DEBATES

OF THE

CONVENTION

TO AMEND THE

CONSTITUTION OF PENNSYLVANIA:

CONVENED AT

HARRISBURG NOVEMBER 12, 1872;

ADJOURNED NOVEMBER 27,

TO MEET AT

PHILADELPHIA, JANUARY 7, 1873.

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1873.

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OF THE

Convention to Amend the Constitution.

SEVENTY-FIRST DAY.

THURSDAY, *March* 20, 1873.

The Convention met at ten o'clock A. M.

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

JOURNAL.

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

WOMAN SUFFRAGE.

The PRESIDENT presented a memorial from Elizabeth Cady Stanton, upon the subject of woman suffrage, which was read and laid on the table.

USURY LAW.

Mr. J. PRICE WETHERILL presented a memorial from the Philadelphia board of trade, asking for the repeal of the usury law, which was referred, without reading, to the Committee on Agriculture, Manufactures, Mining and Commerce.

Mr. CORSON presented the following resolution, which was read and referred to the Committe on the Judiciary:

Resolved, That the practice in the courts of this Commonwealth shall be uniform throughout the State, and no special mode of trial shall be established in any one section.

READING MEMORIALS.

Mr. LILLY offered the following resolution, which was read and laid over, under the rules, until to-morrow:

Resolved, That the rule of the Convention be altered, so that the Convention may dispense with the reading of any memorial, petition, &c., by a majority vote.

LEAVE OF ABSENCE.

Mr. CURRY asked and obtained leave of absence for Mr. Baer, for a few days from to-day.

PRINTING OF DEBATES.

Mr. NEWLIN, from the Committee on Printing, presented the following report:

To the Constitutional Convention:

The Committee on Printing submit the following:

Resolved, That it is inexpedient to print the Debates of the Convention in the daily papers.

(Signed,) J. W. M. NEWLIN.

The question being, shall the Convention proceed to the second reading and consideration of the resolution? it was agreed to.

Mr. NEWLIN. Mr. President: I desire to make a single remark. The committee received bids from the different papers, and it was ascertained that in order to carry out the contemplated action in publishing the Debates in two papers—publishing them at all fully—would cost several hundred dollars a day. In addition to that, it is proper for me to say in regard to the Printer, that on last Friday that official had printed every line of copy which he had received from the Reporter, so that the Printer was not then in fault. Inasmuch as that official has had a good deal

of abuse, I take pleasure in making this statement to the Convention. It is proper also to state in regard to the Reporter that, perhaps, the delay was not his fault, inasmuch as a number of the members retained the copy to correct and revise their speeches.

The question being upon the resolution, it was agreed to.

COUNTIES, TOWNSHIPS AND BOROUGHS.

Mr. LAWRENCE, from the Committee on Counties, Townships and Boroughs, presented the following report, which was read:

SECTION 1. The Legislature shall have power to erect new counties. No new county shall have an area of less than three hundred square miles, nor a population of less than eighteen thousand, and no county shall be reduced to a less area than four hundred square miles. No new county shall be erected until the same shall be approved by three-fifths of the votes cast by the electors embraced within each of the sections of the counties taken to form the new county.

SECTION 2. That section of a new county taken from another county shall pay its equitable proportion of the existing indebtedness of the county from which it is taken; and if in the formation of a new county any township be divided, the indebtedness of such shall be equitably apportioned upon the respective divisions thereof.

SECTION 3. The Legislature shall, by general laws, prescribe the powers of boroughs and townships, and confer upon the courts the authority to erect boroughs and townships, to change their boundaries, and divide boroughs into wards.

The PRESIDENT. This article has now been read the first time. It will be laid on the table and printed.

CONVENTION EXPENSES.

Mr. HAY, from the Committee on Accounts and Expenditures, presented the following report, which was read:

The Committee on Accounts and Expenditures of the Convention respectfully reports:

That it has examined the account of the Chief Clerk for expenditures made by him, under the authority of the Convention, up to the 21st day of February last, showing the payment of the sum of $1,911 00, and a balance in his hands on that date of $89 00.

And that the same is correct, according to the vouchers exhibited and statements made to the committee. An abstract of the account is herewith submitted, marked "A."

Also, the account of William W. Harding for 241 reams of paper, amounting to $1,807 50, furnished to the printer under his contract; and the account of Val. Hummel, amounting to $16 25 for brooms and other articles furnished for the use of the Convention at Harrisburg, which is certified by the Chief Clerk.

These accounts are for proper expenses of the Convention, and should, therefore, be paid. The following resolution is accordingly reported:

Resolved, That the accounts of William W. Harding and Val. Hummel, mentioned in the foregoing report of the Committee on Accounts, are hereby approved; and that a warrant be drawn in favor of William W. Harding for the amount of his account, and that the Chief Clerk pay the account of Val. Hummel.

[A.]

Abstract of expenditures made by D. L. Imbrie, Chief Clerk, up to the 21st day of February, 1873.

To John Patterson, watchman, for services from January 8 until February 21, both days inclusive	$157 50
To Joseph Ebersole, janitor, for services from November 12, 1872, until February 21, both days inclusive	141 00
To James Craig, janitor, for services from 7th January until February 21, both days inclusive	117 00
To C. C. Mullen, janitor, ten days at Harrisburg	30 00
To John Switzer, fireman, for services from 12th November, 1872, until February 21, 1873, both days inclusive	164 50
To James Chambers, assistant fireman, for services from 7th January until February 21, both days inclusive	117 00
To D. Skerrett, page, for services from January 7 to February 21, both days inclusive	58 50
To T. M'Gilloway, page, for services from January 7 to February 21, both days inclusive	58 50
To Percy Meyers, page, for services from January 7 to February 21, both days inclusive	58 50
To J. B. Allen, page, for services from January 7 to February 21, both days inclusive	58 50

To Charles Moore, page, for services from January 7 to February 21, both days inclusive..	58 50
To Frank Berlin, page, for services from January 7 to February 21, both days inclusive..	58 50
To W. A. Cassidy, page, for services from January 7 to February 21, both days inclusive...	58 50
To F. M'Reynolds, page, for services from January 7 to February 21, both days inclusive..	58 50
To T. Simpson, page, for services from January 7 to February 21, both days inclusive.....	58 50
To Powell De France, page, in charge of cloak room, for services from January 7 to February 21, both days inclusive.....	76 50
To Josephine Thompson, for cleaning Hall from January 7 to February 21, both days inclusive.....	507 00
To John Smith, for cleaning yard..	25 00
For postage and express charges, check book and advertising.....	49 00
	1,911 00

The question being, shall the Convention proceed to the second reading of the resolution, it was agreed to. So the resolution was again read.

The resolution was then agreed to.

COUNTY, TOWNSHIP AND BOROUGH OFFICERS.

Mr. S. A. PURVIANCE, from the Committee on County, Township and Borough officers, presented the following report, which was read:

SECTION 1. County officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, county commissioners, county treasuries, district attorneys, and such others as may from time to time be establiished by law: *Provided*, That, with the exception of the sheriff and coronor, any two or more county offices may be filled by one persons, if so directed by law.

SECTION 2. County officers shall be elected at the general elections, and shall hold their offices for such terms as may be prescribed by law. All vacancies shall be filled in such manner as the Legislature may direct.

SECTION 3. All county, township and borough officers who receive compensation for their services, shall be paid by salary, to be prescribed by law; and all fees attached to any county, township or borough office shall be received by the proper officer for and on account of the State, county, township or borough, as may be directed by law: *Provided however*, That the annual salary of any such officer shall not exceed the aggregate yearly amount of fees collected by him.

SECTION 4. The salary of no county, township or borough officer shall be increased after his election or during the term for which he is elected.

SECTION 5. The Legislature shall provide by law for the strict accountability of all county, township and borough officers, as well as for the fees which may be collected by them, as for all public or municipal moneys which may be paid to them.

SECTION 6. Any person shall be eligible for election to any office of any county, township or borough, respectively, of which he is a qualified elector.

The PRESIDENT. This article has now been read the first time. It will be laid on the table and printed.

LEGISLATION.

Mr. MANN. Mr. President: I move that the Convention resolve itself into committee of the whole, on the article reported by the Committee on Legislation.

It was agreed to.

IN COMMITTEE OF THE WHOLE.

The Convention then resolved itself into the committee of the whole, Mr. Armstrong in the chair, for the further consideration of the article reported by the Committee on Legislation.

The CHAIRMAN. The thirty-sixth section of the report of the Committee on Legislation is the section now pending. The gentleman from Allegheney (Mr. Ewing) has the floor. The thirty-sixth section will be read.

The CLERK read:

SECTION 36. A member of the Legislature shall be guilty of bribery, and punished as shall be provided by law, who shall solicit, demand or receive, or consent to receive, directly or indirectly, from any corporation, company or person, any money, testimonial, reward, thing of value or of personal advantage, or promise thereof, for his vote or official influence, or with an understanding, expressed or implied, that his vote or official action in any way is to be influenced thereby, and who shall, after his election and during his term of office, consent to become or continue to act as the agent, attorney or other employee of any corporation or person, knowing such corporation

or person has, or expects to have, any personal or special interests in the legislation of the Commonwealth.

The CHAIRMAN. Does the gentleman from Allegheny (Mr. Ewing) desire the floor?

Mr. EWING. Mr. Chairman: I offered my amendment and closed my remarks.

The CHAIRMAN. The Chair was under the impression that the gentleman from Allegheny (Mr. Ewing) gave way for a motion that the committee rise. That would entitle him to the floor this morning if he desired it.

Mr. EWING. That is true, sir; but I believe I have nothing further to say at this time.

Mr. WRIGHT. Mr. Chairman: I desire to offer an amendment to the amendment of the gentleman from Allegheny (Mr. Ewing.)

On looking at the amendment we discover that the penalties there provided for extend to persons after their election and during their term of office. The amendment I have to offer extends a little further than that, and goes back to the time when a man becomes a *candidate* for the office. He may, before he is elected, enter into any contract or corrupt bargain either with persons or corporations; then he takes his seat in the Legislature, and he cannot be reached by the penalties provided in this amendment. Besides, sir, the amendment, as I take it, is defective in another respect. The person who commits bribery within the Commonwealth, as a matter of course, may be reached through the criminal courts, and be indicted and convicted of bribery; but it is very easy for a party who contemplates an attempt of this kind to slip over to Trenton or Camden, or to leave the capital and go down in the direction of Baltimore. He can there make his corrupt arrangements, and there is no power of indicting him in this Commonwealth for the offence.

I have prepared an amendment to the amendment, to strike out all the words up to the word "solicit," in the third line, and insert: "Any person intending to become a member of the Legislature, or having become a member thereof, shall be guilty of bribery, and punished as provided by law, who shall, either within this Commonwealth or elsewhere, by himself or by any other person for him," &c.

Mr. CORBETT. Mr. Chairman: I hope the committee will vote down this amendment. This section, as reported by the committee, is certainly strong enough, and is certainly a good deal too strong to suit my views. If the amendments are voted down, when the proper time comes I will move to strike out all after the word "thereby."

The question being taken, the amendment to the amendment was not agreed to.

Mr. EWING. Mr. Chairman: I wish to make an explanation in regard to this matter. Judge Black is unavoidably absent. I had supposed, yesterday, near the close of the session, that he would probably be here this morning. Judge Black expects to be heard on this question, and no doubt the Convention desires to hear him. I suppose the amendment I have offered can be introduced upon the second reading of the report. If I am right, and I think it will save time, I will withdraw the amendment I have offered.

The CHAIRMAN. The gentleman has the right to withdraw the amendment, and can introduce it upon the second reading of the report.

Mr. EWING. Mr. Chairman: In consideration of Judge Black's absence at this time, I will withdraw the amendment.

The CHAIRMAN. The gentleman has a right to withdraw the amendment. It has not been amended.

Mr. EWING. I withdraw the amendment for the present.

Mr. CORBETT. Was the amendment not rejected by a vote, and so announced?

The CHAIRMAN. The amendment has not yet been voted upon.

Mr. CORBETT. Mr. Chairman: I move to amend the section, by inserting after the word "testimonial," the word "employment," and strike out all after the word "thereby."

Mr. LILLY. Mr. Chairman: I think the amendment which has been offered by the gentleman from Clarion (Mr. Corbett) is very good as far as it goes. I think the amendment makes the section very much better than it is, but I think it should go further and strike out the whole section. I think it would be a great deal better. I think that these strictures have gone entirely too far in our endeavor to provide for honest legislation, and it appears to me to be a very bad policy to go on any further with this sort of thing. There is not a man in this Convention, and hardly a man of average intelligence in the State of Pennsylvania, if this section is adopted, could go into the Legislature, in either branch, and sit there continu-

ously and do their duty conscientiously. The section says that he shall have no personal interest in legislation. We expect to have general laws passed hereafter, and every man in the Commonwealth is interested in every bill that shall be passed in the Legislature. I think it is highly improper to tie up a man in this manner. I think, therefore, the whole section ought to be voted down. I will, however, vote for the amendment of the gentleman from Clarion, (Mr. Corbett,) as it takes away part of the section, and then I will vote to take away the remainder of it.

Mr. D. N. WHITE. Mr. Chairman: I hope this amendment will not be passed. One of the chief ways corruption in the Legislature arises is from a person acting as an attorney for a railroad corporation that desires legislation to be passed in its interests. If any persons or corporations desire to secure legislation at Harrisburg, and to bribe some members of the Legislature, they at once employ an agent under the guise of an attorney who, by means of his influence and money, procures the necessary legislation. I think it is the most important section we have had before us to prevent corruption in the Legislature, and I hope it will be adopted.

Mr. BIDDLE. Mr. Chairman: I trust sincerely this amendment will pass. What is the meaning of the language at the end of the section as it stands now, "any special or personal interest in the legislation of the Commonwealth?" Has not every corporation, has not every person who has interests, likely to be affected by legislation, an interest in the legislation that is proposed and is under consideration? It is tantamount to saying, as it now stands, that every member of the Legislature who is elected by his constituents to further any particular line of policy, no matter how fair that policy may be, no matter how just to the Commonwealth at large, he shall be practically debarred from representing such constituents. It is impossible to find any human being in the Commonwealth who possseses the ordinary inlets of intelligence who would not be within the purview of this section. I really think I am not going too far when I say it is impossible to find such a human being, and we ought to beware whether in our hasty zeal to correct that evil, about which so much has been said during the last two or three months, we do not make it impossible to constitute a Legislature at all. We are, by the present section, and by some others under discussion here, placing a burthen upon the people of this Commonwealth too intolerabe to bear.

Now all that is desirable to be attained is, that no improper influences shall be brought to bear directly upon the members of the Legislature. When you prohibit that, you prohibit all that you can properly attempt to do. Legislators are not judges. It is a total misapprehension of their functions to regard them in that light. They are there to propose, and discuss, and to act as persons who are furthering the interests of those who sent them there, in all respects to act fairly and honestly, but still to advocate very often partial views. Yet by this section, and other sections, they are treated precisely as if they were called upon to hold evenly the scales of justice between parties litigant. I trust this amendment will be adopted as it is proposed.

Mr. ELLIS. Mr. Chairman: I offer the following amendment: "No person shall be eligible to a seat in either House of the Legislature who owns, or expects to own, any property, real, personal or mixed."

The CHAIRMAN. The Chair will hold that the amendment is not germain to the question, and it will therefore not be considered.

Mr. JOHN R. READ. Mr. Chairman: I trust that the latter part of this section will not be defeated by the members of this committee without fully understanding what the Committee on Legislation intended when they reported it. I do not agree with my colleague from Philadelphia, (Mr. Biddle,) that it is unwise to make such a provision in the Constitution of the State. The object of it, as I understand it, is simply to prevent legislators from having a private or personal interest in the matters upon which they are required to legislate, other than as citizens of this Commonwealth, and I believe that if we provide that they shall not be specially retained as agent or attorney before they enter the halls of legislation, and that they shall cease such employment from that time, if they have been employed or retained, much evil will be hereafter prevented. Why, we all know that it is one of the most approved ways of bribing a member of the Legislature, to retain him as counsel for a particular interest upon which he is asked to legislate. It is one that seems least repulsive to them. They think that there is no wrong in acting as the counsel for parties as their lawyer, when they are

called upon to pass laws specially affecting the interests of the people whom they represent. Now, sir, that is all, as I understand it, that is intended to be prevented by this section; that if persons are specially in the emyloy, or if they are retained as counsel before they enter the Legislature, that they shall decline that position, or that they shall not thereafter act as counsel, or as agent or employee of such person or corporation.

Mr. CORSON. Would it not affect the case of a family Physician?

Mr. JOHN R. READ. Mr. Chairman: I do not think that the gentleman from Montgomery exactly understands the meaning of this section. If he will read the last line, "knowing such corporation has, or expects to have, any personal or special interest in the legislation of this Commonwealth," I think he will understand it better.

Mr. CORSON. Mr. Chairman: Then I will ask the gentleman from Philadelphia this question: Suppose the Legislature should require that all people in our town should be vaccinated to prevent the spread of the small-pox, would that not exclude the family physician from being a member of the Legislature?

Mr. JOHN R. READ. I think not. Certainly, that was not the meaning or intention of the committee that reported this section, and I do not apprehend those who approve of this section will be diverted from their course and turned against it by such argument as the witticisms which have been perpetrated by the gentleman from Montgomery (Mr. Corson) and the gentleman from Schuylkill (Mr. Ellis.) It is all well enough to defeat this proposition by sound argument, or proof that the principle therein contained is unsound; but the weakest of all arguments are those, such as have been educed by the gentleman from Schuylkill and the gentleman from Montgomery, and they fall to the ground.

I believe, Mr. Chairman, that this provision, if adopted, will be beneficial. It is not intended to prevent persons from attending to their legitimate business, or from acting as counsel for clients, or in any way to interfere with the ordinary business life of any citizen of this Commonwealth. It is merely to prevent the scandal that has become a by-word with this Union, and with this State, from enlarging and becoming more odious. We do not want any Credit Mobilier in Pennsylvania if we can help it; and we all know that it was by such methods as those to which I have alluded that members of Congress were dragged into this "slough of despond." I do trust, Mr. Chairman, that this section will be adopted after proper reflection.

