use of the term slave.

Third, because the instrument authorized, by a circuitous expression, the prohibition of the slave trade, after the year 1808.

Fourth, because it prohibited any such alteration of the constitution, prior to 1808, as to take away the privilege of the slave-holding states of having five slaves reckoned in the apportionment of direct taxation, as equal to three freemen; but it allows of the alteration of this provision, after the year 1808.

Fifth, because it was generally urged, in support of the adoption of the constitution by the states, that it would promote the abolition of slavery.

Sixth, because, while the constitution of the Union is declared itself to be unalterable, except by unanimous consent, in that part which gives every state an equal representation in the senate, it is made liable to change in other parts, by the act of three-fourths of the states, so as to enable the general government to legislate directly for the extinction of slavery in the several states.

Seventh, because the power was reserved, so to alter the constitution, as to release the non slaveholding states from the obligation to deliver up fugitives.

Eighth, because it is radically absurd to suppose, that those who had declared the inalienable right of all to be free and equal, and had in most of the states legislated more or less to sustain this principle, would frame and adopt an instrument, intended to bind their posterity forever to its violation.

I freely admit, that the mere power to alter the constitution of the Union, so as to abolish or circumscribe slavery by the act of the general government, would not argue much in favor of the anticipated exercise of such power, if the right to alter the instrument had been expressed merely in general and unlimited terms. But we find it otherwise. We find restrictions on the exercise of the amending power, which shows that the convention carefully weighed the matter, to determine what parts should be liable to change, upon the vote of three-fourths of the states, and what only by unanimous consent. We find, further, that in restrict-

ing the power of change, the subject of slavery was expressly taken into consideration, so that there could be no oversight about the matter. It is declared, in article five, that the equal representation in the senate shall be abolished only by unanimous consent, and that the clause relating to the slave trade, and also the clause relating to slave taxation should not be changed prior to 1808.

Why was not a provision inserted that the constitution should not be so changed, without the unanimous consent of the states, as to authorize the extinction of slavery, by the act of the national government? The answer is, simply this: The slave-holding states did not wish such a restriction; or if they did wish it, the other states would not enter the Union shackled by it; either of which suppositions favors the position, that the final extinction of slavery was contemplated to be made with the assistance, or at least the encouragement of the national government; and that this extinction was anticipated to take place soon after 1808—the period at which all absolute immunities for slave holding were to cease. If posterity had faithfully carried out the intentions of the wise and benevolent framers of this instrument, there would not now have existed a single slave in this boasted land of liberty.

And yet, we are told, that because an individual happens to belong to a class, which, by the national constitution, when free, are made equal in political power to all others, and, when in slavery, are intended to be emancipated by the humane influences and operations of the provisions contained in that instrument—that such a man must not have a jury trial in Pennsylvania when his liberty during the full term of his life is in question, while another man is to be guarrantied such jury trial whenever he may be engaged in controversy about a sum of money no greater than five dollars and thirty-four cents; and this is to be done, out of deference to the constitution of the United States! I take it as being clear, that the constitution of the Union requires no *such* deference. I think that the citizens of this state are required, alike by their sense of justice, their feelings of benevolence, and their regard to their own interests, best protected by preserving unsullied the right of all, to secure this right of jury trial, so far as it may be in their power.

I cannot see that to authorize jury trials in the case under consideration, would violate the provisions of the national constitution in the smallest degree. I understand that the slave holding states of Virginia, North Carolina and Tennessee, grant a jury trial to alleged slaves, claiming their liberty. May not Pennsylvania do the same and with equal propriety?

It has been in this debate alleged to be the prerogative of congress, under the United States constitution, to prescribe the mode by which fugitive slaves shall be delivered up to their owners. He (Mr. E.) had not examined this point with great care, deeming it not material to the question; but from the attention he had given to it, he was disposed to think that Chief Justice Shaw of Massachusetts was correct, in his decision that the provisions of the United States constitution, were partly in nature of a government, to be exercised by congress, and partly in the nature of a treaty, the stepulations of which were to be performed by the several states respectively; and that the provision concerning fugitives

from labor, was in the nature of a treaty stipulation. The provision which immediately precedes it, and which relates to the delivery of fugitives from justice has always been considered as an affair of the states, and not of the general government; and yet the language in each clause is similar.

It is to be noted, that the constitution of the United States, in article one, section 8, clause 18, does not authorize congress to carry into effect every part of the constitution, but only to make laws for carrying into effect "the powers *vested* by this constitution *in the government of the* United States or any department thereof." The question therefore still remains: is the power of restoring fugitives "*vested in the government of the United States*," or does it remain with the states themselves? Having expressed my impression adversely to its being so vested, I will add, in answer to the argument that the power is presumed to belong to the national government, because the congress of 1793 thought fit to claim it, that the celebrated sedition law, for suppressing freedom of speech, would stand on nearly as good ground of constitutional claim, and the Bank of the United States on somewhat better; and yet gentlemen who advance the argument, will not more than myself, admit the constitutionality of these laws.

That so much of the acts of congress as requires the officers of the several states to execute the laws enacted by the general government, is unconstitutional, is sufficiently clear. It has been so decided by the judicial tribunals of various states, without a single decision to the contrary. If it were not so, congress might compel our chief justice of Pennsylvania to perform the functions of a justice of the peace, and our governor those of a deputy marshal, to the neglect of their duties as state officers.

If we adopt the amendment under consideration, it can operate only on our own tribunals; hence if we even concede the right to congress to legislate on this subject, enforcing their legislation through the national tribunals only, we do, by this amendment, in no wise infringe the national constitution. Yet it is needful to adopt it, or one similar to it, because our state legislature has assumed a jurisdiction in the matter, and this jurisdiction we ought to regulate, upon principles of justice and benevolence.

It may be asked whether freemen have suffered under the operation of the now existing laws? This question cannot be answered with much specification of instances; for the man who is wrongfully taken into captivity, with the order of a judge to back his captor, and thence sold into slavery in Arkansas, Mississippi or Texas, is not like soon to return and tell the tale of his wrongs. Two instances which had occurred under his own observation, would serve to illustrate the danger of freemen being delivered up as slaves. In one of these cases, two individuals from Maryland, apparently respectable, testified to the slavery of the person charged as a fugitive; the judge declared himself convinced by this testimony; but was induced to grant a postponement, after which it was ascertained that the real slave in question, was deceased; and the claimants never returned to prosecute their demand. The other case, which occurred before the late Recorder McIlvaine, was similar in its

character and results. In these cases postponements were granted, perhaps reluctantly, at the instance of the counsel employed; yet it may frequently happen that the accused is taken off without the aid of counsel acting in his behalf; and, moreover, the claimant enjoys the dangerous prerogative of selecting the judge before whom he will go to have his claim decided.

It has been attempted to liken cases of persons claimed as slaves, to those of criminals escaping from justice in other states, and it is said that there is no more necessity for a jury trial, previous to delivery, in the one case than the other. I think differently. The alleged criminal is delivered into the custody of a public officer, commissioned for the purpose by the governor of a sister state; and he is taken away, for the mere and only purpose of having a trial *by a jury*, according to law in the state from which he may have fled. But the alleged slave is not taken away for the purpose of trial. He has his trial here. He is not delivered to a public officer, but to the alleged owner; and he is taken, not to the place from which he is said to have fled, but to any part of the world where the claimant may please to carry him. If a false claim has been made, the wrong doer will not be likely to carry his victim to a place where the wrong may be exposed and rectified.

Mr. E. hoped that the delegate from the city (Mr. Biddle) would modify his amendment, so as to provide that a jury trial should be a matter of right in all cases of persons claimed as slaves for asserting their freedom, which might arise *before any of the officers or tribunals of this commonwealth.* In this form, it would avoid all plausible objection on the ground of interference with the province of the government of the United States, as it would touch our own tribunals and not those of the Union.

Mr. E. would now say a few words, in reference to the observations of his friend from Luzerne (Mr. Woodward) respecting the printed document, entitled "facts for the people," which has been sent to each member of this body. I will endeavor to convince the gentleman that the epithets which he has applied to the document and its authors, were needlessly and improperly harsh. It was said that the paper had been "rudely and unceremoniously thrust upon us" I presume the delegate did not intend to deny the right of the authors to publish and circulate their opinions—that it was not intended to assail the freedom of speech and of the press, as guarantied by our constitutions. It was probably the act of sending the documents to us, or the manner of sending, that was intended to be censured. Yet we have received, during the six months of our sitting, publications relating to the various other topics which were agitated, or like to be agitated, in the convention; they have been sent through our letter boxes, in the same manner as these have been sent, and no one has hitherto uttered a word of condemnation upon the proceeding. Why are all censures, upon these attempts to inform or to convince us, reserved for this peculiar subject of slavery? For his part, he (Mr. E.) always felt under obligation to those who sent us evidence, or argument, in relation to any matter, coming, or proposed to be brought under our consideration; and he must think, that the censure, thus publicly cast upon those who have not here the privilege of a reply, was undeserved.

The 20th section of the bill of rights declares, that the citizens have a right "to apply to those invested with the powers of government, by petition, address or remonstrance." Now, without alleging that the course of the distributors of this publication, was within the very letter, he must think that it was within the spirit of this constitutional provision; and that it was more rational and useful, for citizens to forward their views, in a printed form, to each member of the convention, than to send a petition, which would go on the files without printing and without affording to each delegate convenient time and opportunity for careful examination.

The authors of the sheet alluded to have further been charged, with misrepresentation, and with the suppression of material facts. This charge was made without due consideration; I will not say that it was "rudely and unceremoniously" made. The specification of misrepresentation, is, that they suppressed the fact, that the majority of the supreme court (so called) of New York, expressed a different opinion concerning the constitutional question from Chancellor Walworth. Now if gentlemen will again examine the document, they will find that this fact is not suppressed; but it is clearly stated in two places, viz: on pages thirty-one and thirty-two. They will also find, that the court of errors, which is the highest judicial tribunal of New York, did not decide which was right, the chancellor or the others; but the case went off on grounds entirely different from those taken by either.

He would now notice some expressions of his colleague (Mr. Ingersoll) who had said that we had been very much in the habit of doing injustice to a portion of the citizens of the Union; and who had denounced those who upheld what he (Mr. E.) deemed the inalienable rights of man, as traitors to the Union and to Pennsylvania; and had denominated the arguments of some of them, as those of "the thief, the rogue and the scoundrel." For his part, he (Mr. E.) conceived that we had the right of thinking and speaking as we please on the subject of slavery; and he should certainly claim and exercise the privilege of repeating the declaration of independence, and the opinions of Washington, Jefferson, together with such opinions as he might himself form on the matter. It is singular, that gentlemen will feel free to express their own opinions on the conduct and institutions of every foreign government in Europe or America, and yet they feel offended when others express their thoughts upon our own institutions, or upon those which we assist in upholding. We are told, that "the noblest of all state rights is to do right;" and yet we are asked to do a thing, as right, which will not bear examination, and to content ourselves with the enjoyment of so little of state rights ourselves, as to suppress our opinions, and yield the right of regulating our own tribunals according to our own sense of the principles of justice.