Mr. CORBETT. Mr. Chairman: I apprehend that the construction of the gentleman from Philadelphia, of this clause that I have moved to strike out, is not the proper construction, nor was the clause supported in the Committee on Legislation on the construction that he has given it. If you will read it you will perceive that it is a broad and sweeping one. Now, sir, if the clause had been to declare that all corporations and railroads should be presumed to have a special interest in legislation, and that any persons elected to the Legislature should not become the attorneys of a corporation after they are elected or during their term, I shall support it. But such is not the wording. The wording, Mr. Chairman, is so broad that no attorney can be employed as to distinct matters not connected with legislation by any person who is connected with any subject of legislation. The reading is, "or who shall, after his election and during his term of office, consent to become, or continue to act as an agent, attorney or other employee of any corporation or person, knowing such corporation or person has, or expects to have, any personal or special interest in the legislation of the Commonwealth."

Mr. S. A. PURVIANCE. If the gentleman from Clarion will allow me, the first clause of this section provides that there shall be two classes of cases of bribery. The one in the latter clause is that of a party who accepts the office of attorney or agent from any one who expects to have an interest in legislation. Now, suppose that expectation is not carried out, that the legislation is never applied for, is the member guilty of bribery?

Mr. CORBETT. Certainly he would be guilty if you would prove the expectation. There is no doubt about that at all.

Mr. S. A. PURVIANCE. He would be in the condition of having committed no offence, and there having been no application for legislation under this section, would he be guilty of any crime?

Mr. CORBETT. Mr. Chairman: Morally, sir, he would not. But legally, if this section is adopted, he would be guilty. He who accepts the office of agent or attorney where legislation is expected by the party employing him, is sufficient to

constitute the offence. Now, sir, I am totally opposed to this part of the section. Why, no attorney could act as a member of the Legislature and practice his profession during the time that he occupied that office. If he accepts the office of a member of the Legislature he must give up his profession, because if a person would go to him, having an interest in any legislation, and at the same time indicted for murder, he dare not take a fee, he dare not be retained to defend him. The words of this section are broad and general. Therefore I wish, Mr. Chairman, to vote against this part of the section in the committee of the whole, on this ground, and I trust that the committee will strike it out on this ground. But I will say to you, Mr. Chairman, that it was supported in the Committee on Legislation, on the other hand, on the broad ground to strike at all employment of members of the Legislature or counsel by persons having any interest in legislation whatever, and therefore I am opposed to it.

Mr. JOHN R. READ. Mr. Chairman: Will the gentleman from Clarion allow me to ask him a question?

Mr. CORBETT. That will depend upon the character of it.

Mr. JOHN R. READ. I ask whether the gentleman will be satisfied with the clause with the words, "or person," stricken out, so as to make the clause read, "consent to become or continue to act as the agent, attorney or other employee of any corporation, knowing such corporation has or expects to have any personal or special interest in the legislation of the Commonwealth."

Mr. CORBETT. Mr. Chairman: I am not prepared to answer that; that might take some time for me to consider. Mr. Chairman, I am satisfied with the section, striking out all after the word "thereby," and I do not know that other words may not be substituted in place of the concluding clause of this section, to which I would assent.

Mr. DODD. Mr. Chairman: I am in favor of the amendment of the gentleman from Clarion. While I am anxious to secure purity in the Legislature, and while I believe that the legislation of the State is influenced by the great corporations of the State, who are the power behind the throne, greater than the throne itself, yet I cannot forget that by endeavoring to do too much we defeat our own purpose; by making laws too strict we secure only their violation. I cannot imagine any case in which a member of the Legislature is fraudulently influenced by any corporation or person in his legislative action, which is not provided for in this section as amended, and for which he might not be convicted upon proof of the fact; and certainly we would not convict even a legislator without proof. There is no being in this State, natural or artificial, which does not expect to have a personal interest in the legislation of the State, and consequently a member of the Legislature, if this section passes without amendment, could not be employed or receive professional fees from any person, natural or artificial.

Nor could I favor the section, if amended as suggested by the gentleman from Philadelphia, (Mr. John R. Read,) by striking out the words "or person." It would still be impossible for one elected to the Legislature to "continue to act" as the attorney or employee of any corporation. That feature I oppose. If one who is an attorney or employee of a corporation is elected to the Legislature, is it right for us to say he shall be guilty of *bribery* if he does not sever his connection with such corporation? That strikes me as absurd. If the people see fit to elect a man in such employment to the Legislature, by what right shall we interfere with their choice? The responsibility is with them, and upon them falls the consequences.

The member of the House from my district was an employee of a railroad company when elected. The people were well aware of the fact when they elected him. Shall we say in our Constitution that the people did not understand their own interests or know their own wants? It may be so, but they must take the consequences.

I think the section is sufficient as amended by the gentleman from Clarion, and by adding more to it we defeat our own objects. Therefore I hope the amendment will be adopted.

Mr. BEEBE. Mr. Chairman: I desire to state that the person to whom the gentleman from Venange alludes was an employee of a railroad company when elected, but resigned his position before he took his seat at Harrisburg.

Mr. MINOR. Mr. Chairman: I think even if the amentment of the gentleman from Clarion (Mr. Corbett) is adopted, and part of the clause is stricken out, that I must object to what is left. I confess further, sir, that I cannot see the propriety of putting this section, either with

or without the amendment of the gentleman from Clarion, into the Constitution. Let us look at one or two points. If this amendment prevails all there is left of the section is simply a provision that if a member of the Legislature is bribed, he shall suffer such punishment as the Legislature itself shall see fit to prescribe. That is all there is of it. Now, sir, even if we pass it, it leaves substantially the whole thing under the power and control of the Legislature; we make no limitation; we state no new principle. Now, is it worth while for us, in the Constitution, to undertake to legislate in that way? To define a crime against a member of the Legislature already defined, and then say they shall be punished in such manner as they shall see fit themselves to inflict upon themselves, or to prescribe for themselves? But, sir, there is another point which is more important, and that is, that there is now in existence a statute which substantially covers this entire ground, reaching to electors; reaching to persons who may attempt to influence members of the Legislature, and reaching members themselves. It is a law passed in 1860, and on page 330, of Purden's digest, it will be found in full, defining bribery, what it shall consist of, so far as these persons are concerned.

Mr. BEEBE. Mr. Chairman: If the gentleman from Crawford will allow me, I would like to know if any use has ever been made of this statute?

Mr. MINOR. Mr. Chairman: I do not know that there has been or that there has not been any use made of this statute, so far as the Legislature is concerned. But that does not answer the point at all. Suppose that the statute has not been made use of, will the fact that the Legislature shall be required in this section to pass such laws as they may see fit on the subject make it any better? That is the point.

Mr. BEEBE. Yes, that is the point, and I agree with the gentleman.

Mr. MINOR. Yes, sir; we say here in the Constitution that if a member is bribed he shall suffer such penalties as the Legislature prescribes.

The Legislature has already said, already prescribed, that if he is bribed he shall suffer certain penalties. Suppose we require them to do over again that which they have already done, and which stands to-day as the law of the land? It is simply surplusage. That is all we can make of it, and that is all there is of it; this putting in a solemn instrument like the Constitution a simple clause, purely legislative, which is already covered by a statute that has been in force for thirteen years, is entirely out of place. The remedy is not to be applied in this way, by seeking to do that which is already done. It is very apt to endanger an instrument to put into it that which will do no good. We ought not to put into this Constitution things that are useless; they are merely loads to sink it, frivolous, and worse than frivolous. This amendment will render the section itself entirely unnecessary, and without the amendment it is full of objections, as others have shown. We are undertaking to go too far. I will not enlarge upon this, but it seems to me that we are undertaking to do up legislation for all time, and render it unnecessary for the Legislature to do anything hereafter.

Mr. COCHRAN. Mr. Chairman: There is no doubt great force in the remarks of the gentleman from Crawford, (Mr. Minor,) with regard to the fact that this punishment is to be regulated by the Legislature; still there is no other way presented to my mind, at present, of correcting that abuse. It is very true that we have the act of 1860, punishing and defining bribery, but the trouble about this thing is, that the same power which enacted that law can repeal it. The point here is, to put into the Constitution a provision which shall establish this offence, and it shall not be repealable by the Legislature; and, sir, this section does declare these things shall be bribery, and the only point which is submitted to the Legislature under the section is the punishment which shall be prescribed for it.

Therefore, I think the section is good and beneficial to a certain extent, and as far as we can, probably, make it good.

Now, sir, with regard to the amendment to strike out the last clause of the section. I hope it will not be done. There is probably an erroneous idea about the force and effect of this whole section, and about its application. The last part of it applies to no person who does not become the agent or attorney, not before his election but after his election. It does not affect any man.

Mr. WHERRY. Let me call the gentleman's attention to the phraseology of the eighth line, "or continue to act as."

Mr. COCHRAN. "But he who shall, after his election, and during his term of office, consent to become or continue to act as the attorney or agent." The

last clause might be stricken out, but I hold that the strong implication is, that where a man who has been elected to the Legislature, consents to form a new relation to parties who are interested in, or said to be interested in legislation——

Mr. CORBETT. Will that not be covered by the word "employment," as I have moved to amend? Will not that cover the case of a man agreeing to act as counsel or attorney?

Mr. COCHRAN. I do not think that it will be sufficiently explicit. I prefer that the thing should be directly stated in the Constitution itself. Now, there is a grievous evil here, without doubt, and it arises just in this way. I will put a case hypothetically. Suppose an individual or a corporation desires an act of Assembly to be passed, in which he or it may have interest. I do not care whether it is an individual or corporation. I do not see why we should make corporations always the scape-goats to carry off this iniquity. Suppose an individual or a corporation should desire an act to be passed through the Legislature, for his or its benefit—I do not care whether the act is beneficial or injurious—and suppose that, instead of going and making proper representations to the Legislature, on his or its own behalf, for whatever reason they deemed proper, they would go and say to a member of the Legislature: "Here, I will give you so much money. You take this bill in charge, and put it through, and give me no more trouble about it." Now, I want to know whether that is a proper arrangement; whether such a thing as that should be tolerated, and whether, even if it were excusable, or if you please, permissable, which I cannot admit in regard to a proper measure; whether it is not just one of those things which are calculated to, and inevitably will, grow into a mischief, by being permitted in any case.

Now, for that reason, I am opposed to striking out the last clause of this section. I believe that arrangements of that very nature have been made. I have reason to believe so, and it is to prevent any such improper arrangements being entered into between parties seeking legislation and members of the Legislature, that this clause should be continued in the section. The word "employment" may or may not cover it. It is uncertain to my mind, and being uncertain, I prefer the language of the section as it stands.

Mr. ALRICKS. Mr. Chairman: Is bribery of a sufficient magnitude to command the attention of a Constitutional Convention? If it is, I apprehend that the whole dispute among us this morning is about words, for I suppose this section, which is a little verbose, might very readily be reduced to its proper dimensions. I must confess my great surprise at the position taken by the gentleman from Philadelphia, (Mr. Biddle,) to whom I have always looked up as a leader, and from whom I was willing to learn lessons in wisdom and receive instruction. I am persuaded that when he looks at it deliberately, he will consent to every proposition that is contained in the section. I am equally surprised at the remarks of the gentleman from Schuylkill, (Mr. Ellis,) because, if he means to assert that every man who owns real or personal property has obtained it fraudulently, I dissent from the proposition. If he means to say, however, by way of amusement, that the road to wealth and the emoluments of office in Pennsylvania, is to get hold of the tail of a good, fat corporation, I assent to his proposition.

Allow me to read this section as I think it should be, if properly corrected, because there are a few words that should be stricken out. I will read nothing but the printed matter, and I ask any gentleman in this House, including the gentleman from Philadelphia, (Mr. Biddle,) if he does assent to the proposition:

"A member of the Legislature shall be guilty of bribery who shall, directly or indirectly, receive from any corporation, company or person, any money, personal advantage or promise thereof, for his vote or official influence."

I ask any gentleman here if that would not be a proper definition of bribery, and if it would not be proper to punish it as such? Then I pass over two lines and read again:

"And any member who, during his term of office, consents to become or continue to act as the agent, attorney or other employee of any corporation or person, knowing such corporation or person has any personal or special interest in any legislation of the Commonwealth."

Now, I maintain that no honorable lawyer will go into the Legislature when he is the counsel of a corporation having a special interest in legislation. I maintain that an honorable lawyer would as soon become the counsel for the defendant and the counsel for the plaintiff, at the same time, as he would go into the Legislature and have special laws passed

for a corporation which was filling his pockets with fees.

Why, Mr. Chairman, a number of years ago, when the Hon. Garrick Mallery was a member of the Legislature, I met him on the board walk at the Capitol and said to him: "You are neglecting your duties. There is a matter before the Legislature in which your constituents have an interest." "Why," said he, "it would benefit a corporation in our county, and I am the counsel for that corporation, and I would not show my face in the Legislature while that law is being discussed." He spoke the sentiments of an honest man. He lived, you will doubtless say, in other days, but I maintain now that we should put a veto upon corrupt legislation, and the proper way to put it upon any corruption upon the part of Legislatures is to say that no man shall go there and make laws for the poeple who is paid for making laws for a particular party. I apprehend, therefore, Mr. Chairman, that this section, when it comes to be properly pruned, will be found to be about right in every respect, and the only difficulty now with it is, that there are some words here that should be omitted, and as soon as the amendment pending is disposed of I will move to strike out the words, "solicit, demand, or receive" in the third line, and to strike out "testimonial, reward, or thing of value," in the fourth line, and to strike out, also, "or other employee," in the ninth line, and to strike out "or expects to have" in the tenth line, and to add to the end of the section the words, "he is enacting." I would make the section read as follows:

"A member of the Legislature shall be guilty of bribery, and punished as shall be provided by law, who shall consent to receive, directly or indirectly, from any person or corporation, any money or personal advantage for his vote or official influence, or who shall, after his election, or during his term of office, consent to act as the agent or attorney of any person or corporation, knowing such person or corporation to have a special interest in the legislation he is enacting.

Mr. H. G. SMITH. Mr. Chairman: I cannot vote for the amendment proposed by the gentleman from Clarion (Mr. Corbett.) I cannot do it, sir, because, if I take his interpretation of the amendment which he makes, it leaves the section, as he says, essentially as it is, but it does not provide so clearly and explicitly against an evil which has grown up in this Commonwealth and elsewhere, as does the more carefully prepared language of the section as reported by the Committee on Legistation.

I would vote for another amendment very willingly. I would vote to strike out the words, "or continue to act." If the people of this Commonwealth choose to elect a man known to be an attorney of a corporation, or the special agent of any person or combination whatever, as a member of the Legislature, let them do so. Let him go to the Legislature, occupying the status that he does at home, carrying with him into that body all the relations that he possesses before he is elected. But no man ought to be permitted to become the attorney of any corporation, or the agent of any person desiring to secure special legislation, when he comes into the legislative body and takes the oath of office. A high sense of honor, a clear perception of duty, ought to prevent any man from doing so, but men may be employed *generally* when they have become members of the Legislature; they may be retained as attorneys without special reference to particular legislation, and they may not think this wrong. They may consider it right, as I believe not a few have done. I believe it is a source of evil in our Legislature, as it exists to-day, and if what we have heard from Washington be true, it is a fruitful source of evil in the National Legislature also. Let us, when we are providing against this evil, do so explicitly and clearly. Let us declare in the fundamental law of the State of Pennsylvania that this thing shall continue no longer. Let us put honorable men upon their guard, and let us prohibit men who might be willing, for improper purposes, to be retained by corporations, or individuals having an interest in legislation, from doing so. Let us lay the law down so that if men corruptly do this thing it can be proven upon them, and so that they can be punished for it. If there be any force in the amendment of the gentleman from Clarion, (Mr. Corbett,) as he himself explains it here, it is merely a provision for lopping off the conclusion of the section, which more explicitly declares what he himself means by his word "employment."

Let us, if we choose, provide that the fact that a man is attorney of a corporation, or the agent of an individual, shall not prevent the people from electing him to the Legislature, but that after persons are elected and sworn in, they shall not, in

any way, consent, while members of the Legislature, to be retained as counsel or agent by corporations, combinations or individuals having a special or personal interest in legislation.

Mr. CORSON. Mr. Chairman: A moment ago I thought it was, perhaps, my duty to reply to some remarks made by the gentleman from Philadelphia, (Mr. John R. Read,) but the ripple was so light on the wave that it has totally disappeared. I now propose to consider the section. This, as it reads now, is as follows:

"A member of the Legislature shall be guilty of bribery who shall, after his election, continue to act as the employee of any person who expects to have any personal interest in the legislation of the Commonwealth."

That is exactly what it says. Now I say that it was, in no sense of an idle criticism, that I propounded to the gentleman from Philadelphia (Mr. John R. Read) the interrogatory: "Would not this prevent a family physician from becoming a member of the Legislature, especially if in case of some impending epidemic there should be special legislation required as a special measure?

I say, Mr. Chairmain, that this section as it stands here, and which struck the vast body of this Convention as an absurdity upon its face when it was first laid before us, is the most absurd section that I ever saw in print. Why, sir, it would prevent a man from going to the Legislature as the special advocate of woman suffrage; as the special advocate of temperance; as the special advocate of the enfranchisement of the black man; as the special advocate of any of the important interests in which this country has ever had any political controversy.

Mr. ELLIS. Mr. Chairman: I would like to ask the gentleman a question. Would it not also exclude a minister of the Gospel?

Mr. CORSON. Mr. Chairman: It would not only exclude a minister of the Gospel from going to the Legislature; but if it was in the Bible it would exclude him from going to heaven. I consider that, if we ever come to a vote on this question, it will be voted down, and as the quickest way to put an end to a controversy is not to take part in it, I will say nothing further.