His colleague had charged the advocates of universal freedom, with not associating familiarly with the people of colour. Was he to understand him as advocating or recommending what is called amalgamation?

[Mr. INGERSOLL here explained. He wished every one to do as he pleased—he would put no legal restraint upon them.]

Mr. EARLE continued: It has been here asserted that the friends of emancipation have, by what is called the abolition excitement, produced the severe and oppressive laws of the southern states, in relation to the slaves and the coloured population. This reminded him of the anecdote

of the man, who was his own grandfather. He knew that the severe laws alluded to, were chiefly passed before the agitation in question, and were, in fact, among the causes of it. Those laws exceeded, in severity, probably those of every other slave-holding country on the earth. The Spanish West Indies have laws for encouraging emancipation, and compelling it in certain cases; and under these laws a large portion of the blacks have acquired liberty. We profess a purer religion than those who are not christians; yet the Mahommedans, in their milder treatment of their slaves, and in giving them liberty when they embrace the religion of their masters, may well put us to the blush.

In the south of our Union there are not only no laws to compel emancipation, but laws to prohibit the benevolent master from voluntarily emancipating his slaves, as well as from giving them literary instruction. Against such a system he would express his thoughts, and he would aid in upholding such a system no farther than we were clearly bound to do so by our national compact. He would thus act, without any unkind feelings toward the slave-holders, for he felt none, and without any prejudices against them, for he was free to admit the generally estimable character of many of them, and that we ourselves, if educated and circumstanced in like manner, might have committed the same wrongs. But this concession was not to prevent us from doing justice at home, nor from using our moral and political influence, so far as we might rightfully do it, in sustaining the principles of sound religion, of sound philosophy, and of the sage and patriotic founders of our republic.

Mr. HOPKINSON, of Philadelphia, said that however, the question might be finally disposed of, he trusted it would be decided with cool heads and pure hearts, with an undisturbed reference to the duty we owe to the state, and to the United States. We are bound to both, and by obligations so arranged as to preserve a harmonious action in the performance of our duties. The question is indeed an important one, but it appeared to him not to be very difficult, if considered by itself and stripped of various matters with which it had been marked in the course of the debate. If we turn as we ought to do, from topics and appeals, on the subject of human rights, addressed assuredly to the feelings of the heart, and not to the dictates of the judgment; if we confine our attention, as we ought to do, to the constitution of the United States, and the law of congress made under its authority, and which must be our rule and our guide, the question will be a plain one, and the decision upon it attended with no difficulty.

Mr. H. said that he did not know what was the intention of the mover of this amendment, but that in its terms it certainly transcended any power this convention could exercise or possess. It will be observed that it imposes its restriction not only on the magistrates of the state acting in the case of a fugitive slave, but on the judges of the United States, who assuredly would feel it to be their duty to act under the authority of the constitution and laws of the United States, untramelled by any state regulations not warranted by that constitution and those laws. If, however, the amendment should be so modified as not to embrace these judges, you will then have conflicting jurisdictions upon the same subject, acting on different principles, proceeding by different forms and modes of trial, And another consequence, certainly to be avoided if possible, will be that

if the United States find that you will not allow your officers to carry into effect the provisions of the constitution, and to execute their laws, without regulations and restrictions which will effectually defeat their object, it will be the duty of the government of the United States to appoint judicial officers throughout the states to execute the laws of the Union. The fugitives then whose interests you are so anxious to protect will be shut out altogether from your state jurisdiction, and the officers then appointed will not be as safe for them as the United States judges commissioned for these courts.

But we are called upon to meet an objection, *in limine*, which I confess came upon me most unexpectedly. It is argued that the act of congress of 1793, is unconstitutional, and this is made the basis of much of the argument in support of the proposed amendment. I ask the members of this convention if they believe they came here—if they believe it was the intention of those who sent them here, that they should erect themselves into a judicial tribunal to decide upon the constituttonality of acts of congress? —to constitute themselves a high court of errors and appeals to revise, correct and reverse the decisions, not only of congress, but of almost every court in the Union, state as well as federal. Suppose the proposition came to you naked, to pass a vote in terms that the law of 1793, is unconstitutional and void, is there a member of this body who would assent to it? Let us not do it indirectly—let us introduce no provision into our constitution, which is to stand on the ground of the unconstitutionality of that law. What is to be the consequence and result of an opinion that that law violates the constitution of the United States?

If this act of 1793, be unconstitutional, it is binding on no judge, neither of the United States, nor of a state; they are bound to disregard it. Now I presume that no lawyer within these walls will be disposed to deny, or to doubt that this is a question which belongs to the judiciary; it is to be tried and decided by the judicial authority; and that no opinion expressed by this convention, directly or indirectly, can have any force beyond these walls, upon the question. What have the judicial authorities of our country, state as well as federal, responded to this question?

For five and forty years the question has occurred, I may say a thousand times, before the judicial tribunals of the federal and state governments—from the supreme court of the United States to the inferior magistrates of every state of the Union, and all these judges—among whom will be found our most eminent statesmen—lawyers, have gone on executing this law, delivering over slaves to their masters under its provisions and by its authority, without a suspicion that they were violating the constitution they were sworn to support. What is opposed to this uniform practice for so many years? The opinion, or rather argument of a lawyer in Ohio, who had he been employed by the other side, would have argued as well, I hope better, according to his service, and the doubts of a chancellor of New York.

The inquiry of a judge is—and the inquiry of this convention should be, not whether this act of congress violates what any man may conceive to be the natural rights of man, black or white; nor whether it is contrary

to the opinions and wishes of the people of Pennsylvania; these are not the tests that are to be opposed to it, but it is to be tested by the constitution of the United States, and if it stands that trial—if it is found to be in full harmony and conformity with that instrument—if it is authorized and justified by that power, there can be no objection to it on the ground of unconstitutionality. Both white and black are bound to obey that authority, and can have no rights inconsistent with it. I demand of gentleman who have defended this ground, to take the constitution of the United States in one hand and the law of 1793 in the other, and show to you in what it is that the latter violates the former. Put them side by side and show us wherein it is that there is any conflict between them. Until they can do this, it is in vain to talk of a violation of human rights—of oppression and wrong—of the feelings of the people of Pennsylvania —all this decides nothing for or against the constitutionality of this law.

The constitution declares that "no person, held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such labor and service may be due." There is certainly no obscurity in this provision of the constitution—analyze, for a moment, its sound parts.

If a person be held to service or labor in a state, as the laws of that state —and if the person so held escape into another state, that is, if he leaves that service fraudulently and wrongfully, in violation of the laws of that state—then he shall not be discharged from his service in consequence of any laws or regulation of the state into which he escapes; that is a right which is secured to a citizen of any one of our states by the laws of that state, shall not be divested, or taken from her by the laws and regulations of another state, which has acquired a jurisdiction over the subject by the friend of the party claiming its protection. What then, is the duty of the state to which the person escapes; clearly and plainly to deliver him up, on claim of the party to whom the service or labor may be due. I ask any gentleman to say whether the act of 1793, goes one step, one line beyond the letter and spirit of this article of the constitution? Is it any thing more than carrying into effect its provisions; providing the means by which the right thus guarantied to every citizen of every state shall be prosecuted and obtained?

But if we undertake to clog, to impede, I would say, to destroy this right—to reduce it to a name—to take away from it the remedy, by the adoption of the proposed amendment—how shall we stand in relation to the constitution of the United States? Who will be found in violation of its primary and vital provisions? He would say to the party claiming the service of the fugitive: you must prove your right to their service, your title—before a jury of our state, summoned and empannelled under the laws of Pennsylvania; you must satisfy that jury that the fugitive is your slave, and then you are to depend upon the feelings, perhaps of that jury, whether he shall be returned to you. Is not all this a mockery of the party; will he not rather abandon his right, whatever it may be, than be compelled to wait, nobody knows how long, for such a trial, and than to encounter all the difficulties of proof, "all the delay," as Chief Justice

Tilghman says, "of a formal trial in a common law court." The southern citizen might well consider such a course to be an evasion; a violation of his right and of the constitution under which he claims it—and say to us—you have broken loose from the obligations and ties of the contract of our Union, in a matter vital to our interest, and why should we any longer hold ourselves to be bound by it.

Can any man attentively read the article of the constitution, and not perceive that an effectual, speedy, summery remedy was intended to be given to the claimant? In the first place, let it be remarked; that the person claimed, must have been held to service or labor; therefore the mere fact that he was so held according to the laws of the state in which he lived, is sufficient—without an inquiry into the right or title of the master, beyond the authority of the laws of the state. Secondly, he must have escaped by which I understand a secret, fraudulent, wrongful departure from that service in violation of his duty and the legal right of his master—What then? Why that the master shall not lose his right, that the fugitive shall not be discharged from his duty, nor the master be deprived of his service, in consequence of any regulation or law of the state to which he escapes. Can we then make a regulation or a law, the consequence of which will be to discharge the fugitive from his service, and deprive his master of his right held under and by the laws of the state to which they both belonged. Can we so trammel and embarrass the right of recovery, by forms and modes of trial as effectually and practically to destroy it.

What is our duty in such a case, under this article of the constitution? It is very clear. The master having proved that the fugitive did owe him labor and service according to the laws of their state; and that he did escape from that service, our duty is, to deliver him up as the claim of of the party to whom the said service and labor may be due. It is to be done on the claim—not on a full and personal trial of his right to the service—before a court and jury, according to all the forms and delay of a common law proceeding. Congress then, can carry this provision of the constitution into a practical, useful operation, and at the same time to guard against oppression and injustice, passed the law of 1793, prescribing very distinctly the mode of proceeding in such cases. The master may himself seize or arrest the fugitive, without any warrant from any magistrate, because if he were obliged to get such a warrant, it is clear the fugitive in the mean time might escape or be concealed. Having arrested him, he must at once be taken before some judge of the United Statrs courts—or any magistrate of the county—and he is then to prove to the satisfaction of the judge that the person seized did owe him service and labor according to the laws of the state from which he fled: and upon this proof it is the duty of the judge to give the master a certificate, which shall be a sufficient warrant for removing the fugitive to the state from which he fled.

Does this act do any thing more than carry into effect the provision of the constitution? How then is it unconstitutional? In conformation with this view of the question let me repeat, that not one judge of our country whether high or low, learned or unlearned, at the north, south, east or west, has ever entertained or expressed a doubt on this question, but have one and all gone on to execute the law without scruple or suspision of wrong.