Mr. J. PRICE WETHERILL. Mr. Chairman: I entirely disagree with the gentleman from Montgomery (Mr. Corson) in his views in regard to this proposition. I do not think it is at all absurd; neither do I see the force of the argument as he puts it. As I understand it, it does not contemplate; neither by any forced construction in the case of a physician, to which he has alluded, can he consider him in the capacity of an agent. An agent is a *paid employee*—paid by a person or corporation for a certain purpose. Now, in reference to attorneys, I have yet to learn that the attorneys of this State generally act without fee. It seems to me that they understand that part of the business pretty well, and they generally act in that particular with entire satisfaction to themselves, though, perhaps, not so much so to their clients. If they desire to go to Harrisburg under the pay of a company, when that company has a special interest in legislation, they ought to be excluded from the Legislature. That is the sense of the section, as I understand it. Now, who are the parties interested in this special legislation? It is fully described in the latter part of this section:

"All corporations holding franchises by grants from the State, or doing business in the State, their officers, agents, attorneys and employees, or contractors or persons having an interest in contracts, all officers, judicial, executive, ministerial," &c. Those parties are named and, sir, it seems to me that, looking at the entire matter, there is no reason why the section should not pass. There is another reason why it should pass, and it has already been alluded to. A member of Congress goes to Washington to carry his point, and works under the plea that money must be put where it will do the most good—and where does he put that money? Why, sir, in the pockets of four or five members of Congress, and gives them money in a certain way, to secure their votes, and they are properly considered guilty because they accept it, and are brought up to the bar of the House and condemned, and the stain remains with them for life. But he may give many thousands of dollars to another member of Congress, and because that member of Congrses is an *attorney-at-law*, therefore he can say that he receives a good many thousand dollars more than his reasonable fee, and simply by calling it a retainer he asserts he received it honestly, and he is cleared of his guilt, though, perhaps, quite as guilty as the others alluded to. This is an evil that we want to correct, and I do hope that if this section does re-

quire amendment and is, perhaps, a little too broad, that it will be so amended as to reach just such cases. I know very well that perhaps this section is a little too broad. I can fully understand, if we intend hereafter to have special legislation, how, perhaps, it may act a little harshly. But if we intend to avoid special legislation, if we intend to confine our laws to general laws, if we intend to have general railroad and general manufacturing laws, it does not seem to me that this will act so harshly as the gentleman from Montgomery (Mr. Corson) supposes. It will do good, sir, as I have indicated, and as there is merit in it, I hope it will not be ridiculed out of the Convention.

Mr. T. H. B. PATTERSON. Mr. Chairman: I am very sorry that the amendment now pending should have been proposed by a member of the committee who reported this section. The gentleman opposed this section in the committee "tooth and toe-nail."

Mr. ELLIS. Mr. Chairman: I call the gentleman to order. I do not think that the private opinions of gentlemen in committee should be repeated here.

Mr. CORBETT. Mr. Chairman: I desire to ask the gentleman a question. Have not I as good a right to move this amendment as any other member of the committee to move an entirely different one?

Mr. T. H. B. PATTERSON. Certainly; an additional amendment. As I understand the gentleman from Clarion (Mr. Corbett) himself, to state his position. I do not consider that I am guilty of any breach of etiquette, or of the rules of this Convention, because he stated himself, that he had opposed this in committee, and I merely referred to that fact.

The gentleman moves to curtail and cut off a portion of the section, as reported by the committee after a full discussion of all the questions which have been raised here. I hope that the committee of the whole will consider well before they strike down, for such frivolous reasons, and on ridiculous arguments, a section which was fully argued and carefully considered by the committee before being reported. I cannot understand, myself, how any man can go into a Legislature as an attorney for any corporation or person, knowing that they expect to have a personal or special interest in the legislation upon which he is to pass as a member of that Legislature. Now, these words in the section appear to have been entirely overlooked by the gentlemen who have been arguing this question before this Convention. The section provides explicitly that it shall only apply to those attorneys who go into the Legislature as the attorneys of corporations or persons, knowing that they expect to have a personal interest or special interest in the legislation to be passed upon by such attorneys. I ask any attorney of this Convention if he, knowing that a corporation or person was to have a personal or special interest in an act upon which he was to pass as a legislator, would sit in the House and pass upon that act. I do not think there is a single attorney in this Convention who would take that position himself. Why, then, is it wrong for us to put in a provision that shall call the attention of candidates, and of the people, to this outrageous position? It is simply putting a man in a position, trying to every virtue he has. I say we ought, if possible, to prevent such positions being taken by citizens of this Commonwealth. Further than that, I would like to ask the opponents of this section whether or not they would oppose allowing members of the judiciary, judges upon the bench, to act as judges of this Commonwealth, while being attorneys of persons or corporations having personal or special interest in the questions of law, upon which, as judges, they will have to pass and decide. Yet members and attorneys have gotten up on this floor and advocated, permitting the men that are to make the laws, upon which these judges are to pass, to take improper positions which not one of them would permit a judicial officer of this Commonwealth to hold under any circumstances. I say this is a question that ought to be seriously considered, and I ask the earnest attention of every member of this Convention to the question upon which he is to vote before he votes, to strike down a section which provides the very rule of law which now applies in our judiciary, for that it is in substance.

Mr. NEWLIN. Mr. Chairman: I am amazed that any delegate should defend the position of an attorney of a corporation holding a seat in the Legislature. Now, what is wanted in the Legislature is representatives of the people; and it is unfair to the people and unfair to the person or attorney himself to put him in the position of a divided allegiance. It is the old story of trying to serve God and mammon; and when the choice has to be made in the Legislature, unfortunately in a great many instances the selection

will not be such a one as will be beneficial to the public. I think the phraseology of this proposed amendment, perhaps, might be open to some objection; but the general scope and idea is good, and I am astonished that it should have met with any opposition at all. I trust it will be adopted by a large vote.

Mr. EWING. Mr. Chairman: After what has been already said, I do not think the gentleman from Clarion (Mr. Corbett) will make any objection to my stating anything that has been said in committee. We differed, and he and I opposed this section, but for different reasons; that is enough. I was not present in committee when any such discussions as he speaks of took place, in relation to the meaning of this section. I never heard in committee such an interpretation put on that section as is sought to be given it in the discussion to-day.

As I said yesterday, I do not care anything about this section being adopted as a whole. I will vote against it. That portion of the section which the gentleman from Clarion (Mr. Corbett) desires to strike out contains the only thing of value that is in the entire section. The gentleman to my right, from Crawford county, (Mr. Minor,) stated very properly and to me, satisfactorily, that it is useless to adopt the first portion of the section, that is, leaving the section as it would stand if the amendment now under consideration should be adopted. It is nothing more than a substantial copy of our statute in regard to bribery. I do not think it is any stronger than the common law would be. I do not see any necessity for incorporating in the Constitution the provisions of the common law upon this subject. If we do not go any further than that, we had better not do anything at all; and while the latter portion of this section the amendment offers to strike out, I look on as of considerable value, yet the whole section, with that provision in it, is so unimportant, and stops so far short of what ought to be contained in the provisions, that it matters very little whether it is voted up or voted down. It seems to me very common here to express surprise at the positions taken by gentlemen on this floor. Well, we have been in session a long time, and I have learned not to be surprised at anything.

I was slightly surprised yesterday, however, to find learned gentlemen discussing for two or three hours the question of the effect of certain sections of the Constitution in regard to the vote upon the passage of bills, which is undoubtedly a matter that has been decided, over and over again, by competent courts in this country and well settled, and yet it was discussed as though there had been no decision at all upon the question. This section has been seriously discussed, and particularly by the learned and eloquent gentleman from Philadelphia, (Mr. Biddle,) who is, as a general thing, right on all questions. He argues that this provision would apply to any man who had any interest, eitheir directly or indirectly, in legislation. The learned gentleman from Montgomery (Mr. Corson) has told us that this section might interfere with the employment of the family physician, who might be a member of the Legislature, and a question of vaccination. These gentlemen overlook altogether the wording of this section. It is *special* or *personal* interests in legislation that is the test. I would prefer the word "private" to the word "personal," and in committee I have to say I never heard it suggested, although, probably, it was when I was not present, that this provision would apply to cases of general legislation. It never occurred to me—and I think it never occurred to any of those who were in favor of that particular amendment—that it would bear any other interpretation, and I suppose that some gentlemen who are in favor of it had some experience in those matters. There is an act of Congress, I believe, that prohibits a member of Congress, who has a special or private interest in the bill under consideration, from voting on such a bill. The precise words of that act I am not able to give, but I think it is very similar to the words of this section.

Now you, Mr. Chairman, are perfectly familiar with the construction of that act or rule which prohibits a member from having a special interest in any bill pending in that body from voting on the bill. I recollect a few days before the adjournment of Congress, recently, that this precise question came up in that body, and it was decided that a certain member had not the right to vote on a question involving the rights of the Union Pacific railroad because he was a stockholder, and because in that particular bill he had a special interest. Now, that would be the case here. On the other hand, it has been decided, and I recollect, as an illustration of the proper construction of the rule, given in the case to which I refer, that where the act under

consideration was a general law, affecting all similar institutions in the United States, the member had a right to vote; and the case of a member who was a stockholder in a national bank was given by the Speaker as a case in point, and the rule would not, in case of such member, being such stockholder, have a special or private interest that would prevent him from voting. I think that is the proper interpretation of this section, and I am surprised to find that any gentleman should give it any different interpretation, and I do not think it is fairly capable of a different interpretation. I suppose this clause is a matter of very considerable importance, and my impression is that a very large amount of the actual bribery of members of Congress and members of the State Legislature occurs in precisely the way that is prohibited in this section—that is that members upon the floors of these bodies are the paid and retained agents of parties having a special interest in the legislation that is to be enacted.

Mr. LANDIS. Mr. Chairman: I desire to make a single observation in connection with the subject under discussion. I have not thought very much about the proposition in regard to whether a person who is the attorney of a railroad corporation or the employee of a railroad corporation, or becomes so after his election, or the agent or employee of a person who expects to have a personal interest in legislation, but, sir, it strikes me as manifestly improper, whether that be right or wrong, that this proviso should be annexed to the section proposed here for adoption. The section proposes to specify what shall constitute legislative bribery, and concludes by declaring that one who, after his election, shall become the attorney or employee of a corporation or person, knowing that such person or corporation expects to have a special interest in the legislation, shall be guilty of bribery. A person may occupy that relation to a "corporation" or "person" at the very time of his election, and not know that such "corporation" or "person" expects to have a special interest in the ensuing legislation, and though not guilty of bribery, he might be even more objectionable than the man who comes into the same relation after his election; and because the latter happens to occupy that position and is elected to this office, or rather comes unwittingly to occupy that position after his election, he becomes guilty of an offense which, in all the history of judicial investigation, was never before known to be an offense.

Now, sir, as to whether this Convention ought to take cognizance of any such supposed irregularity, I will not now discuss, but certainly it strikes me as manifestly improper that this proviso should be appended to the section which defines what legislative bribery is. I conceive it to be a question solely of eligibility or of disqualification. It is a question that ought to be met by the Committee on the Legislature in determining who are eligible candidates forthat office, or how they may be disqualified. Certainly it is not a question to be determined here under the broad provisions as to what is a legislative offense and what is the offense of bribery.

Mr. EWING. I would like to ask the gentleman a question. If the gentleman will look at the section, I desire to ask him if he does not find that the section simply prevents a person from acting as attorney for a corporation after his election as a member of the Legislature.

Mr. LANDIS. I do not think that it matters at all. It does not meet the point I wish to make. I take it, whether he has been the attorney before his election, or becomes so after his election, it could not make any difference, unless his appointment of attorney or agent be made a consideration for future legislative services.

Mr. MCVEAGH. I think the point of difference in the minds of many members is this: That if the people choose to elect a person who has antecedently sustained the relation of counsel to corporations, to represent them in the Legislature, they hove a perfect right so to elect them, and he would have a perfect right so to serve, if that fact were known, that it was a relation existing antecedent to his election as a member of the Legislature, because otherwise it would narrow the right of the people to elect members of the Legislature.

Mr. LANDIS. I understand that to be the case, but I said at the outset of my remarks that I did not desire to discuss that part of the question. I said that question ought to come up in the shape of a separate proposition, and that I had not arrived at any definite conclusion as to the manner in which that branch of the subject should be treated, but I say that it is a question that looks more to eligibility and disqualification for the office than it does to the offense of bribery as we have understood the offense of bribery

under its legal definition, and ought not to be included in this section. That is the point I desire to make, and therefore I find myself forced to the conclusion of voting in favor of the amendment of the gentleman from Clarion (Mr. Corbett.)

Mr. CLARK. Mr. Chairman: It seems to me that the amendment made by the gentleman from Clarion (Mr. Corbett) ought to receive the approbation of the committee of the whole. The first part of this section seems to me to be an eminently proper provision, as it clearly defines what shall constitute bribery, but the second portion of the section seems to me to be objectionable in many respects.

The section is properly divided into two parts, the first of which reads as follows:

"A member of the Legislature shall be guilty of bribery, and punished as shall be provided by law, who shall solicit, demand or receive, or consent to receive, directly or indirectly, from any corporation, company or person, any money, testimonial, reward, thing of value, or of personal advantage, or of promise thereof, for his vote or official influence, or with an understanding, expressed or implied, that his vote or official action in any way is to be influenced thereby."

This has within it a clear and explicit definition of bribery, and is a proper provision.

The second portion of this section would read thus:

"Or who shall, after his election and during his term of office, consent to become, or continue to act as the agent, attorney or other employee of any corporation or person knowing such corporation or person has, or expects to have, any personal or special interest in the legislation of the Commonwealth."

Now, an agent may have a general employment or authority from his principal, or he may only be delegated and empowered to execute some special matter; and it is not stated here that his agency must appertain to the business to which the legislation relates. He may be an agent in one direction, whilst the legislation proposed lies in another. The same may be said of an attorney. A man may have a general employment as an attorney for a corporation or an individual, and thus be interested, as such attorney, in all the affairs of his principal, and in all that he does. Or he may be an attorney, specally employed for some single case which his client has in hand. In either case, however, he is an agent or an attorney within the meaning and scope of this section.

To make the matter more comprehensive, however, the words "agent and attorney" are followed by the expression, "or other employee of." It does seem to me that the object of the section should be simply to prevent an agent or attorney, or an employee, employed in the matter or thing to which the legislation is to relate from participating in the legislation. But this goes much further than that, and says that all agents, whether general or special, all employees, however they may be employed, and all attorneys, whether their employment by general or special, are rendered incapable of taking part in legislation in behalf of their principals or employees. I think that this is too sweeping and broad.

And further, the language of this section is, "knowing such corporation or person has or expects to have any personal or special interest in the Legislation of the Commonwealth." A special interest, Mr. Chairman, is not an individual interest. Whilst all the people of the Commonwealth have a general interest in all general laws, I apprehend that all banking institutions have a special interest in a general banking law; all railroad companies have a special interest in a general railroad law; all men who stand charged with murder have a special interest in any law which defines that crime or prescribes its punishment. The word "special," I believe, has its origin from *species*, as general has from *geuus;* while *genus* denotes the whole of a kind, and *species* a class, so a general law applies to the whole community, and a special law to a class of the community. That is, in some respects, a special law which defines the rights and duties of a banking company; that is a special law which defines the status of a railroad company; that is a special law, too, in the same sense, which relates to a specific offense, or to any special thing, or class of interests, or persons. Just as *genus* and *species* are relative terms, so are their derivations general and special; and the general law appertains to everybody throughout the State, whilst a special law has application to a particular class.

Now, look at the effect of this: "Knowing such corporation or person has, or expects to have, any personal or special interest," &c. Why, the attorney of a banking institution of the Commonwealth must resign his seat in the Legislature

the moment that a general law is offered, regulating the banking institutions of the Commonwealth; or when an amendment to such a law is proposed, however trifling in its effect, he must retire from the Legislature, and pass over his duties to some other person, or else be guilty of the high crime of bribery. I might say the same of an attorney or employee. If he were a brakesman on the road, or an agent in some insignificant ticket office, or an attorney employed in some small case before an alderman or justice of the peace, the employment and service being altogether disconnected with, and independent of, the legislation anticipated, he is nevertheless incompetent to serve in the Legislature upon anything pertaining to the general class of railroads. I care not what the character of his employment is, or how insignificant it is, he is thereby disqualified, and rendered incompetent to serve his constituency in the Legislature.

It is of no consequence that he was in the same employment at the time of his election; that his constituency knew the fact, and yet chose him to fill the place; by the terms of this section he shall not continue in such relation, and if he does continue therein, although the employment may in no way relate to or touch the subjects of legislation, he is, by the Constitution of the State, to be adjudged guilty of bribery. This is a most anomalous provision, and as absurd as anomalous. The latter part of the section is, therefore, in my judgment, too wide in its provisions, and should be stricken out. I hope, therefore, that the amendment submitted by the gentleman from Clarion (Mr. Corbett) will receive the favorable consideration of the committee.

Mr. MACCONNELL. Mr. Chairman: I want to add one word to that which has been said by my friend behind me (Mr. Clark.) There seems to be an inconsistency in this section, unless the first part is taken out, which is this: Any attorney-at-law, being the attorney of a corporation to defend or prosecute a little appeal before a justice of the peace, which has no reference at all to any subject of legislation, would be excluded by this provision from sitting in the Legislature, although the interest that he would have would be so exceedingly small as to come within the familiar rule of *de minemies non curat lex.* But whilst that is the case, a person may be a stockholder in a corporation to the extent of a hundred thousand dollars, or a million of dollars, and yet not be excluded by this provision from being a legislator. That is clear, and it seems to me that there is a marked inconsistency in the thing. It does not seem to me to be sensible. If we are going to retain this, it seems to me that we ought to exclude stockholders in corporations, as well as agents and attorneys. Why permit a principal to sit as a legislator, when you exclude the agent? It seems to me, Mr. Chairman, that that is a difficulty about the thing that puts it in such a shape that it should not receive the sanction of this Convention.

Mr. C. A. BLACK. Mr. Chairman. I have just a word or two to say on this proposition to strike out this part of the section. It may be that I do not understand the question, but if I do, then I am surprised at some of my friends who advocate the motion to strike out this part of the section. Now, if I understand it, it just simply and only proposes that after a man is elected to the Legislature by the people, who knew what he was when he was elected; that after he was so elected he shall not become the paid agent of any person who has any interest in legislation. That is the whole sum and substance of the second part of this clause.