But it is said, that the question never came directly up before them, and why did it not? It was a question of jurisdiction and the judges were bound to take notice of it if a doubt had occurred to them respecting it. But we know that these fugitives have always been supplied with able counsel by societies who have humanely taken upon themselves to guard them from wrong and injustice; and such counsel, it seems, have never brought this question up. Can we doubt of the reason; it was because they either never thought of it, or knew that it is impossible to sustain the objection. Yet now we have seen that every simple, ignorant creature, never perhaps having read or seen the constitution, with just learning enough to scratch his name to a memorial, or read a paragraph in a newspaper, undertakes to set all these judges and courts right and to instruct this convention, that the act of 1793, is unconstitutional and void.

As to that part of the act which refers its execution to the state magistrates it will be shown that there is nothing mandatory upon these magistrates to take cognizance of the cases. We may grant that the state has a right to refuse the agency or interference of her magistrates to execute the law; but if she does allow it, if she does accept the authority and jurisdiction, he must use it according to the provisions of the act of congress, so as to carry them substantially into effect. He cannot under the colour and pretence of affording means to execute the law, make conditions and provisions which will effectually defeat it. She has nothing to do with the subject, but by virtue of the act of congress; and she must therefore act according to that law, or let the whole subject alone. Congress might have entrusted the execution of the act exclusively to the judges or magistrates of the United States. If they have either permitted or requested the aid of the state officers, it must be afforded in a manner to carry the provisions of the constitution and the law into effect, or refused altogether. The act of the assembly of Pennsylvania of 1820 and 1826, merely designated what officers or magistrates of the state may act in these cases, and directs their mode of proceeding, but the true essential principles of the law of 1793, are preserved, to wit: a summary proceeding, and before a judge without the intervention and delay of a jury.

In the case of Wright vs. Deacon, 5 Sergeant and Rawle p. 62, in the supreme court of our state, Chief Justice Tilghman, a man as tender of the rights of humanity as any that ever lived, says, in determining the opinion of the court, that from the whole scope and tenor of the constitution and act of Congress, it appears that the fugitive is to be delivered up on a summary proceeding, without the delay of a formal trial or a court of common law; and he decides that if a certificate be given to the master by a judge, after a hearing, it is a legal warrant to remove the slave, and that no writ of *homine replegiendo* afterwards lies on the part of the slave in a court of the state where such certificate is given, to try his right to freedom, such writ is a violation of the constitution.

As the opinion of chancellor Walworth has been referred to, it is but justice to him to say, that in his remarks which have been quoted, he clearly refers to apprentices, and not to fugitive slaves. We have heard from my colleague from the city, of dragging away free-born citizens; this was also the error of the chancellor; no free-born citizen ever was or can be dragged away by the authority of the act of congress. He must

owe labour and service to another, under the laws of their state. It must be a fugitive slave, leaving his master fraudulently. To none other have the remedies of this act ever been applied.

If we may suppose that the objections to the proposed amendment are all removed, we must then inquire and clearly understand how the provisions of the amendment are to be carried out—how they are to be brought into a practical operation. It is not enough to tell us that this left to the legislature; that they will take care of the details. In a matter of this importance details are every thing; and before we introduce them into the broad and general provision, we should know and be satisfied of the manner in which it is to be acted upon; how is that to be done which we here say shall be done? How are the objects of this amendment to be accomplished? The intention is to give a fugitive slave a trial by jury before he is to be delivered up to his master. A trial of what? whether he is a slave or not? That is not the issue under the constituion. How is this trial to be conducted? by what form of proceeding? by what modes of proof? Trial by jury! this is a copious and seducing theme for popular applause. It has great excellence, and it has its defects. I believe that I should not stand alone, were I to say that for the decision of legal right of property or person, I should prefer to be judged by a learned, impartial, intelligent court. The union of both, in a great majority of cases, is the most perfect mode of trial; but in every case, if one of them is to be excluded, let it be the jury, where a decision is desired according to the law and justice of the case. The trial by jury without a court, would be an arbitration by twelve men, honest and intelligent, if you please, but wanting the knowledge and experience necessary for a case composed of a combination of law and fact. They are also liable to prepossessions, biases, exparte information, and wanting in the solemn and continued responsibility that hangs over a judge. A court has equal integrity, at least equal intelligence, with the learning and experience necessary to a complete investigation of the evidence and the law.

In the question now before us we must not consider which mode of trial will give the slave the best chance of escape from his servitude. We must remember that there is another party, who also has his rights. Our inquiry should be which mode of trial will do justice and right to both parties, according to the supreme law of the land.

It has been pathetically urged upon us that under the law a native free citizen of the state may be carried into slavery. This cannot be, as I have already shown, by virtue of an honest execution of the law. It authorizes and intends no such thing. Even the child of a fugitive slave cannot be taken, by the strict construction which our courts have given to the act in favour of liberty. It is possible that cases of abuse may occur under this as under any other law, but the injustice is more likely to be committed against the rights of the master than the liberty of the slave. So innocent men may be imprisioned on false charges of infamous crimes: but will any one argue from this that the preliminary inquiry should not be intrusted to a judge or committing magistrate? But a jury should be called to decide whether the circumstances warrant a commitment for trial. The committing judge does not decide the ultimate question of innocence or guilt; nor does the judge giving the certificate to

the master of a fugitive, decide the question of the freedom or slavery of the fugitive. It is merely decided that he has fled or escaped from a person who had held him to service or labour in another state by the law of that state. He is sent back to the same place and condition from which he had escaped fraudulently, and he is left to try the question there, whether he was held in bondage rightfully or not—whether he is a slave or a freeman. We have no right to say—we have no right to make it the foundation of an argument here, that the court of Virginia or Maryland will not do him justice on the trial of this question. Experience disproves it. I am informed that the leaning of the courts is generally in favour of the slave, for slavery in the abstract, is no more favoured there than here.