Now, if that be it, then I maintain that the section is exactly right as it is. To me it is repulsive; it is shocking to common sense to say that a man who is elected to the Legislature to legislate for the entire people, independently, and not for any interest or corporation, shall become the paid agent of a person or corporation who has an interest in legislation. The very thought of bribery or secret and improper influence, operating upon the mind of a public officer, whether legislative, judicial or otherwise, is repulsive to every one who desires honest legislation or faithful administration of justice.

From the time of Bacon down to the present time, bribery and corrupt influence in high places, in theory at least, have been repulsive to every right minded man.

No man who is supposed to represent the people or administer justice should be the paid agent of any private party having an interest in the administration of justice or in legislation. This, if I understand it, is the sum and substance of the provision proposed to be stricken out by my friend from Clarion (Mr. Corbett.) That after a man is elected, after he is sworn in, after he has promised, on oath, to support the Constitution and represent

the people and the people alone, he shall not then become an agent of anybody else but the people, especially any person of persons who have an interest in legislation. Now, sir, if that is the meaning or this, if that is the meaning and intent of this, who can say there is anything wrong in it, or who should object to it?

Mr. CUYLER. Mr. Chairman: May I ask the gentleman how he disposes of the words, "or continue to."

Mr. C. A. BLACK. Mr. Chairman: I do not think that has reference to previous employment. I am willing, however, to strike it out. I had some hesitation about that, but am willing to omit it, and merely say that after his election he shall not become the agent of any other party than the people. I agree that the people have the right to elect an attorney of a corporation to the Legislature if they choose to do so. They then know all about it. They know who they are voting for, and should take the responsibility,

Mr. MACVEAGH. Mr. Chairman: Is the gentleman willing to strike out after the word "become," the words, "or continue to act?"

Mr. C. A. BLACK. Yes, sir; I will strike that out, and then there can be no objection to the latter part of this section. I was going on to speak as to the policy of electing an agent of a corporation to the Legislature, that the people have the right they are doing, and act understandingly. to do, if they so desire. They know what But a person who is elected without such previous keowledge, a man who has not been the agent or attorney of any person or corporation, ought under no circumstances to become agent or attorney of of any company or individual seeking, or having an interest in legislation. To amend it is utterly destructive to the purity of legislation.

Mr. CUYLER. Mr. Chairman: Is a further amendment in order?

The CHAIRMAN. An amendment to the amendment is in order.

Mr. CUYLER. I was about to suggest, sir, that we extend this principle a little further, and provide that nobody who has any interest in property shall be a member of the Legislature, and if an amendment to the amendment is in order, I will submit what I have embodied in a few sentences.

Now, shall any individual, owning any property whatsoever, real or personal, be elected to the Legislature, lest he participate in legislation affecting property?

Mr. BIDDLE. That has been offered this morning.

Mr. BUCKALEW. Mr. Chairman: I shall vote for this amendment to strike out this clause. I think, sir, it would look very badly on the face of the Constitution to make the mere fact of attorneyship, continued after the election of a member of the Legislature, under the incorporated law of the State, bribery. Think of it. A mere appearance before a justice of the peace in some case where a corporation might be interested, an argument in the Supreme Court upon some question having no relation at all to anything pending at the Legislature that session, or likely to come before it, that that should be the deep and infamous offense of bribery. I think, sir, it is one of the most astonishing provisions I ever heard of. I would be willing to vote for a clause of this sort if the Committee on Legislation will bring it in, that is: That no attorney of any incorporated company shall be permitted to speak or to vote on any question in which his corporation was concerned while a member of either House. That would apply a familiar principle. If we put in the paramount law the doctrine that no member shall act upon any measure in which he is personally interested, that is a very proper regulation. I consider that it would be a good extension of that rule or principle to apply it to agents of incorporated companies, and say that they shall not represent their corporation by their own vote or their own speech. But I would not disqualify them from acting as agents of the people in the general business of the government of the State. Certainly the section which I have indicated would be ample, and it is the only reasonable one which we can impose, if we are to impose any, in the fundamental law.

Mr. MACVEAGH. Mr. Chairman: Is it in order to move, as an amendment to the pending amendment, an amendment striking out the words, "or continue to act as?"

The CHAIRMAN. That would be in order.

Mr. MACVEAGH. Then I move that amendment.

The CHAIRMAN. The question before the committee is to strike out the words that have been indicated.

The amendment was not agreed to.

The CHAIRMAN. The question is upon the amendment of the gentleman from Clarion (Mr. Corbett.)

Mr. J. W. F. WHITE. Mr. Chairman: I did not intend to take part in this discussion until the gentleman from Columbia (Mr. Buckalew) spoke. I must confess, sir, that I have not read this section in the light in which he appears to have read it. It does not seem to me that this section prohibits the attorney of a corporation being a member of the Legislature. It does not prohibit the attorney of a corporation, who may be a member of the Legislature, from arguing a cause in the Supreme Court or in any other court, and I apprehend that under the other sections of this article which we have adopted, corporations will have very few occasions to go before the Legislature to ask for special acts or privileges. I understand this section, as reported by the committee, to mean simply this, that one who is the attorney of a corporation or individual, after being elected to the Legislature, shall not continue to act as attorney for that person or corporation if he knows that they intend to apply for some act of Assembly in which they are specially interested; or, that a member of the Legislature shall not be employed as the attorney for a corporation, knowing that such corporation will be *specially* interested in some legislation—not interested as other persons and the public generally are interested, but having some special interest in the legislation.

I know that many gentlemen who are attorneys for corporation would be very good members of the Legislature. We have some here in this Convention; but when that corporation intends to apply to the Legislature for some special legislation, I do say that the attorney of that corporation ought not to be sent there for the purpose of getting that through the Legislature. Neither should a corporation have the power to go to the Legislature and make a contract with some member of the Legislature to employ him as their attorney, to put through some special act, and that I apprehend is what this section clearly mean. Not understanding it, therefore, as the gentleman from Columbia (Mr. Buckalew) has represented it, but understanding it as a wise and wholesome provision, and as one striking at what I have understood from other gentleman who have been in the Legislature, as being a great evil in this State, this thing of employing members, under the the guise of making them their attorneys, to put through the Legislature some special act. I say, as the section strikes at that, one of the greatest evils heretofore in our legislation, I shall vote for the section as reported by the committee.

The amendment of Mr. Corbett was agreed to, there being, on a division, forty-two in the affimative, and thirty-four in the negative.

Mr. BUCKALEW. Mr. Chairman: I propose to move an amendment as a substitute for the section. Before I present it, I will state that, in my opinion, this section is very defective in two particulars, which are corrected in the draft of the substitute which I propose to present. In the first place, there is no provision for the payment of the consideration to a third person, which, as I mentioned before, in a former debate, is a common form which corrupt influence assumes. This section, as now drawn, is only directed to a payment tax, or a reception of consideration by the party himself. It must be a specific offense in that way, or it will not fall under this section. That is one defect.

I also observe that the section is directed only against a positive act by the Senator or Representative in question. He must do some positive act in his official capacity, which can be recognized by the Journal or otherwise, and established in a court of justice. Now, the withholding of acts or the withholding of a vote, the absenting or non-attendance of members, is possibly and probably not included in the section as drawn. In some haste I have drawn a section covering those points, in addition to those already contained in the section, which I will read:

"A member of the Legislature who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation or person, any money, office or appointment, employment, testimonial, reward, thing of value or enjoyment, personal advantage or promise thereof, for his vote or official influence or for withholding the same, or with the understanding, expressed or implied, that his vote or official action shall be, in any way, influenced thereby, or who shall solicit or demand any such money or other advantage or thing aforesaid for another as a consideration for his vote or official influence or for withholding the same, or shall give or withhold his vote or influence in consideration of the payment or promise of such money, advantage or

matter or thing to another, shall be held guilty of bribery, within the meaning of this Constitution, and shall incur the disabilities provided thereby for such offence, and such additional punishment as is or shall be provided by law."

Mr. EWING. Mr. Chairman: Before the vote is taken upon this amendment I would like the gentleman from Columbia (Mr. Buckalew) to explain to us wherein and how his proposition differs from the common law of bribery or from the statute we already have.

Mr. BUCKALEW. Mr. Chairman: I have not the statute of our State to compare my amendment with. I think that some clauses here are not contained in the statutes. As now drawn I imagine it will cover every possible case where a limitation should be imposed in this section, if we adopt the section at all. I have attempted to draw it in such careful form that, although it has assumed some of the form of the statute, that everything will be included that may be necessary in the future; and, as the conclusion of the section will show, this will be the standard by which this qualification shall be measured under the Constitution itself.

As a matter of course, we will have a provision that a man convicted of bribery shall be expelled from the House of which he is a member, and that he shall not be qualified for a re-election to either House of the Legislature, either for a limited time or indefinitely, and those disqualifications then will have the sanction, or rather they will relate to this provision, which will define what constitutional bribery is, for the purposes of those disqualifications which the Constitution will contain. On that point this section will have value, for without it the Legislature hereafter can change the statutes, and can take away their force and effect. In that view I understand that the section will have value.

It will be perceived that I have carefully provided, at the end of my amendment, that the Legislature shall prescribe other penalties besides those of disqualification, from time to time, as they think proper.

The CHAIRMAN. The question is upon the amendment proposed by the gentleman from Columbia, (Mr. Buckalew,) which is to strike out the section as amended, and insert the substitute to the section, which has been read.

The amendment of Mr. Buckalew was agreed to.

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

Mr. MINOR. Mr. Chairman: I feel inclined to call the attention of the committee again to the fact that there is nothing whatever in this amendment but what is pure legislation. It would be very proper if offered in a Legislature. The gentleman who offered it (Mr. Buckalew) admitted that he had not before him, and was not familiar with, the statute upon this subject now in existence. If he will read that statute, he will find that it covers all this whole subject, and in the strongest language, and applies to members of the Legislature, to jurors, to judges, and everybody who acts in an official capacity, even down to electors. It provides for two classes of persons—the person who may attempt to influence, and the person whom he attempts to influence. It is, therefore, a very general, comprehensive and valuable statute, rendering unnecessary that which is now offered here. Further, even this amendment itself does not undertake to be complete. It says that if they are bribed in a certain way they shall be punished in a certain way, and in such other ways as the Legislature shall prescribe. Is it worth while to undertake to prescribe in the Constitution a matter merely of statutory character, that which must more properly be in a statute than in a Constitution? Is it worth while to put in the Constitution one part of the provision and have the balance of it in the acts of Assembly. Even if this did contain anything other than what is in the act itself—I cannot see, however, that it does—even if it did, it is but legislation. It is merely prescribing a little more than the other, and then saying that the Legislature shall prescribe more. With all due deference for the gentlemen who favor the proposition, I ask if it is wise for us, in this Constitution, to fix things in that way? The Legislature would do it anyhow.

The question being on the section as amended, a division was called for and resulted: In the affirmative, thirty-nine; and in the negative, thirty-seven; so the section, as amended, was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read:

SECTION 37. Any person who shall, directly or indirectly, or by means of, or through any artful or dishonest device, offer, give or promise any money, goods, things of value, testimonial, privilege or

personal advantage to any executive or judicial officer or member of the Legislature of this Commonwealth, to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and punished in such manner as shall be provided by law.

Mr. HOWARD. Mr. Chairman: I do not see any use in this section. I think it is all covered by the provision just offered by the delegate from Columbia (Mr. Buckalew.) I think that the provision we have just accepted contains all the common law on the subject of bribery, and everything else relating to it.

I have no doubt that the people of the Commonwealth would have been very much gratified to have had an opportunity of voting upon this thirty-sixth section, but this Convention seems to have decided that the lawyers, and the agents, and the employees of the corporations of the Commonwealth could go to Harrisburg, take their seats, legislate for the Commonwealth as they have done in the past, and in the place of that we have substituted a general provision against bribery, just such provisions as the Commonwealth has been acting upon in the years past. This section under consideration goes a little further than that. That applies only to members of the Legislature. This goes further, and applies to executive and judicial officers, and members of the Legislature of the Commonwealth. Members of the Legislature are also included in this. I would like to have something more specific—something to meet the evils under which we think the Commonwealth has labored, and for and against which the public has complained, and I should be very sorry if what we have now done shall go before the people of the Commonwealth to be voted upon as a part of this Constitution, and that the lawyers in this Constitutional Convention have stricken out of the proposed Constitution a provision that would prevent such scenes as we know we have witnessed from year to year in the Legislature—things have been complained of universally by the people of this State, and under which the people have suffered, and have terribly suffered. I regret very much the action of the Convention in adopting the provision that was offered by the delegate from Columbia (Mr. Buckalew.) The section, as it stood, and as it was reported by the committee, was worth something to meet a specific evil—one that all the people of the Commonwealth were conversant with. This is a general provision, providing simply that if any person shall do anything to bribe, &c. It is good as far as it goes, but it is not sufficiently explicit, and for that reason I am opposed to it.

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

The CHAIRMAN. The next section will be read.

The CLERK read:

SECTION 38. The Legislature, at its first session after the adoption of this Constitution, shall provide by law to compel any person who may have offered or promised a bribe, or solicited or received one, to testify against any person who may have committed the offence of bribery, as defined in the foregoing sections, and the person so compelled to testify shall be exempt from punishment for the offense concerning which he is so required to testify, and of which he may be guilty; and any person convicted of the offense of bribery, as hereintofore defined, shall, as part of the punishment therefor, be disqualified from holding office or position of honor, trust or profit in this Commonwealth.

Mr. BUCKALEW. Mr. Chairman: I move to amend, by inserting the word "paid" before the word "offered," in the third line, so as to make it read, "who may have paid, offered or promised."

Mr. J. W. F. WHITE. I would suggest to the gentleman from Columbia (Mr. Buckalew) that the word "given" would be better than the word "paid."

Mr. BUCKALEW. Yes; make it "given."

The question being upon the amendment of Mr Buckalew, it was agreed to.

Mr. BUCKALEW. Mr. Chairman: By this section a complete discharge is allowed to any criminal who shall be examined as a witness. Every man who is brought in as a witness is freed from any liability to prosecution for his offence. That may do in a statute, carefully guarded, but I doubt very much the policy of putting it in the Constitution. I fear that persons will sometimes be called as witnesses merely for the purpose of discharging them from responsibility. It seems to me that we had better leave that question entirely with the Legislature. Although the person called may not testify to anything of consequence, the mere fact that he is sworn will be an absolute discharge to him from all responsibility, and a district attorney, by subpœnaing a large number of persons whom he desires to discharge from criminal responsi-

bility, can secure their immunity for ever.

Mr. MACVEAGH. Mr. Chairman: I trust the committee will consider the second clause of this section with some care. I confess I have not a very definite opinion on it myself, for I have not considered it, but it certainly is a very great question whether you are to allow one of two guilty parties, the one who, on investigation, secures the right to be called to testify, or if both are called to testify that they should be entirely relieved of any possibility of punishment thereafter for their offense, and especially that it should be a constitutional provision in broad terms.

Mr. BUCKALEW. Mr. Chairman: The member from Dauphin (Mr. MacVeagh) will remember that the article reported by the Committee on Suffrage provides that the testimony of a witness shall never be used against him.

Mr. MACVEAGH. That I think is perfectly right; but why should we go beyond that?

The CHAIRMAN. Does the gentleman from Dauphin (Mr. MacVeagh) move an amendment?

Mr. MACVEAGH. I think perhaps the gentleman from Columbia (Mr. Buckalew) is about to do it.

Mr. CORBETT. Mr. Chairman: I think that the provision would be acceptable if it were made similar to those terms just referred to by the gentleman from Columbia (Mr. Buckalew.)

Mr. BUCKALEW. Mr. Chairman: I move to amend, by inserting after the second word, "the," in the fifth line, "testimony of such," so that it shall read, "and the testimony of such person so compelled to testify," &c., and to insert after the word "shall" the words, "not be used against him in any judicial proceeding," and further, to strike out the remainder of the sixth line and the seventh line, down to and including the word "guilty," in the seventh line, so that it shall read:

"The Legislature at its first session after the adoption of this Constitution, shall provide by law to compel all persons who may have given, offered or promised a bribe, or solicited or received one, to testify against any person who may have committed the offence of bribery, as defined in the foregoing sections, and the testimony of such person so compelled to tesify shall not be used against him in any judicial proceeding; and any person convicted of the offense of bribery as hereinbefore defined, shall, as part of the punishment therefore, be disqualified from holding any office or position of honor, trust or profit in this Commonwealth.

Mr. J. W. F. WHITE. Mr. Chairman; I doubt the wisdom of the amendment which has been proposed. Let us look at the section as it is reported. It reads: That any person who may have offered or promised a bribe, or solicited or received one, shall be compelled to testify against any person who may have committed the crime of bribery. The section provides as reported, that any person may be compelled to testify against one who has committed the crime, and then it provides that a person who has been so compelled to testify shall be exempt from prosecution. Now, that is what has long been the established principle of law in the way of compelling witnesses to give testimony that criminates themselves. If a witness is compelled to give testimony that criminates himself, he renders himself liable to prosecution, and the invariable rule of law has been, that when he thus testifies under compulsion he should be exempt from prosecution. Now, let us examine the amendment which has been proposed. It says that a witness shall be compelled to testify in a bribery case. He may be called to the stand and sworn, and under oath compelled to testify to facts that will prove him to be guilty of bribery. He may have divulged the names of parties, and circumstances on the witness stand that will convict him of a crime that will send him to the penitentiary. What is the protection given to that witness under this amendment? Simply that the testimony he gives shall not be used against him. Does that protect him against the evidence which he unavoidably divulges—the facts and circumstances which will enable the prosecution in a proceeding against him to call those other parties as witnesses?

Any witness who has been guilty of bribery has been guilty of that crime under circumstances connected with some persons else, whose names will be revealed by his testimony, and those persons may be called and examined in the proceedings against himself, and where is his protection? I cannot conceive, Mr. Chairman, that under the amendment a witness will have any protection whatever. Well, now, if he has no protection you call him upon the witness stand and, under oath, make him admit facts and give testimony that will render him lia-

ble to be sent to the penitentiary, or else he must perjure himself. He furnishes the means that will inevitably lead to his conviction, after his testimony has been used on the witness stand. Now, I, for one, want to stand by the old landmarks, the long-established principles of the common law and the statute law of this country; that if you call a criminal to the witness stand and compel him under the solemn sanction of an oath, to testify against a party in crime with him, you must throw the protection of your law around him, and say that he shall not suffer by reason of his testimony.

The section does not mean, as suggested by the gentleman who offered this amendment, that a person under this clause, who may be called and sworn as a witness, shall be exempt from prosecution, whether he gives important testimony or not. The section, as reported, doet not convey that meaning, and it cannot be so construed. The section says, a person who shall be so compelled to testify. How! "*So compelled* to testify" against a party who has been guilty of the crime of bribery. Such is the section, and in the words of the section, none except those who have been *compelled* to testify against a party guilty of the crime of bribery will be exempt at all. The defendant cannot call in witnesses, and by calling them to the stand excuse them from prosecution. Only those who testify against the party can be excused, and he must himself be guilty, or otherwise he will not be exempt under this section. It does seem to me that if we adopt this amendment, proposed by the gentleman from Columbia, (Mr. Buckalew,) you will defeat the very object of this section. What is the object of this section? It is to obtain testimony by which a man may be convicted of bribery, and the theory is that none except *particeps criminis* can prove the fact, and that without the testimony of these parties it will be impossible to convict, and hence the shield and protection of the law must be thrown around the witnesses whom you call to prove those facts. If you do not do this, and if the witness knows that he will not be protected, but that he must divulge facts, circumstances and names that will lead to his own conviction, he will either evade becoming a witness or will equivocate when upon the stand, thus defeating the very object of the section:

Mr. MACVEAGH. Mr. Chairman: I do not consider this to be a very important matter, but it seems to be considered so by the gentleman from Allegheny (Mr. J. W. F. White.) It is a departure from the ancient ways in the administration of the law. Heretofore it has been one who renders a willing aid in its administration whose case has been leniently considered after he has testified, and it is known that he has told the truth. I grant you, when a criminal comes forward and says, "I will make all reparation in my power; I will tell the whole truth," and assist justice in her dealings with the other criminals, that after he has rendered this service voluntarily, and it is seen that he has told the truth, then it is usual, in the discretion of the district attorney, not to prosecute him.

Mr. J. W. F. WHITE. I would like to ask the gentleman if he knows of any Constitution in the Union, or of the law of any State, that compels a witness to criminate himself without protecting him from prosecution.

Mr. MACVEAGH. Whenever the public necessity requires compulsion to be used, then I understand the precise principle of our law is, that the testimony thus given under compulsion shall never be used against the witness. I do not agree with that theory at all, individually; but that has nothing to do with this matter. I believe the principle of law administered in France is infinitely better, because it goes to the root of the question by going to the man that knows the truth, and asks him what the truth is—interrogates the criminal himself, and allows him to tell the truth, and leaves the consequences of the truth to be visited upon him by the judges; but upon our principles of administering criminal justice, if you compel a man to testify, you provide that his testimony shall not be used against him. You do not, however, pardon the offense altogether, and you should never do so. You may protect a man from being harmed by the compulsion you exercise, but why allow a district attorney, or any person for him, to decide which man of two men, equally guilty, shall be put in the penitentiary, and which shall have a free pardon?

I grant you that his testimony shall not be used against him under the American system; but surely there ought not to be a constitutional pardon granted to a man who is compelled to testify. What has

he done to merit a pardon? Why should he be protected from the punishment otherwise due to his degrading crime? You compel him to testify. He is, therefore, no willing assistant in the administration of justice, and yet you would allow a district attorney to grant him full absolution. From this reluctant and unwilling agent of corruption and fraud you wring all the testimony you can, and then you give him a free pardon for his offense, and you send the other man, who has not done any worse, who has not been more corrupt, who has not been more unwilling to help you, to the penitentiary. I submit to you that it is unsafe to put such a power as this in the hands of anybody, when there is no difference of merit whatever in the cases of the parties concerned; a power which allows the district attorney to put one of two criminals in the witness box, with a free pardon in his hands, and to put the other man, who was guilty of the same offense, into prison, is a power that should not be granted in the mode provided in this section.

Mr. MANN. Mr. Chairman: The gentleman from Allegheny (Mr. J. W. F. White) so clearly stated the purpose and spirit, and object of the Committee on Legislation, that reported this section, that it would be superfluous to add any more words to it. I will not, therefore, reiterate what he said in regard to the effects of this section, but I submit to this committee of the whole that the Constitution should either decline to compel a man to testify to that which will convict him, or else it should save him from the conviction. One or the other. The common law, as held sacred heretofore, has closed the lips of a man if he chose to close them, whose intelligence would alone convict himself, and has said that under no circumstances shall he be compelled to disclose that intelligence. The Committee on Legislation thought that this offence of bribery was becoming so serious that the good of the whole people required a change in that law, and that it would be wise, under the conditions named in this section, to compel a man to testify to facts that would convict himself, but they provided that he shall be saved from the consequences of so testifying; and I reiterate the statement of the gentleman from Allegheny, that he cannot be saved from these consequences unless you save him from the conviction, for his testimony will inevitably disclose facts that will enable the prosecution to convict him of the offense outside of his own testimony. To say that his testimony shall not be used against him in the prosecution is no help to him whatever, because the facts which he discloses, the information which he will give to the prosecuting attorney, or to the Commonwealth, will enable them to convict him of the crime without his own testimony in very many cases, and in nearly every case, so that he cannot be saved from this conviction except by this provision in the section. And the amendment proposed by the gentleman from Columbia (Mr. Buckalew) will have no possible help for him after he has disclosed all the facts.

Now, it may not be wise to say that a man shall not be convicted. It may not be wise to save a man from conviction under these circumstances. If so, vote down the section. But do not emasculate it, tearing its humane principles, by inserting this amendment of the gentleman from Columbia. It may be unwise. If so, vote it down. But the principle contained in it is certainly a wise and a humane one, and it will be a departure from all the humane principles of the common law to insert the amendment of the gentleman from Columbia, and then adopt a section that will, in effect, compel a man to convict himself.

Mr. BUCKALEW. Mr. Chairman: This section goes with the two sections which immediately precede it. It is a part of a general plan to reach the subject which the Committee on Legislation have very properly reported. Now, this provision that no man shall be permitted to stand silent before a tribunal in a case of prosecution for bribing a public officer, is not only material, but indispensable, to reach our object. Without it we will have made no advance in all our definitions of what this offense is, in all our provisions regarding disqualifications. We will have left the whole subject just where it is, and that is in a situation where, to talk about prosecuting a public officer at Harrisburg for corruption, or to prosecute any person for being concerned in corrupting him, is as idle as whistling against the wind.

Now, sir, under the ancient forms of our common law, which took its form before modern necessities were known, nobody concerned in corruption of members of the Legislatuee or other officer of the government can testify. You can extract from him or any of his confederates no information upon the subject on which you examine. If a man at Harrisburg

has gone about and corrupted twenty or thirty public officials, neither he, nor any man he has corrupted, nor any man that has acted as an agent for him, can be compelled to testify a word before any legislative committee or before any court. Therefore, investigations are impossible, at least any efficient investigation, is impossible; prosecutions are impossible, and punishment is impossible. Therefore this offence grows up, and although we all know of its existence, we cannot reach it.

Now, the Committee on Suffrage, Election and Representation, in their report, provided with regard to popular elections, that whenever an inquiry or a trial shall take place in regard to election frauds, that no person shall be permitted to withhold the truth. And why? Because the case is entirely different from those of ordinary private transactions which are investigated in courts of justice. There private considerations constitute the major mass that is to be considered. But in these cases of election frauds; in these cases of the corruption of public officers, the public interest overwhelms a thousand-fold any individual interest involved in the investigation, and the public interests and the public necessities demand that from this time, in Pennsylvania, in such cases, no man shall stand with his mouth closed before a tribunal of justice in the development of truth. And, sir, it would do no mischief; it would do no injustice to any person called and examined.

Why, sir, the Legislature will have complete power if they choose to pass just such a statute as the statute which the gentleman from Allegheny (Mr. J. W. F. White) thinks ought to be passed; that is, to exempt from punishment any man who shall be examined. They may pass a careful statute that in certain cases, and under certain circumstances, the examination of a man as a witness shall exempt him from prosecution. The whole matter is left open to the legislative power. All that I insist upon is that you shall not put such an absolute exemption here in the body of the Constitution.

Mr. BOWMAN. Mr. Chairman: I wish to ask the gentleman from Columbia one simple question, if he will be kind enough to permit the interruption.

Mr. BUCKALEW. Certainly; go on.

Mr. BOWMAN. Is not the gentleman aware that there was an act passed in 1860, compelling every person, interested or concerned in offering a bribe or receiving one, to testify in the case?

Mr. BUCKALEW. I think not. It may be, sir, that there is such a statute. But I want a constitutional provision which cannot be tampered with for a considerable time.

Mr. Chairman, another consideration, which has already been referred to by the gentleman from Dauphin (Mr. MacVeagh.) If in any court of this Commonwealth a witness comes forward and testifies to valuable matter in behalf of the government, testifies frankly and manfully, the district attorney and the court will see to it that he is not punished afterward. I do not think there is anything like severity to be apprehended in our courts of justice. Perhaps modern times are rather too lenient to criminals. Any witness that conducts himself properly, speaks the truth frankly, and impresses the prosecuting officer and the court with the conviction that he intends to repent of his former offence, and is not likely to repeat it, and that he is to be an improved member of society, will not be prosecuted or punished.

Mr. BOWMAN. Mr. Chairman: I am in favor of the amendment offered by the gentleman from Columbia, (Mr. Buckalew,) and opposed to this section. But I do not believe that if, when a man is prosecuted, or when a party is accused of having committed an offence, as herein contained, that simply by his going before an investigating committee and testifying that he shall be absolved forever after from all punishment. Why, sir, what would be the effect of that? In my judgment, the effect would be this, that every individual concerned in that particular case of bribery would make a general rush to the witness stand, in order that they might testify in the case, and thereby escape punishment.

Now, the gentleman's amendment is very nearly in the language of the act of 1860, upon the same subject, and also with the act known as the gambling act. Parties concerned in gambling, who may have been directly concerned in setting up an establishment of gambling, maybe compelled to testify, but how far are they absolved from punishment? Only that the evidence they have given in a particular case shall not be used against them. That is all, and that is as far as it ought to go. Not that they shall escape punishment, but that their evidence shall not be used against them. If you can show them to

have been guilty of the offense, by other evidence, it would be competent to convict them. They are liable to prosecution and conviction.

Now, Mr. Chairman, for the purpose of getting this matter squarely before the committee of the whole, I propose to read those sections to which I have referred. You will find them in Purdon's Digest, page 330.

"If any person shall, directly or indirectly, or by means of and through any artful and dishonest device whatever, give or offer to give any money, goods or other present or reward, or give or make any promise, contract or agreement for the payment, delivery or alienation of any money, goods or other bribe, in order to obtain or influence the vote"—(I wish to call the attention of gentlemen particularly to this)—"opinion, verdict, award, judgment, decree or behavior of any member of the General Assembly, or any officer of this Commonwealth, judge, juror, justice, referee or arbitrator."

The next section is this:

"No witness shall be excused from testifying in any criminal proceeding, or in any investigation or inquiry before either branch of the General Assembly, or any committee thereof, touching his knowledge of the aforesaid crimes, under any pretense or allegation whatsoever; but the evidence so given, or the facts divulged by him, shall not be used against him in any prosecution under this act: *Provided*, That the accused shall not be convicted on the testimony of an accomplice unless the same be corroborated by other evidence or the circumstances of the case."

And the gambling act is precisely the same. Now, how is this?

Now, what have we here? "The Legislature, at its first session after the adoption of this Constitution, shall provide by law to compel any person who may have offered or promised a bribe, or solicited or received one, to testify against any person who may have committed the offense or bribery, as defined in the foregoing section, and the person so compelled to testify shall be exempt from punishment for the offense concerning which he is so required to testify, and of which he may be guilty."

No risk does a person run in that case whatever, provided he can get upon the witness stand. Now, Mr. Chairman, I am decidedly opposed to this section as it stands, and am in favor of the amendment of the gentleman from Columbia, (Mr. Buckalew,) for I believe it is in accordance with the several acts of Assembly already passed upon this question, and there is no reason in the wide world why a man should be absolved from punishment, either by direct expulsion from the House or the Senate, or from any future prosecution, and as the gentleman from Dauphin (Mr. MacVeagh) has said, he may be steeped deep and stained all over in this crime, and if he can get upon the witness stand no punishment will overtake him.

Mr. J. W. F. WHITE. Mr. Chairman: I move to amend, by striking out the words, "testimony of such," which were inserted in the fifth line, before the word "person," and inserting the words, "evidence given and the facts divulged by the person so compelled to testify."

Mr. BUCKALEW. Mr. Chairman: I understand the first part of that to make no change, simply being a substitution of the word "evidence" for the word "testimony," which, of course, in this case, are synonymous. The latter part of it is that the fact divulged by him shall not be used. Now, if I understand the member from Allegheny, (Mr. J. W. F. White,) you will not permit any fact to which the witness has been examined to be ever afterwards proved, although it may have been sworn to by twenty others. The exemption will depend, then, entirely upon the character and force of his examination as a witness. If he happens to be examined upon facts alone, and no other witnesses examined upon them, as a matter of course, under either amendment, the testimony can be given in evidence against him; but if he happens to be examined in reference to a fact not material, although it may be established by twenty other witnesses, then that fact cannot be given in evidence.

Mr. J. W. F. WHITE. Mr. Chairman: The amendment that I have proposed to the amendment is in the precise words of the present act of Assembly, the act of 1860. I do not know what judicial construction, if any, has been placed upon those words, but I trust that, if that act of Assembly of 1860 has been as unavailing as the gentleman from Columbia (Mr. Buckalew) says, because he speaks of all time past having failed to convict persons of bribery, I trust we will not now, while trying to reform and get at a better means of securing evidence out of witnesses, throw around them less protection than

we did by the act of Assembly of 1860. It would be legislating backward, and in place of giving additional facilities for getting testimony we make it more difficult to get at. I merely propose to add the words of the present statute on the subject.

The amendment of Mr. J. W. F. White was not agreed to, there being, on a division, twenty-five, not a majority of the quorum, voting in the affirmative.

The CHAIRMAN. The question is upon the amendment of the gentleman from Columbia (Mr. Buckalew.)

The amendment was agreed to, there being, upon a division, forty-one in the affirmative, and twenty-two in the negative.

Mr. DODD. I offer an amendment, as a substitute for the section.

The CLERK read:

"Any person who may have offered or promised a bribe, or solicited or received one, may be compelled to testify in any judicial proceeding against any person who may have committed the offense of bribery, as defined in the forgoing section; and the testimony of such witness shall be used against him in any judicial proceeding, and any person convicted of the offense of bribery, as hereinbefore defined, shall, as part of the punishment, thereafter be disqualified from holding any office or position of honor, trust or profit in this Commonwealth."

Mr. DODD. Mr. Chairman: It will be seen that this is simply a change in form. I have preserved exactly the amendments which we have adopted. I have preserved the language of the gentleman from Columbia (Mr. Buckalew) exactly, but have stricken out this language in the first two lines: "The Legislature, at its first session after the adoption of this Constitution, shall provide by law to compel." I consider it utterly unnecessary to call upon the Legislature to pass a provision which we can just as well pass ourselves. If we are going to make it a constitutional provision, let us declare it here, as a principle, and not depend upon the Legislature to pass a law which shall declare it as a principle. I do not like that language in any part of our Constitution. I do not believe in calling upon the Legislature to pass laws. Suppose they do not do it? What power is there in the State to do it? It is simply a change in this particular, and I think the language of my amendment is much better.

The amendment was agreed to.

The question recurring upon the section as amended, it was agreed to, there being, upon a division, fifty-one in the affirmative, and eleven in the negative.

The CHAIRMAN. The next section will be read.

The CLERK read:

SECTION 39. Nothing in the foregoing section shall affect the validity of any existing statutes in relation to the offense of bribery.

Mr. BUCKALEW. Mr. Chairman: I hope that will be voted down. There will necessarily be in the schedule a general clause relating to all existing statutes.

The section was rejected.

Mr. DODD. Mr. Chairman: I offer a new section, to come in at this place.

The CLERK read:

"The Legislature shall have no power to pass retrospective laws, but may, by general laws, authorize courts to carry into affect, upon such terms as shall be just and equitable, the manifest intention of parties and officers, by curing omissions, defects and errors in instruments and proceedings arising out of a want of conformity with the laws of the State."

Mr. DODD. Mr. Chairman: Gentlemen who have upon their tables the Constitutions, by turning to the Constitution of the State of Ohio, upon the article of legislation, will find there the section which I have offered here, and I desire to say a few words upon the subject, believing it, as I do, of vital importance. I offered some arguments to a member of the Committee on Declaration of Rights, in favor of adding thereto an article preventing the passage of retrospective laws. While examining the subject I came across this provision in the Constitution of the State of Ohio, and in this form it belongs to the Committee on Legislation.

I suppose that committee has not examined this particular subject, but I ask your attention for a few moments to the matter. The federal Constitution, as well as the Constitution of our own State, prohibits the passage of *ex post facto* laws: but an *ex post facto* law has been defined by the courts to be one only which inflicts a penalty or a punishment. A retrospective law is really an *ex post facto* law in the largest meaning of that term—a law passed after the fact.

It has been defined to be a law which gives a different legal effect to some previous transaction than it had under the law when it took place. The mere state-

ment of what a retrospective law is shows that it must be unjust and dangerous. I cannot be punished for an act which I commit to-day, which is innocent in the eyes of the law, by an act which shall be passed to-morrow creating it a crime. Such injustice as that would be revolting to every feeling of our nature. Why, then, if I hold a perfectly legal title to my property to-day, shall an act be passed to-morrow, or a year hence, which shall relate back to this time and give a different effect to some transaction upon which my title depends, which shall take my property from me and vest it in another.