From the argument we have heard here, one unacquainted with the truth of the case, could be led to believe that the master or claimant of a fugitive slave, has the power under this act of congress, to come to our city, pick up any man of colour he might find in our streets, at his pleasure, and drag him off to bondage in the south, without a trial, without a hearing, without proof of his right, and without any judicial opinion upon his proof and his right. We have had something very like an assertion that this has been done, or may be done. Such is not the law, nor have I ever known or heard of such an attempt. On the contrary, a full, patient and fair trial is given, the right of the claimant is carefully examined, not by a jury indeed, but by a responsible judge, whose commission is some evidence of his integrity and ability to decide such a case according to the law and the truth of the fact. He is one, at least, to whom you trust your own property, liberty and lives. He is one who has no league, no communion of interest or feeling with the master, but whose feelings and prejudices, so far as they may influence his judgment at all, are of the same character and tendency with those around him. Before such a tribunal the case is heard—by such a tribunal it is decided; and I trust we do not mean to sink the judges of Pennsylvania so low as to proclaim they cannot be trusted with the decision of such a question. By the course of the proceeding the burden of proof lies on the claimant, he must by clear and satisfactory evidence, make out his case, establish his right according to the terms of the act of congress. He must prove that the person whose service he claims, was lawfully held by him to service in another state, and that he did escape from that service. The fugitive is fully heard by his witnesses—by his counsel; time is given to him to prevent surprise, to obtain his proof from any distance, and if finally the case is decided against him, the only consequence is that he is sent back to the place and condition from which he had escaped. By virtue of the same article in the constitution, under the authority of the same act of congress, a person charged with a crime in one state, and flying into another, may be arrested and delivered up to be removed to the state having jurisdiction of the crime. There is no trial by jury given to him—no examination before any judicial tribunal whatever—no inquiry into the truth of the charge, but he is sent back to the state from which he fled, to try the question of his guilt there. Nobody complains of this—no sympathies are appealed to for him, nor do we hear a word of the sanctity of the trial by jury.

But I again inquire, how is the constitutional provision to be carried

out under this amendment? You are to have jury. How, and by what authority is this jury to be summoned? The legislature, we are told, is to direct the manner. What can they do? 1. They may order the sheriff or a constable to convene twelve men, to pick them up *instanter* in the highway, to procced at once to the trial—or 2—they may refer the trial to the ordinary courts at their ordinary sessions, and in the usual form of trial. As to the first mode, it will be a strong anomaly in the law; it will not be to preserve the trial by jury as heretofore, which the constitution enjoins upon us. Such a proceeding was never before heard of, as a jury got together in this way, without the aid or superintendence of a court or judge of any discription to try an issue between parties—to try an issue of law and fact. It is wholly unlike an inquest to assess damages, where a judgment has been rendered by default; or to make partition of real estate, and other cases of these sheriff's inquests; but to try an issue of law and fact the joint action of a court and jury is always required.

2. Is the case to be referred to the ordinary courts, in these ordinary times and modes of trial; one gentleman has suggested that the court of quarter sessions are the proper tribunals. The first question is, how are you to get it there? who are to be the parties? what are the pleadings and the issue? But let us suppose either mode of proceeding to be adopted, and inquire whether the slave will not be placed in a worse situation than he is now. If a jury may be summoned instanter, be sworn and empannelled, some delay even for this, must take place. But when empannelled they must proceed on to the end, with such proof as the parties may have in their power. It would be against all precedent, and indeed, most dangerous, to have this jury adjourning from time to time, perhaps for weeks, hearing a little to day, a little to-morrow, and so on. Now it frequently happens that although the master comes prepared with the proof required of him by the law, the slave wants evidence, written or oral, from a great distance. How can the jury afford him time, and opportunity, and means to obtain? If, on the contrary, the hearing is before a judge, he has no difficulty in this respect. I speak from my own experience, when I say that such cases occur. I have frequently postponed a case, after hearing the master's proof, for a considerable time, to give the slave an opportuniry to produce his defensive evidence.

Again—this trial by jury, if they may have power to make these necessary adjournments, will be attended with a great expense. They must be paid for their services. Who is to pay? Assuredly not the master, if he succeeds in establishing his claim. Not the slave, for he has nothing. The public—the county must pay, and the amount in a year will be monstrous: for as you increase the difficulties of the master in regaining his slave, the number of fugitives will increase.

Again—what is to become of the slave pending these protracted proceedings? He must be confined in a jail or elsewhere, and maintained there at your expense. All these difficulties are multiplied and increased, if the trial is to be referred to the ordinary courts. Indeed the difficulties and delays will be such as to be altogether destructive of the remedy and the right, and it will no longer be worth while for any master to pursue a fugitive slave into Pennsylvania. Surely we do not intend this—

we do not intend by these indirect means to deprive the citizens of the south of a property guarantied to them by the solemn compact of the constitution, and the security of which is as essential to their prosperity, as any property we have is to ours.