One who has not examined this subject may ask, how can this be done? Is it not divesting vested rights? Most certainly it is. There cannot be a retrospective law, in my opinion, which does not divest vested rights. They simply take one man's property and give it to another. Yet the Supreme Court of this State have held such laws constitutional, but to a very limited extent. I admit, and if it had not declared unconstitutional a large portion of the retrospective acts which have been passed, the injustice of them would have been remedied long ago. In the case of Heister *vs.* Wade, 2 Smith, 474, I find a statement by Judge Sharswood, of the extent to which retrospective laws are still permitted. His language is as follows:

"The Legislature cannot take one man's property and give it to another, but may enforce imperfect obligations, such as rendering effective imperfect acknowledgements of deeds by married women, curing defects in legal proceedings, validating pending suits, modifying an existing remedy, and authorizing an action where none existed before."

Let me illustrate my views on this subject by the least objectionable of the laws here referred to, the curing of defective acknowledgments of deeds by married women. A married woman makes a deed; the acknowledgment does not state that she was examined separately and apart from her husband, or that the contents of the instrument were made known to her. The Legislature some years afterwards, or some days afterwards, passes an act validating that particular acknowledgment; and although at the time that deed was made the property did not pass from the married woman, although, by the protection thrown around her by the law, the property still remained hers; yet a law passed after the fact takes the property from her and vests it in the grantee, on the ground that there was an an imperfect obligation on her part to convey.

Now, I ask, are these provisions of the law, in relation to acknowledgments by married women, mere matters of form, or of substance? If of form merely, why not repeal the law? Why keep such provisions in the law for the mere purpose of entrapping the unwary, if they are of no service and not intended for use? But if they are matters of substance, what obligation, perfect or imperfect, rests upon a married woman who was not examined, separate and apart from her husband, and was ignorant of the contents of the deed, to afterwards make a perfect conveyance of her land? If the provisions of the law are meant for her protection, let them be enforced in all cases or in none. And yet such acknowledgements have been made valid by retrospective laws in many instances. There was one case, which you will find reported in Miller *vs.* Watson, 1 Watts, 330, where the heirs of a married woman brought suit against the grantee, recovered the land, and remained in possession of it for seventeen years, and then the Legislature passed an act validating the acknowledgement, under which act the grantee brought suit against the heirs and recovered. Talk about the evils of special legislation! After all that we have put into this article to abate such evils, we have left untouched the greatest of all, and still permit the Legislature to pass special *ex post facto* laws, setting aside the operation of general laws as regards particular transactions, in violation of the well known principle that laws should be general, uniform and universal.

But suppose, sir, that in the case that I have referred to, the married woman was really examined, separate and apart from her husband, and that the contents of the deed were actually made known to her, but the acknowledgment fails to set forth that fact, should there be no remedy then? Most certainly. That is an error or omission in the acknowledgment, the law having actually been complied with. Now, who should have the power to remedy such errors, the Legislature or the judiciary? If the power is left in the Legislature its action will be arbitrary and *ex parte*.

It cannot call witnesses and cannot examine facts; that is the province of a court.

It is a judicial proceeding. All the parties in interest should have notice. The witnesses should be summoned; the facts should be established clearly, whether there has been a mere error or omission in the acknowledgment, or a failure to comply with the law; and if the former, then, upon hearing of all the parties, and upon judicial investigation of the facts, the error should be corrected. And that is what the section I have offered contemplates, to take this arbitrary power from the Legislature, and vest it where it belongs, in the courts. This is not vesting in the courts legislative power, because it is not a Legislative power at all. That body should never have exercised it. It is a judicial power.

We all know that "mistake" is one of the regular heads of equity jurisdiction. If I intend to convey property and make some mistake in my description, or in any part of the conveyance, the court of equity, on full hearing, in presence of all the parties interested, will correct the error. Why should not they correct an error in the acknowldgment of a married woman, or a treasurer, or sheriff, upon hearing of all the parties, and upon clear proof of the facts. What I ask is that we put this matter where it properly belongs—into the hands of the courts, and that we take this dangerous power to pass special *ex post facto* laws out of the hands of the Legislature. It has been exercised in a dangerous, arbitrary and unjust manner, and our reports are full of cases where the courts have interfered to prevent the divesting of vested rights by such retrospective acts.

A law is a rule of future conduct, not an interference with vested rights or past transactions: and to allow the Legislature such power is unjust and dangerous.

A law, also, should be permanent, uniform and universal. It is not so much meant to secure justice, in any one particular instance, or in successive particular instances, as it is a general rule, which shall secure justice as nearly as possible, in every case. Rogues may take advantage of the fixed rule of law to entrap the unwary. Persons may be deceived by ignorance of the law, but these evils are far less than to allow an arbitrary power in the Legislature to cure any supposed injustice of this kind, by acts passed afterwards, referring back to such transactions.

As a conclusion to these remarks, I desire to read a few extracts from decisions, in which some of our ablest jurists have expressed their opinion, upon the subject of retrospective legislation.

Says Justice Patterson, of the United States Supreme Court, in Calder *vs.* Bull, 3 Dallas, 397: "I had an ardent desire to have extended the provision in the Constitution (prohibiting *ex post facto* laws) to retrospective laws in general. There is neither policy nor safety in such laws, and therefore I have always had a strong aversion against them. They neither accord with sound legislation nor the fundamental principles of the social compact."

Judge Gibson, in the case of Greenough *vs.* Greenough, 1 Jones, 495, says: "All *ex post facto* laws are arbitrary; and it is to be regretted that the constitutional prohibition of them has been restricted to laws for penalties and punishments. In a moral or political aspect an invasion of the right of property is as unjust as an invasion of the rights of personal security. But retroactive legislation began and has continued, because the judiciary has thought itself too weak to withstand the antagonism of the Legislature."

Chancellor Kent uses this language: "It is a principle in the English law, as ancient as the law itself, that a statute, even of its omnipotent Parliament, is not to have a retrospective effect. It was a principle of the civil law, '*nemo potest mutare concilium suum in alterius injuriam.*' No one could reflect on interference with private rights and pending suits without disgust and indignation."—Dash *vs.* Van Kleek, 7 Johns. Rep., 477.

Judge Sharswood says, in Taylor *vs.* Mitchell, 7 Smith, 212: "Retrospective laws generally, if not universally, work injustice."

And says Judge Strong, in Journeay *vs.* Gibson, 6 Smith, 58: "It must be admitted they often produce harsh results. Much as we may disapprove of such legislation, and unjust as it is, it is operative."

Mr. Chairman, I feel if we were to allow this report of the Committee on Legislation to pass by without inserting a provision of this kind, we would leave in the hands of the Legislature a far more dangerous weapon than we have yet removed from it. I think if the members of this committee will examine this matter they will be satisfied, with me, that it is necessary to take this power from the Legislature, and allow the courts to correct the errors and omissions of this kind wherev-

er the facts are regularly and judicially investigated.

Mr. BIDDLE. Mr. Chairman: I merely rise to say a very few words in expressing my hearty concurrence with the gentleman who has preceded me (Mr. Dodd) in regard to this section. Some of us are familiar with the class of cases in which is involved the subject which has occupied the attention, not only of our own Supreme Court, but that of the Supreme Court of the United States. I refer specially to the great case in which titles to land in the North-eastern part of the State was involved. Judge Duncan dissented from the opinion of the majority of the court in that case, taking the ground which this section proposes to take. In a recent decision in our own Supreme Court, Grim *vs.* Weissenburg School District, 7 Smith, 433, Judge Sharswood remarked, that had that question come up at the present time there is very little doubt that the opinion of the dissenting judge would have been the opinion of the majority of the court. The evils of this kind of legislation have been so well depicted by the gentleman from Venango (Mr. Dodd) as to render any further remarks upon it unnecessary. I therefore trust, even if gentlemen have doubts upon this subject, they will forego them at present, and let this section be reported as part of this article, and be further discussed upon its second reading. I consider it a most valuable addition to the labors of the Committee on Legislation, and I hope it will receive the sanction of the committee of the whole.

Mr. SIMPSON. Mr. Chairman: I do not often disagree with my friend who has just taken his seat, (Mr. Biddle,) but I am not prepared to vote in favor of this section at this time. While I admit that retroactive acts of the Legislature have worked injurious results, still there are classes of cases where, if the power of the Legislature had not been invoked in this particular, great injustice would be done. I will instance a single case. A man living in the interior of the State, holding a piece of property, placed it in the market and sold it, and an ignorant man became the purchaser of it. The vendor was a justice of the peace. He drew the deed himself, and acknowledged it before himself. His wife signed the deed, and he certified that she, before him, as justice of the peace, in the absence of her husband, acknowledged the deed. The purchaser took possession of the property, and some years after the vendor and his wife both died some party entered a claim against the property. Would it have been just to have dispossessed the purchaser? Would it have been right, and how could the difficulty have been obviated? They were rights, and would have vested but for the power of the Legislature, by passing a retroactive act, which vested the title where it belonged, and where it remained. That is a single case which comes to my mind. I could probably instance others if I had time to think of them.

Mr. CRAIG. Mr. Chairman: This subject was forcibly brought to my attention during my practice years ago. I was strongly impressed with the injustice often occasioned by retroactive legislation. In the year 1870 an effort was made in the Legislature to obtain what is sometimes called a validating law, as to the record of deeds made to bar estates tail. The original statute made it of the essence of the proceedings that a deed made for such purpose should be recorded within six months in the recorder's office. I happened to be on the Judiciary Committee and succeeded in defeating the proposed legislation, and in obtaining, instead thereof, a law placing the record of such deeds in the recorder's office on the same footing as the record of private deeds, and so the law on that subject remains to-day. The evil usually arises by the passage of a retroactive or validating law, intending it to cover a particular case, as to which it may be all right. But it is found, after a while, to cover a multitude of cases in which it does great injustice. Every case of this kind should stand upon its own merits.

I believe that the position of the courts now upon the subject of retroactive laws is that they will, in no case, give a retroactive operation to any law, unless they are compelled by the force of the language to do so. There are certainly cases where a retroactive operation ought to be given; and especially where there are errors to be corrected a power should be vested somewhere to do so, and I know of no tribunal where it could be more safely vested than the courts. I have in my mind now a state of facts that came under my own observation. It was a case involving the title to about two hundred and forty acres of land in Butler county, made by a married woman, her husband not joining, soon after the law of 1848, under the terms of which many persons

then supposed that a married woman could make a separate conveyance of her property. The title stands in that way to-day, and the purchaser believes it to be a good one; but the day will come when the heirs of the vendor will dispute the title to that land, and it will be found that the title is defective. There is certainly some need of correction there. The deed was made in good faith, the property was bought in good faith and the purchase money all paid.

I will, therefore, favor the proposition of the gentleman from Venango, (Mr. Dodd,) as I deem it an exceedingly important question.

Mr. MINOR. Mr. Chairman: The section now offered is taken from the Constitution of Ohio, and while the principle announced is correct, we ought to be very careful as to the form of its statement. I know that, under such a section, the Supreme Court of Ohio have made several important decisions. I know that in passing upon a certain deed, for the purpose of curing a defective acknowledgement under such a section, it made a certain decision, which stood for several years, and was then reversed as one that was unauthorized under this clause of the Constitution. The decisions in that State have been quite various upon this point, and the judges have differed as to how far the Legislature may go in correcting mistakes in the acknowledgments of deeds. I think that this section might now be adopted, and after an examination has been made of the decisions which have been rendered, the language can then be modified upon second reading, and we will thus avoid the difficulties that the courts of Ohio have fallen into under it, and whereby for a time they were brought into confusion worse confounded. I cannot at this moment turn to the decisions referred to, but I remember them. I, therefore, say the principle is right, that there should be power vested somewhere, but the mode in which it should be expressed I think should not be copied from other statutes without great care. I am in favor of the principle of the amendment offered, and when the article comes up on second reading, the section can be placed in a more acceptable form.

The CHAIRMAN. The question is upon the amendment proposed by the gentleman from Venango (Mr. Dodd.)

The question being taken, the amendment was agreed to.

Mr. MANN. Mr. Chairman: I offer the following, as a new section:

"No license shall be granted to sell vinous, spirituous or malt liquor, or an admixture thereof, or any other intoxicating drinks; and any sale of such liquors, except for mechanical, medicinal and sacramental purposes, shall be a misdeameanor."

The CHAIRMAN. The Chair will state that it will be perfectly competent for the gentleman from Potter (Mr. Mann) to offer a new section after the sections as proposed by the committee have been disposed of.

Mr. MANN. With that understanding I will withdraw it.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 40. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the House of which he is a member, and shall not have the right to vote thereon.

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

"Every member who may have, or expect to have, any personal or private interest in any measure or bill which shall be proposed or pending before the Legislature, or who may be, for any purpose or to any extent, the agent or attorney of any person, corporation or association, then having, or which he may then anticipate will have, any such interest therein, shall disclose that fact to the House of which he may be a member, and shall not speak or vote upon such measure or bill, or upon any proposition or question affecting the same."

Mr. DALLAS. Mr. Chairman: The chief difficulty in the section, as reported, is that there is no means provided for its enforcement. I have not, however, by the amendment I have offered, attempted to remedy that difficulty, trusting that the Committee on Constitutional Sanction, from whom much is hoped, may be able to supply this deficiency. But the section should, I think, be amennded, in view of the fact that in the consideration of the thirty-sixth section we excluded from that section all which would, in effect, have made ineligible to a seat in either house an attorney or agent of any person or corporation having a special interest in legislation. Having cut that out, in that place, it would, in my judgment, be well to include in this present

section a provision that a member who has a personal of private interest in any bill or measure before the Legislature, shall not have the right to vote or speak on such questien. I have embodied this thought in this substitute to the section, which I have just offered, and I have added to the word "vote," the words, "or speak." And in addition to prohibiting voting or speaking upon any measure or bill proposed by a member having an interest therein, I have added that he shall not vote or speak "upon any proposition or question" affecting such bill or measure.

Mr. CORBETT. I hope that proposition, as broad as it is, will not pass. If the gentleman who offers it will confine it to the subject matter of legislation before the Legislature, I should vote for it. But I certainly will not vote for it in the shape in which it has been presented, because it would prevent, in its broad sense, an agent or an attorney, although in a collateral matter altogether, from voting or speaking in favor of any legislation that his client might be interested in.

Mr. COCHRAN. Mr. Chairman: The gentleman from Philadelphia anticipated me in the amendment which he has offered; but I had one prepared which is probably not quite as stringent as his, and I do not know which would be the more acceptable to the committee. The proposition which I had prepared, and which I cannot now offer, I will read in the hearing of the members, so that they can see if it is preferable to that of the gentleman from Philadelphia (Mr. Dallas.)

"A member who has a personal or private interest, or who shall, after his election, become the attorney, agent or employee of any private corporation, company or individual, who shall have a special or private interest in any measure or bill proposed or pending before the Legislature, shall disclose the fact to the House of which he is a member, and shall not have the right to vote thereon."

It will be observed that this proposition of mine does not go to the full extent of the proposition of the gentleman from the city. It applies simply to those who become the agent, or attorney, or employee of a company after their election to the Legislature, which, as I once before stated this morning, furnishes a very strong implication that there was a special object in obtaining that relation at the particular time in which it was constituted.

Mr. DALLAS. Mr. Chairman: If the gentleman will excuse the interruption, I simply desire to say that if he will move an amendment to my amendment, making it apply only to agents and attorneys receiving appointments after election, I wil accept that amendment, in the hope of securing the acceptance of the proposition in the modified shape, though I prefer it as I have written it.

Mr. COCHRAN. I will offer the proposition that I have just read.

Mr. DALLAS. That I cannot accept, because, in several particulars, I do not like it as well as my own.

Mr. COCHRAN. Mr. Chairman: I cannot offer an amendment to the amendment of the gentleman from Philadelphia, because his amendment is in the nature of a substitute. Nor can I make this proposition of mine fit into the wording of his amendment, as it now stands; and besides, I think that his amendment is rather too strong. Therefore I will have to wait until action is taken upon his proposition, when I, perhaps, can offer my amendment.

Mr. ANDREW REED. Mr. Chairman: I move to amend the amendment, by striking out the words "speak or."

I cannot see a good reason why a person who is an agent or attorney of any corporation, or any other person, after he gets on the floor of the Legislature and discloses that he is such an agent or that he has such an interest, should be prevented from speaking upon a bill. I think he is the proper one to speak upon it. He may be more able to give the light that ought to be given to the Legislature than, perhaps, any other member acquainted with the subject. He has not a right to vote upon it, and that, I think, is proper, but why not let him show to the Legislature the reasons why the bill in question should pass? Are we afraid that his eloquence will be so powerful that it will overcome the sense of right and justice of the Legislature? I think that he, above all others, is the one who is most capable of explaining what the bill means, and that he should give his reasons why it should pass. That is the reason why I am in favor of that amendment.

Mr. BUCKALEW. Mr. Chairman: I suppose the gentleman from Philadelphia, (Mr. Dallas,) in the substitute which he has offered, intended to mean *private* corporations. The terms of his amendment are general, and it would apply to cities, towns or boroughs.

Mr. DALLAS. Mr. Chairman: I will so modify my amendment, and insert the word "private" before "corporation."

Mr. WHERRY, Mr. Chairman: I ask that the substitute be read as amended.

The CLERK read as follows:

"Every member who may have, or expect to have, any personal or private interest in any measure or bill which shall be proposed or pending before the Legislature, or who may be, for any purpose or to any extent, the agent or attorney of any person, private corporation or association then having, or which he may then anticipate will have, any such interest therein, shall disclose that fact to the House of which he may be a member, and shall not vote upon such measure or bill, or upon any proposition or question affecting the same."

The CHAIRMAN. The question is on the amendment to the amendment, to strike out the words, "speak or."

The amendment to the amendment was rejected.

Mr. WHERRY. Mr. Chairman: I am able to suppose that this is all right, but I confess I can not see it. It seems to me that this is an iron rule which we are about to incorporate into the Constitution. I can easily understand why a member of the Legislature, of whom it was known that some corporation with which he was connected, or which he represented, was directly interested in some operation which would take money from the public treasury, might not be permitted to vote. But why an individual, who represents an interest in his community that may be an incorporated interest, shall not have a right to speak and vote upon any measure of a public character presented to the Legislature, is beyond my comprehension. I tell you, Mr. Chairman, it is idle, it is perfectly idle, to attempt to set any citizen, and especially a representative citizen, apart from the community in which he lives. There are no intelligent men in the Commonwealth of Pennsylvania who do not have some kind of corporate interests to be affected by legislation. Is this section intended to fill up your Legislature with blockheads and fossilized fogies? If it is not, then I do not know what it means. If that is not the design of it, I do not understand it.