It has again and again been urged upon us—shall a man, a freeman, be deprived of his liberty, without a trial by a jury of his country? Is there any thing strange in this? In all criminal charges, is not the accused, on sufficient cause being shown, committed to a prison on the mandate of a single judge or magistrate, to await the trial of the question of his innocence? In civil suits, have not defendants, on the mere affidavit of an adversary, been sent to a prison? In the case of an absconding apprentice, is he not arrested on the application of the master to a magistrate? is he not sent to prison if he cannot find bail for his appearance at the court; and does not that court finally decide upon the right of the master to his service, without the aid or intervention of a jury? It is a mistake to suppose that the liberty of a man cannot be restrained, or his property taken from him, without the sanction of a jury. Millions are disposed of in courts of chancery, and justly and legally so, without a jury.

Mr. H. said that being restricted by the rules of the convention to a limited time, he had very rapidly thrown out his suggestions against the adoption of this amendment, being unable to carry them out more fully into their consequences. But he was seriously impressed with the importance of the question. The amendment, in his opinion, might well be considered by our southern brethren as a violation of their rights under the constitution, or at least, an attempt to clog their remedy with conditions and difficulties, which will practically amount to a destruction of the right. He (Mr. H.) could not say, and trembled to anticipate what measures the south might resort to, to repel this wrong, nor could he say what measures might not be justified by it. He hoped that the wisdom and patriotism of the convention would avert the experiment; that we should hold to the constitution as the charter of all our rights, and as the ark of the safety of all.

The question was called for by Mr. OVERFIELD, and twenty-nine others rising in their places.

And on the question,

Shall the question be now put?

The yeas and nays were required by Mr. DICKEY and Mr. OVERFIELD, and are as follow, viz:

YEAS—Messrs. Banks, Barclay, Barndollar, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Clapp, Clarke, of Beaver, Clarke, of Indiana, Crain, Crawford, Crum, Curll, Darrah, Dickerson, Dillinger, Donagan, Doran, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, High, Houpt, Hyde, Keim, Kennedy, Kerr, Kerbs, Lyons, Magee, Mann, M'Cahen, Miller, Myers, Overfield, Payne, Read, Riter, Ritter, Rogers, Russell, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Steri-gere, Stickel, Sturdevant, Taggart, Todd, Woodward, Porter, of Northampton, *President pro tem*—66.

NAYS—Messrs. Ayres, Baldwin, Barnitz, Biddle, Brown, of Lancaster, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clark, of Dauphin, Cline, Coates, Cochran, Cope, Cox, Cummin, Cunningham, Denny, Dickey, Earle, Farrelly, Forward, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Ingersoll, Jenks, Konigmacher, Long, Maclay, Martin, M'Sherry, Merrill, Merkel, Montgomery, Pennypacker, Porter, of Lancaster, Purviance, Royer, Scott, Sill, Thomas, White, Young,—46.

So the question 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. HOPKINSON and Mr. MANN, and are as follow, viz:

YEAS—Messrs. Ayres, Baldwin, Barnitz, Biddle, Brown, of Lancaster, Carey, Chandler, of Chester, Chandler, of Philadelphia, Clarke, of Beaver, Clark, of Dauphin, Coates, Cochran, Cope, Cox, Craig, Cunningham, Denny, Dickey, Farrelly, Forward, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Jenks, Kerr, Konigmacher, Long, Maclay, Merkel, Montgomery, Pennypacker, Porter, of Lancaster, Purviance, Royer, Saeger, Scott, Thomas, Young—39.

NAYS—Messrs. Agnew, Banks, Barclay, Barndollar, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Chambers, Clapp, Carke, of Indiana, Cline, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dickerson, Dillinger, Donagan, Doran, Dunlop, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, High, Hopkinson, Houpt, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, M'Sherry, Merrill, Miller, Myers, Overfield, Payne, Read, Riter, Ritter, Rogers, Russell, Scheetz, Sellers, Seltzer, Shellito, Sill, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Todd, White, Woodward, Porter, of Northampton, *President pro tem.*—76.

So the question was determined in the negative.

Mr. BIDDLE, of Philadelphia, moved to amend the section by adding to the end thereof the words as follow, viz:

"Nor shall it be denied by any judicial officer or tribunal of this commonwealth to persons who may be claimed as fugitives from labor, but who shall assert their right to freedom."

Mr. BIDDLE said, he thought the convention would do him the justice to say that from the time he became a member of this convention to the present day, he had never thrust himself upon their attention. But this being a question of great importance, he had thought it his duty to deliver his sentiments on it, and had had occupied two hours of their time. He would now claim the indulgence of the convention for a very short period of time. He did not propose to resume the argument he left unfinished this morning. Nor did he propose, as the vote had been taken, to lay before the body any more authorities in support of his argument, nor to say any thing as to the constitutionality or unconstitutionality of the act of 1793. It was enough for him to say that when this question was before the supreme court of Massachusetts, the court never decided on it. It was enough for him to say, too, that the supreme court of New Jersey said the law was unconstitutional.

"Fools rush in where angels fear to tread."

The question was one of immense importance. It was one touching our liberties, and therefore was entitled to the most serious and deliberate consideration. The question was now submitted to us for our decision.

With regard to the amendment that had been before the convention this morning, it was objected to on the ground that it conflicted with the constitution of the United States. And, we had been told by two learned gentlemen, that it could not be incorporated in the constitution; and since that, the sense of the convention had been expressed in it. He (Mr. B.) had now brought forward his amendment in a modified form. It had been said, in the course of the debate, that these unfortunate coloured men stood a much better chance if brought before a judge than if tried by a jury. Others, however, there were who did not think so. There were but two magistrates who hold jurisdiction under the act of 1793. There was one judge residing it Pittsburg, and the other here. But all these unfortunate beings had not the advantages of being brought before either of those two judges. Now he (Mr. B.) doubted not that the learned judge (Mr. Hopkinson) always administered justice tempered with mercy; but, he would rather that the eulogy had fallen from any other mouth than his (Mr. Hopkinson's) own.

Mr. B. would ask how it was to be discovered whether the supposed fugitive was a slave or not, under the existing mode of procedure? He declared himself to be a free man of Pennsylvania, and is, perhaps, a white man, though of dark skin. Was he (Mr. B.) to be told that the fugitive was to be subject to the decision of a single magistrate, and that he is to decide the man's fate after being brought before him, probably by an individual whose occupation was of the most degrading character, and to be by him carried wherever he chooses to take him. Do we question the impartiality of the tribunals of our sister states? Not at all. But we know that man's doom is inevitable. Where was he to be taken? Perhaps to South Carolina, to Mississippi, or Louisiana, to be tried, no doubt, in the absence of witnesses, without any one to comfort him, or to rescue him from impending danger.

This was the operation of the law as it now stood. And, in such a questions of such immense magnitude as this was, he would implore the convention to pause before they finally determined. He had offered the amendment in a modified form, because he had reason to believe that there were some delegates ready to vote for this. who had scruples in regard to the other.

When he rose it had not been his intention to say so much as he had done, but merely to briefly explain his reasons for offering this amendment. He would now leave this matter with the convention, whatever might be the result, in the full consciousness of having discharged his duty.

After a few words from Mr. HOPKINSON, and Mr. BIDDLE, in explation,

Mr. DENNY, asked leave of the convention to have his name recorded on the vote just taken. He was engaged in conversation at the moment, and inadvertently omitted to call the attention of the President to it at the time.

Leave was thereupon given, and the vote recorded.

Mr. MILLER, of Fayette, said that he had entered this body as a radical. The gentleman from the city of Philadelphia, (Mr. Biddle) had entered as a conservative, and they were now about to change sides. For his own part he (Mr. M.) had been here quite as long as he wished to be, and he would therefore, ask the convention to sustain him in the demand for the previous question. It was quite time that the debate should be brought to a termination.

Which said motion was sustained by the requisite number of delegates rising in their places.

And on the question,

Shall the main question be now put?

The yeas and nays were required by Mr. DICKEY and Mr. MILLER, and are as follow, viz;

YEAS—Messrs. Banks, Barclay, Barndollar, Bedford, Brown, of Northampton, Brown, of Philadelphia, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dickerson, Dillinger, Donagan, Doran, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenslein, High, Houpt, Hyde, Keim, Kennedy, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, Miller, Myers, Overfield, Payne, Read, Riter, Ritter, Rogers, Russell, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Todd, Woodward, Porter, of Northampton, *President pro tem.*—63.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barnitz, Biddle, Bonham, Brown, of Lancaster, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Coates Cochran, Cope, Cox, Craig, Cunningham, Denny, Dickey, Dunlop, Earle, Farrelly, Forward, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Ingersoll, Jenks, Kerr, Konigmacher, Long, Maclay, M'Sherry, Merrill, Merkel, Montgomery, Pennypacker, Porter, of Lancaster, Purviance, Royer, Scott, Sill, Thomas, White, Young—51.

So the convention determined that the main question should be now taken.

And on the main question,

Will the convention agree to the report of the committee, so far as relates to the said sixth section of the ninth article of the constitution?

The yeas and nays were required by Mr EARLE and Mr. GRENELL and are as follow, viz:

YEAS—Messrs. Banks, Barclay, Barndollar, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Chambers, Clapp, Clarke, of Indiana, Cline, Craig, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Darrah, Dickerson, Dillinger, Donagan, Doran, Dunlop, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, High, Hopkinson, Houpt, Hyde, Ingersoll, Keim, Kennedy, Krebs, Long, Lyons, Magee, Mann, Martin, M'Cahen, M'Sherry, Merrill, Miller, Myers, Overfield, Payne, Read, Riter, Ritter, Rogers, Russell, Saeger, Scheets, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Todd, White, Woodward, Porter, of Northampton, *President pro tem* 78.

NAYS—Messrs. Ayres, Baldwin, Barnitz, Biddle, Brown, of Lancaster, Carey, Chandler, of Chester, Clarke, of Beaver, Clark, of Dauphin, Coates, Cochran, Cope, Cox, Denny, Dickey, Earle, Farrelly, Forward, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Jenks, Konigmacher, Maclay, Merkel, Montgomery, Pennypacker, Purviance, Porter, of Lancaster, Royer, Sott, Sill, Thomas, Young—36.

So the report of the committee, so far as relates to the said sixth section of the ninth article of the constitution, was agreed to.

A motion was made by Mr. READ,

That the convention do now adjourn,

Which was agreed to.

And the Conventien adjourned until half past nine o'clock to-morrow morning.

INDEX

TO THE

ELEVENTH VOLUME.

INDEX

TO THE

ELEVENTH VOLUME.

A.

B

C.

D

E

F

G.

H.

J

K

L

M

O.

P.

R.

S

T

W

Y

END OF VOLUME TEN.