Mr. COCHRAN. Mr. Chairman: If the gentleman from Cumberland will allow me, I wish to say, by way of explanation, that so far as the amendment which I have read is concerned, it only prevents them from voting in the particular case where they are interested.

Mr. WHERRY. Mr. Chairman: That may be right enough, but that is not the question before the committee of the whole, and I am speaking to the amendment before the House. I take it that a member of the Legislature is not a delegate in any sense of the word. I deny that he is a delegate. He is something much more than that; he is a representative. He is a representative as distinguished from a delegate. He does not go into the Legislature to represent one corporation nor ten corporations, one individual nor ten individuals. He goes into represent them one and all, each and every one of them, and you are bound, if you adhere to the principles of our government, to give him a hearing and a vote upon every proposition.

Now, I protest against this tying the hands and sealing the mouths of, not delegates, for they are not delegates; if they were, it would be right and just—but sealing the mouths and tying the hands of representatives! What is a representative government; what is a representative body?

It is a microcosm of the community. The Legislature of the State, if it be a just representation, is as true and as certain a picture of the community of the State, as the photograph which you hold up before your eye is a picture of the object which it represents just that true and that certain and that faithful a likeness. Now, then, if you are going to take a wheel out of that miniature organism; if you are going to say to any single cog upon any wheel of that organism; that it shall not do its work, you destroy the true function of the whole body, and make its action irregular, and impossible to be measured or counted.

I protest against this proceeding. We have gone just as far as we dare to go in these clogs upon the Legislature, and I tell you, Mr. Chairman, we will find, I fear, that when we have done our work in this Convention, and it is sanctioned by the people, that we have destroyed its most vital interests. I believe in personal power, and I believe in personal development, as distinct from corporate development, but we have not yet reached that condition of wealth, of intelligence, and of personal power in this Commonwealth, that we dare thus to set our foot upon all these corporate privileges and rights.

Mr. LILLY. Mr. Chairman: It appears to me that this section ought to be voted down. I do not think that any good can arise from it. When a constituency elect a man to represent them in the Legislature, I fully agree with the gentleman from Cumberland (Mr. Wherry) that we have no right in our fundamental law to tie his hands nor seal his mouth on any subject that may be brought to the consideration of that body. The people understand their necessities in this particular, and theirs is the power to supply them. They understand probably all about the man they choose to represent them before they elect him. They know his interests, his connections and the corporate powers, if any, whom he represents. If he is a lawyer, they know who are his clients, and if he is attorney of any controlling corporation interest that fact is public, and the people consider it in their judgment upon the fitness of the representative selected by them. That being the case, the responsibility is lodged with the people.

We seem to be forgetting here that there is any such thing as the people, with whom rights are inherent. We seem to be forgetting that the representatives become a body of the people, delegated by them to exercise the functions of government. Cannot the people be trusted to choose their own representatives in their own way, without a constitutional interdiction upon the votes and voices of their representatives? I believe that all the honesty is not gone from the people, nor do I believe that their choice of representatives to make their laws falls only upon rascals. Nay, more, I believe that a man who is a representative of this or that corporation which may have interests in pending legislation, is just as capable of exercising his duty, as a representative, to his constituents and to the Commonwealth, as is anybody else. If he has got an interest, even, in a measure before the Legislature, I cannot see why he should not be heard. If his constituents have an interest there, and he has an interest in acting with his constituents, of course he is heard. I have heard no good reason whatever, on this floor for either the section or the amendment, and I hope they will be voted down.

The question being on the amendment of Mr. Dallas, it was rejected.

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

The CLERK read:

"A member who has a personal or private interest, or who shall, after his election, become the attorney, agent or employee of any private corporation, company or individual, who shall have a special or private interest in any measure or bill proposed or pending before the Legislature, shall disclose the fact to the House of which he is a member, and shall not have the right to vote thereon."

Mr. COCHRAN. Mr. Chairman: The amendment which I have proposed here is modified from the proposition of the gentleman from Philadelphia, (Mr. Dallas,) and it does seem to me that nothing can be more clear than that it is wrong and improper, in any public representative body, for an individual to vote on a question in which he has a direct personal interest, or a professional or other interest. The argument which the gentleman from Carbon (Mr. Lilly) presented a few moments ago, taken in its length and bredth and whole force, would be an argument against putting any limitation or restriction upon the Legislature whatever, and all the work that we have been doing here for the last week or more might as well have been spared, for it is a waste of time if his argument is correct. The amendment which I present is a simple proposition that no man who has a personal interest himself, or who shall, after his election, become the agent, representative or attorney of any party who has a personal interest in any measure pending before the Legislature, shall vote on that question. I do not care how much he speaks if he is a member. Let him talk. If he can convince anybody by his argument, or by legitimate reasoning, let him do it; but when it comes to the question of voting—the substantial matter in the case—let him on that point be silent, and let those who are in no way interested in the matter decide that question. Let those who are disinterested have the final decision in the case, and determine what the legislation shall be on that particular subject. It seems to me that the proposition is reasonable, and therefore I shall not discuss it further.

The question being upon the amendmend of Mr. Cochran, a division was called for, and resulted, in the affirmative, thirty-five; in the negative, thirty-five.

So the amendment was rejected.

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

The CLERK read:

"Nor shall any person be a member of the Legislature who shall be at the same time the agent or attorney of any private corporation, or person, or company, that shall be personally interested, or expects to be so interested, in any legislation: *Provided however*, That this provision shall not apply to an attorney or agent employed only a special case or cases, but to such as are the regularly employed agents or attorneys; and in case, during the session of the Legislature, it shall appear that the principal of such agent or attorney will become specially interested in legislation, such agent or attorney shall not be permitted to speak or vote upon such legislation, or to have a seat upon the floor of either House during the deliberations upon and pendancy of such legislation."

Mr. CUYLER. Mr. Chairman: I suppose that I have arrived at that period of life at which I will not be suspected of an ambition to go to the Legislature, and therefore may not be suspected of being actuated by any interested motives in opposing any such section, but I do say, on general grounds of propriety, that I suppose any gentleman who is elected to the Legislature—particularly if we succeed in reforming the constitution of that body as we propose to do—will have sufficient sense of propriety not to vote upon any measure in which he is specially interested. But the doctrine that underlies the provision is a false doctrine all the way through. Elsewhere, in other countries, great corporations are especially represented, and it is thought to be a wise thing in legislation that it should be so. The British universities send their direct representatives to Parliament. The city of London has her own especial representatives there, and so has every great city in the country. The great interests of the country are directly represented on the floor of Parliament. Why? Why, for a very manifest reason. First, because these are material interests of great value, and there ought to be present those who are acquainted with what may affect their interests, so as to explain how they may be affected by the various measures. That is a manifest and palpable reason why they should be represented. You take the great corporations of Pennsylvania—I think I can speak disinterestedly with regard to them. They own hundreds of millions of dollars worth of property in this Commonwealth. Shall that property stand unrepresented there? Why exclude them? I have heard many an argument for applying the freehold restriction to the exercise of the elective franchise. Many good men of the community believe that in that direction is to be found a recipe for many of the ills of which we complain, but here you propose to exclude from all possibility of representation, the largest property holders in your Commonwealth. Why, if there is any force in the doctrine, every man who holds any property, real or personal, ought to be excluded from membership in the Legislature, because the legislation that takes place there may affect his interests, either in real or personal property. The more utterly pauper-like and beggarly you make your legislators, and the less of actual interest they have at stake in the community in which they live, upon the theory of all such propositions, the better fitted are they to become members of the Legislature.

I can see no reason in that doctrine at all. I suppose, as I said before, that if there should be upon the floor of the Legislature those who have the misfortune—for such I regard it for many reasons—to be professionally the representatives of great corporations, that they would have sufficient good sense and delicacy not to vote where the interests to which they were directly related were involved. We might as well prescribe the dress that a member of the Legislature shall wear, the length of his collar and the style of his coat, as to descend to all these particulars of his moral character to which we are now descending. If there is no virtue in the people of the State, no manliness or virtue in the men who are contemplated for public office, let us so state, and dispose of the whole thing at once, but do not let us reduce our legislator to a mere machine that should have no freedom of thought or independence of action as this proposition would do, and do not let us say that our legislators shall not have anything at stake in the prosperity of the committee over which they preside.

Mr. HOWARD. Mr. Chairman: It seems to me that unless we incorporate some such provision as this in the Constitution we shall fail to meet one of the great evils that we know has practically existed in our Legislature, that the people have complained of from one end of the Commonwealth to the other. I am aware, sir, that however the issue may be made, and however carefully it may be approached, I know we have got to meet right here,

upon the floor of this Convention, and we have got to meet it before the people of this Commonwealth, when we come to ask that our work shall be endorsed. We have got to meet the great corporations of this Commonwealth, their agents and their lawyers here, and also upon the stump, and I would just as soon begin the battle now as at any other time. The delegate from Philadelphia (Mr. Cuyler) has referred to the fact that the great public corporations of England are represented upon the floor of the House of Commons. That is all perfectly right. They represent public interests. But, does the Bank of England have a representative there? Have her railroad corporations got any representatives upon the floor of the House of Commons, or have any other of the private corporations of that Kingdom got representatives there? I think not. Indeed, I know they have not. Men who represent the public corporations are interested, of course, in the general welfare. Men who represent private corporations are interested only in grasping and wringing from the public their rights, and appropriating them to themselves, for their own special benefit and profit. If, when they have got these rights and privileges from the public, they use them properly, then it is well. But there is an impression abroad in this State that they have not in every instance used the rights and privileges that have been bestowed upon them by the people always for the public benefit, but that they have used these great powers against the people; and, Mr. Chairman, it has come to be believed that these great corporations have been annually represented at Harrisburg by persons who have not been able to discover that it is a very indelicate and very improper thing for a man to be the regular yearly employed lawyer of some great corporation that is interested at every session in legislation, and yet they are there to buttonhole, and talk, and use all the influence possible, in order to get further legislation from the people of their Commonwealth for the advancemrnt of their especial and particular corporations.

Mr. WHERRY. Mr. Chairman: I would like to ask the gentleman a question. Is there anything wrong in a corporation being represented in the Legislature?

Mr. HOWARD. There is, if it is a private corporation—a job for the benefit of a few individuals. If it is a public institution it would be different.

Mr. WHERRY. An agricultural association is as much a private corporation as is a railroad.

Mr. HOWARD. There is not a man in this Commonwealth, if he had a case involving a five dollar bill, and a jury were to be called and he found among them the agent of his adversary, the attorney or the employee, that he would not instantly challenge him, and say that his interests or his prejudices were such that he should not sit upon a jury to try that matter of five dollars. He would challenge him at once.

Mr. ELLIS. Mr. Chairman: Will the gentleman permit me to ask him a question?

Mr. HOWARD. Yes, sir.

Mr. ELLIS, Does the gentleman believe that there should be taxation without representation?

Mr. HOWARD. No, sir. I believe that there should be representation where there is taxation. But what right have I, if I do pay taxes, to have my special representative upon the floor of the Legislature in matters where I am personally and specially interested? They have a right to be generally represented. The corporations of this Commonwealth have been chartered, and are to be treated fairly and treated like other people, but I say that it is not right, and it is against public policy for them to have their regular agents and their regular lawyers there as members. I do not object to a lawyer simply because he has been employed in a single case or in a dozen cases, so long as he is only employed occasionally. But I do object where they are the regular counsel, employed year in and year out. Their feelings become so wound up and involved in the interests of their principals that they cannot do justice in the general legislation of the State.

However nice it may be, sir, in theory to talk about how disinterested and patriotic men can act, and how fairly they can represent everybody, yet, sir, it is but a few days ago, upon this floor, that we had a gentleman representing—though he disclaimed to represent, a corporation; he undertook the defence of one of the corporations of this State on a subject on which I heard a reply, and I thought that that reply showed that that gentleman was not a fair representative of that question. I allude to the manner in which the public works of this State were first surrounded, then crippled and deprived of their means of earning money; then

put up at auction and bought by one of the corporations of this Commonwealth; and yet, upon this floor, that corporation was defended as the picture of honesty, of justice and of right; and not only was that corporation defended, but the gentleman went so far as to charge that the agents of the public works were themselves the agents for corrupting and defiling the management and operation of these works and the politics of the State.

Mr. CUYLER. I would like to ask the gentleman a question.

Mr. HOWARD. Very well, sir.

Mr. CUYLER. Are there any circumstances that justify repudiation?

Mr. HOWARD. No, sir. You alluded to that before, and I thank you, sir, for recurring to it again, and I say that any man upon this floor who can slander a great people like the people of Allegheny county is capable of defending any wrong or monstrosity whatever. Do you understand, sir, the difference between repudiation and resistance in a court of justice to a claim, upon the ground that you believe it is not a lawful claim against you?

Mr. CUYLER. I beg the gentleman's pardon. I do not understand how, morally, a negotiable instrument which has passed into the hands of a third party can be refused to be paid on any such ground as he states.

Mr. HOWARD. I ask the gentleman (Mr. Cuyler) whether he understands the difference between repudiation and resisting a claim on the ground of illegality or fraud?

Mr. BIDDLE. Mr. Chairman. I arise to a point of order. I submit that that is not the question before the House, and ought not to be brought into this discussion. I do not think it is proper at all.

The CHAIRMAN. It is not for the Chair to define with any precision what shall be the line of argument that may be used as a matter of illustration, but the Chair would suggest that the gentleman confine himself as closely as may be to the general subject.

Mr. BIDDLE. I did not refer so much, sir, to the gentleman from Allegheny (Mr. Howard) as to the gentleman from Philadelphia (Mr. Cuyler.)

Mr. HOWARD. I have heard that slander before—I have heard it frequently. The people of Allegheny county, sir, believed, honestly and truly and earnestly, that their county commissioners were never elected with the right or power to saddle millions of dollars upon the taxpayers, to build railroads or any other improvement of that character, to be controlled by private corporations, and they resisted that payment as long as they could resist it in the courts. They fought it, and when the claimants got their decision they got it by a divided court, showing that at least a respectable minority of the judges thought that the people were right in resisting. But, sir, if payment is repudiation, I do not understand the meaning of terms. The people of Allegheny county are regularly, every year, assessing taxes to discharge that debt. They are paying it annually as they are called upon to pay it, and according to the terms of the contract made in the final settlement of that controversy. There is no repudiation about it. It is a slander, mean and contemptible, in any man that will utter it here or anywhere else, and it is well worthy of a railroad lawyer upon this floor. That gentleman, upon all occasions, disclaims the special interest that he represents, and yet every speech he makes, either by attack or defense, shows precisely where his heart lies in the controversies that have arisen. Mr. Chairman, if there is an evil to which the people of this Commonwealth have had their attention steadily directed for the last twenty-five years, it is the scandal, the public, the notorious scandal, that the lawyers of private corporations are at Harrisburg upon the floor working for the passage of laws for their regular employers. We shall fail, sir, in the discharge of our duty to the people of this Commonwealth unless we stop this thing. While we would have supposed that a sense of what was right and proper in itself would have prevented men from occupying those double relations, we know by experience that it has not done it, and therefore I am in favor of making the test right here, whether we will put into this Constitution some provision that will enable them to see that they have no business there, and I have drawn that provision so as to meet the objection of members who desire to see these men excluded. This would exclude no man who was employed in special cases to defend or to be the counsel of a railroad. I have said it would not apply to such a man, but we ought to exclude the regular employees of corporations, and it seems to me that, guarded in this manner, it should receive the endorsement of the Convention.

Mr. ELLIS. Mr. Chairman: Fearing the effect of the very impressive elo-

quence the gentleman has favored the Convention with, and fearing that we might possibly do hastily what we should do slowly and carefully, I would move that the committee do now rise, report progress and ask leave to sit again.

It was not agreed to.

Mr. DUNNING. Mr. Chairman: I feel, in common with many other gentlemen, anxious that none but good and wise provisions should be put into our new Constisution for the people of the Commonwealth, and that future legislation shall be so protected, or that the people shall be so protected against improper action on the part of any future Legislature, that I am willing to vote for any proposition that comes properly and fairly before this Convention that has that object in view. I am not here, sir, as an apologist for the corporations of this Commonwealth, or any of them, or for any improper acts that they may have committed. Neither, sir, am I to stand here and condemn, without measure or stint, the corporations of this Commonwealth. I believe that there is no legislation that has ever taken place for the benefit of any class of persons or for the benefit of the Commonwealth, that has tended more to develop the greatness and grandeur of this Commonwealth than the legislation that has been given to corporations. That there are great corporations in this Commonwealth that, perhaps, may have overstepped the line that was expected to be filled out by the parties granting them the privileges which they have, I am not going to deny, but, sir, because this may have been true, are we, by wholesale denunciations, to oppose everything in connection with the incorporations of this Commonwealth? The greatness, the grandeur and the glory of this Commonwealth, in a great measure, depend upon the legislation, or rather is the *result* of the legislation, that has been given to incorporated capital to develop the resources of the State. That has made the State the great State that it is.

Why, sir, we have only to look out over the Commonwealth and see what it has accomplished, to be satisfied of this fact. When we look and see that this State is connected with every other State of the Union by organized capital; when we see the great factories and foundries that have been the result of organized capital; when we see the thousand flames that leap from the iron works and tell, in language unmistakable, of the greatness and grandeur of this Commonwaelth, and the result of organized capital, are we to stand here and condemn them without any regard to what may be the rights of individuals, or of this organized capital? I think not, sir; and do we, as a Convention, intend to introduce into this organic law such a principle as will make it almost impossible to determine who can be a member of our future Legislature? Why, sir, if it should be my misfortune, (I should almost regard it as a misfortune if my constituents should so highly honor me as to allow me a seat in the Legislature again as a representative from my county,) I should feel that under the legislation that is proposed here, that I would require at least one Philadelphia lawyer to be by my side constantly, to tell me what my rights were, and protect me against the provisions that are proposed to be adopted, for fear I should be convicted of brbery. I hope we shall act intelligently upon this question. I hope we shall present to the people of the State of Pennsylvania such measures as will commend themselves to our constituents, and upon which they may be enabled to vote intelligently.

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Allegheny (Mr. Howard.)

The question being taken a division was called, and the amendment was not agreed to, a majority of a quorum having voted in the negative.

The question then recurring on the fortieth section, a division was called, which resulted as follows: Ayes, forty-six; noes, twenty-four.

So the section was agreed to.

Mr. MANN. Mr. Chairman: I now renew the motion I made, to offer an additional section to the report of the committee, which will be found upon page 375 of the Journal.

The CHAIRMAN. The section offered by the gentleman will be read.

The CLERK read as follows:

"No license shall be granted to sell vinous, spirituous or malt liquors, or an admixture thereof, or any other intoxicating drinks; and any sale of such liquors, except for mechanical, medicinal and sacramental purposes, shall be a misdemeanor."

Mr. JOHN M. BAILEY. Mr. Chairman: It seems evident that the discussion of this question cannot be completed to-day. I move therefore that the committee rise and report progress.

The question being taken, a division was called, which resulted as follows: Ayes, thirty-three; noes, forty.

So the motion was not agreed to.

Mr. MANN. Mr. Chairman: This section which I have offered will be found on page 375 of the Journal. It was not printed along with the report of the committee on account of a recommendation the committee made, that it should be submitted to a separate vote of the people; and the President of the Convention ruled that that recommendation took it away from the balance of the report, so it is not printed in connection with the article submitted by the committee. But this section, which I now move to adopt, was agreed upon in committee and reported by the chairman, and although I make this motion now, in the absence of the chairman of the committee, I do not make it upon my own individual suggestion. It is the deliberate action of the committee of which I was a member. I admit it is the proposition which I submitted to the committee for consideration, but it became as much a part of their report as any section that they have passed upon, and, Mr. Chairman, I hold it to be as important as any section which the committee of the whole has had under consideration.

It is certain the people of this Commonwealth think it quite as important as any other section. More petitions have been presented asking for the adoption of this section, or some section of a similar character, than for anything else, or for all the other purposes which have been asked for by the people, and I believe that there is more interest throughout the Commonwealth, raised now in the passage of this section, or some similar one, than for anything else we are likely to adopt. It is a subject that has engaged the attention of more people, and will receive a more hearty and enthusiastic endorsement than anything else we shall do. Upon many subjects which we have passed upon there is a great diversity of opinion among even good men as to the wisdom of our action, and there will be a like diversity of opinion after we have closed our labors, among good men, as to the propriety of what we shall have accomplished; but upon this question I believe, there is no diversity in the opinion of good men of this Commonwealth as to the necessity of a provision of this kind. I do not say that the precise language of the report of the committee will meet the approval of all interested in this subject, but what I do say, there will be more unanimity in endorsing our action, on the part of good men and women of this Commonwealth, upon this section, than upon any other which shall be presented for their consideration. I do not know that this is a consideration that ought to commend itself to the committee in the adoption of this report, yet I think it ought to have some effect. I believe that the adoption of this section will bring to the support of the Constitution, which we shall submit, great additional strength, and that it will call out in its support, and engage the attention of a class of people who will not be brought out in support of any other provision. This much as to the reason, necessity and propriety of giving this subject a candid and deliberate attention. Now, a few words as to the merits of this proposition. I think, from the interest which it has received, and which has manifested itself throughout the Commonwealth, there can be no doubt of the advisability of submitting it to the people of the State. I repeat but a trite saying when I allege that it is within the knowledge of every intelligent delegate upon this floor, that this section proposes to strike at an evil of greater magnitude than all the others we have been discussing. I do not say that this section furnishes a remedy for this evil, but I do say that it aims to furnish a remedy, and if I shall have time I will give some reasons in support of my belief that it will furnish a remedy, to some extent, for the evils of intemperance.

I believe I would be speaking within the bounds of truth, if I alleged that the evils sought to be remedied are greater than all the evils we have been discussing; that it is the source of a large share of the corruption, which we have been discussing, in legislative bodies, and that without the use of stimulants and intoxicating drinks, which are brought to bear upon members of Congress and members of the Legislature, no such corruption could get into these bodies as we have been deploring and attempting to remedy. I assert that the use of intoxicating drinks is at the bottom and is the source of a large proportion of this corruption. We have been manifesting great anxiety that we should furnish a remedy for the demoralization which is going on in the legislative bodies. That remedy will be found more certainly in banishing from the use of members intoxicating drinks,

than in all the other provision which we can provide.

In the little experience which I have had myself in legislative bodies, I have known a number of the brightest and most influential minds entirely to lose their usefulness and public worth by the use of intoxicating drinks. Hence they not only lost their influence in those bodies, but were altogether demoralized, and were not only useless but were a hindrance and were the means of bringing about bad legislation, if not corruption. I have known individuals in the Legislature at Harrisburg, in earnest sympathy with all the good movements of the day, in favor of honest legislation, opposed to all corrupt influences, opposed to all demoralizing influences that are brought to bear upon the Legislature, and their first step downward was to enter the saloon or parlor where intoxicating drinks were furnished and become addicted to them, and have fastened upon them an appetite which they could not control, and their complete demoralization soon followed. I have no doubt every individual who has ever been in such legislative bodies can refer to numerous instances of the same kind. And it is not only there, it is everywhere, that it is the first step downward in the path of every promising young man who loses his integrity and position, And, mind you, Mr. Chairman, this influence spares neither the high nor the low. It is just as apt to seize upon the most prominent and most amiable young man, with all the good qualities of human nature in him, as any other, and, I believe, a little more so. It is the generous, whole-souled man that is more liable to this temptation, and more in danger of being ruined by it than the more cautious and less susceptible; and the social influences that are brought to bear upon him are almost irresistible.

Mr. WRIGHT. Mr. Chairman: Will the gentleman from Potter yield to a motion that the committee rise?

Mr. MANN. Certainly.

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

This was agreed to.

The committee rose and the President resumed his chair.

IN CONVENTION.

Mr. ARMSTRONG, chairman of the committee of the whole, reported that the committee had further considered the report of the Committee on Legislation, and had instructed him to report progress, with a request that the committee be allowed to sit again.

On the question, shall the committee of the whole have leave to sit again, it was determined in the affirmative.

On the question, when shall the committee of the whole have leave to sit, to-morrow was named and agreed upon.

Mr. BROOMALL. Mr. President: I move the Convention do now adjourn.

This was agreed to, and at two o'clock and fifty-five minutes, P. M., the Convention adjourned until to-morrow at ten o'clock A. M.

SEVENTY-SECOND DAY.

FRIDAY, *March* 21, 1873.

The Convention met at ten o'clock A.M.

Prayer was offered by Rev. Mr. Curry.

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

RELIGIOUS AMENDMENT TO THE CONSTITUTION.

The PRESIDENT presented a petition, signed by John Alexander, Robert B. Sterling and others, dated March 20, 1873, requesting the use of the hall of the Constitutional Convention for the purpose of a public meeting, to afford an opportunity to the advocates of a religious amendment to present their views and to urge that a clause be inserted in the Constitution, recognizing Almighty God and the christian religion as the foundation of the State.

Mr. D. N. WHITE. Mr. President: I move that the hall be granted for the purpose requested.

It was agreed to.

Mr. CLARK presented the petition of two hundred and sixty-six citizens of Indiana, Westmoreland county, praying that an amendment may be made to the Constitution, recognizing Almighty God; also the petition of citizens of Schuylkill county, of a like import; also the petition of citizens of Philadelphia city, of a like import.

All of which were referred to the Committee on Declaration of Rights.

Mr. ARMSTRONG presented a similar petition from citizens of Clinton county, which was referred to the Committee on Declaration of Rights.

Mr. M'MURRAY presented three petitions of citizens of Pennsylvania, of like import, which were referred to the Committee on Declaration of Rights.

PROHIBITION.

Mr. CLARK presented the petition of citizens of Indiana county, praying an amendment to the Constitution, prohibiting the manufacture and sale of intoxicating liquors, which was laid on the table.

Mr. MACCONNELL presented a petition of citizens of Jefferson county, of like import, which was laid on the table.

LEGISLATIVE REVISOR.

Mr. ALRICKS offered the following resolution, which was referred to the Committee on the Judiciary.

Resolved, That the Committee on the Judiciary inquire into the expediency of providing for the appointment of a competent person, whose duty it shall be to examine all bills that have passed third reading, and if the language of the act is not plain and so clear that the will of the law maker can be readily understood, or if technical words are so used as to create ambiguity and lead to future litigation; in either event requiring said revisor to report the objections to the phraseology of the bill to the House in which it originated for correction, before the bill is presented to the Governor for his signature.

LIMITATION OF DEBATE.

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

Resolved, That when this Convention to-day resolve itself into committee of the whole upon the report of the Committe on Legislation, a vote shall be taken upon the pending section within two hours from the time the committee resumes its sitting.

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

HOURS OF SESSION.

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

Resolved, That from and after Monday next, the Convention will hold two sessions daily, the first to begin at ten A. M. and end at one P. M., the second to begin at three P. M. and end at six P. M.

The question being, shall the Convention proceed to the second reading and consideration of the resolution, it was not agreed to.

LIMITATION OF DEBATE.

Mr. T. H. B. PATTERSON offered the following resolution, which was read:

Resolved, That the committee of the whole, on the article on legislation, be instructed to proceed to a final vote on li-

cense section now under consideration, within one hour after the Convention goes into committee of the whole to-day.

The question being, shall the Convention proceed to the second reading and consideration of the resolution, it was not agreed to.

SPEAKING TO THE QUESTION.

Mr. S. A. PURVIANCE offered the following resolution, which was read :

Resolved, That the chairman of the committee of the whole be authorized and required to call any member to order who, in the judgment of the Chair, may not be speaking to the point or question before the Convention.

The PRESIDENT. The Chair would observe that this resolution seems to be wholly unnecessary. The chairman of the committee of the whole has now that authority. Perhaps it would be as well if that resolution were withdrawn.

Mr. S. A. PURVIANCE. Mr. President: It may be true that the chairman of the committee of the whole may have that power, but it is found that it is not exercised; at least that has been our past experience.

Mr. DARLINGTON. Mr. President: Must it not lie over one day under the rules?

The question being upon the motion of Mr. S. A. Purviance, it was not agreed to.

A PRIVILEGED QUESTION.

Mr. HOWARD. Mr. President: I rise to a question of privilege. I see in the *Public Ledger* of this morning the following:

"Mr. HOWARD moved to amend the next section, by adding a provision that no attorney, agent or employee of any private corporation should be a member of the Legislature. Not agreed to."

I did not offer any such provision as that. No doubt the *Ledger* means to publish statements that are correct and fair, but they have undertaken to abridge a proposition that I offered, and have wholly destroyed the idea that I intended by that amendment. The amendment is in the hands of the Clerk, and if they wish to see it they can ascertain what it is. But *this* certainly is not what I offered.

LEGISLATION.

Mr. D. N. WHITE. Mr. President: I move that the Convention now resolve itself into committee of the whole, on the article reported by the Committee on Legislation.

It was agreed to.

IN COMMITTEE OF THE WHOLE.

The Convention then resolved itself into a committee of the whole, Mr. Armstrong in the chair, for the further consideration of the report of the Committee on Legislation.

The CHAIRMAN. The question pending before the committee is the motion of the gentleman from Potter, (Mr. Mann,) to add a new section at the end of the article. Upon this motion the gentleman from Potter (Mr. Mann) has the floor. The section will be read.

The CLERK read:

"No license shall be granted to sell vinous, spirituous or malt liquors, or any admixture thereof, or any other intoxicating drinks; and any sale of such liquors, except for mechanical, medicinal or sacramental purposes, shall be a misdemeanor."

Mr. MANN. Mr. Chairman: I give way to a motion to be made by the gentleman from Fayette (Mr. Kaine.)

Mr. KAINE. Mr. Chairman: I move to re-consider the vote by which the twenty-fourth section was adopted.

The CHAIRMAN. How did the gentleman vote?

Mr. KAINE. I voted in the affirmative.

Mr. WHERRY. Mr. Chairman: I second the motion; I voted in the affirmative, also.

Mr. HAY. Mr. Chairman: I would ask whether it is in order to do this while we are considering another section?

The CHAIRMAN. It would not be in order if the gentleman from Potter (Mr. Mann) had not given way.

Mr. HAY. But I understand the section is not withdrawn from consideration; yet we are going to re-consider another section.

The CHAIRMAN. The point of order is well taken, if it is insisted upon.

Mr. HAY. I can see no reason why the amendment should not be withdrawn, in order to allow the re-consideration.

Mr. DARLINGTON. The gentleman from Potter (Mr. Mann) might withdraw his amendment for the purpose.

The CHAIRMAN. It is under consideration, and unless by unanimous consent it be withdrawn, the point of order will be sustained. [After a pause.] The gentleman from Potter (Mr. Mann) will proceed.

Mr. MANN. Mr. Chairman: I desire again to call the attention of gentlemen to the fact that this section, as now proposed to be adopted, is identical with the recommendation of the report of the Com-

mittee on Legislation, and that committee reported that this section be submitted to a separate vote of the people of the Commonwealth; and, so far as I know, the friends of this proposition expect, and are willing, that this section shall take that course. I want to make this additional remark, that it is in the power, under the rules as we have now adopted them, of any forty-five delegates to require it to take that course; but for myself and those friends with whom I am acting, so far as I know, we expect to agree with other gentlemen, and have it take that course without exception or objection. That was the course recommended by the committee, and being a member of the committee, I propose to be governed by it. With this preliminary statement, I will now offer a few additional reasons why I think this section ought to be so submitted to the people.

When the committee rose, yesterday, I was speaking of the magnitude of the evil, or evils, which the friends of this proposition expect to remove, in part, by its adoption. I do not propose to discuss these evils in their higher form. In the few remarks I have to make this morning, I propose to confine myself to the lowest view of that question. There are other gentlemen on this floor who will discuss the moral phase of the question, and who will point out the moral evils, the degradation and misery caused by intemperance. I will, myself, simply look at it in its lowest aspect, as it bears on the business of the community, and of the evils that it brings upon us in that respect.

And, first, I ask you just to take a glance at the loss of property, at the vast amount of accidents in all departments of business, which the excessive use of intoxicating drinks occasions. You cannot name a single business interest—there is not one industry carried on within this Commonwealth, that the excessive use of intoxicating drinks does not seriously injure. It is constantly occasioning loss of property and loss of life. Fires, railroad accidents, and all the accidents with which the community are affected in their interests, are greatly increased by the excessive use of intoxicating drinks. Losses at sea, destruction of life and property upon the ocean, are very largely increased by it. There is no intelligent gentleman who would entrust his family in a carriage, upon a simple dirt road, with a driver who was partly intoxicated. It would be unsafe for such a man to take charge of a family upon the plainest and broadest road in the Commonwealth; much less would a gentleman trust himself or family upon a railroad train with an intoxicated engineer, or upon a vessel with a captain who was addicted to the use of intoxicating liquor to a great degree. He certainly would not, if he were aware of it. Accidents to life and property at sea are largely attributed to the use of intoxicating drinks. I had a little experience of that kind myself, and very serious I deemed it at the time. It may not seem very serious to some, but I considered it very serious, indeed; I refer to it simply because it is one of thousands.

In the fall of 1838, when I was a mere boy, I had occasion to make a trip from this city to Galveston, in Texas. While upon the Gulf of Mexico, the vessel in which I took passage was met, as many others are, by one of those tropical storms that come up suddenly, without any warning, and it was so severe that the cargo had to be thrown overboard in order to save the vessel, and the captain and mates thought it even required that the mast be cut away. The storm increasing, the captain and his men came to the conclusion that there was no possibility of saving the vessel, and when he cut away the mast he went to the cabin to drown his danger in the intoxicating bowl, and he and every sailor upon the vessel became intoxicated. The vessel was left to the mercy of the waves and the care of the passengers, none of whom had had any kind of experience in navigation. One of them, however, was plucky and energetic, and calling the other passengers about him, said: "The only possible chance of taking the vessel into harbor is for one of us to take command of it, and I propose to do it myself." He knew nothing whatever of navigation; but he threw out the anchors, and by some good chance they held the vessel. A very serious leak was soon sprung, however, and for four days and nights the captain and every seaman on that schooner lay drunk in the cabin and in their berths, and the passengers kept the vessel afloat by superhuman exertions in bailing with buckets, the pumps having entirely given out. At the end of the fourth day the captain, finding himself still alive, I suppose, sobered up and came on deck, and said, with an oath, "I will stop this leak," and in fifteen minutes he did so, and the vessel was floating on the water as easily as any vessel ever did. He got his sailors about him, fixed up a

new rigging, and finally took the vessel into the harbor of Galveston, the place for which it had started. But it was owing entirely to the energy and efforts of a passenger upon that vessel that the passengers and sailors ever came to the shore. If the vessel had gone down in that storm, nobody would have ever heard of it. It would have been simply a vessel wrecked at sea, and it would have been said that it was an act of Providence, or something of that kind, when it would have gone down in consequence of the excessive use of intoxicating drinks, unmanning its commander and the sailors. I know these accidents are occurring continually. I *know* the vessel in question came very near being sunk in consequence of the use of intoxicating drinks, and I *believe* that very many others sink in consequence of it. But I do not propose to dwell on that point. If gentlemen will give their attention to it for a single moment, they will know that it is the fact, and I believe that there is no use in discussing any of the evils now connected with the excessive use of intoxicating drinks, for every intelligent man is aware of them. It is conceded. It is never denied.

It is conceded, also, that this is a great cause of pauperism and crime. I propose to call attention to another calamity to which human nature is subjected by this malign agency, that is of insanity. I maintain that the excessive use of intoxicating drinks is the great cause of insanity, as well as of pauperism and crime.

In this connection I refer to the testimony of the superintendent of the western hospital of Pennsylvania. Five years ago, when that gentleman was before the Committee of Ways and Means of the Pennsylvania Legislature, asking for an extra appropriation for the enlargement of the facilities of that hospital for maintaining patients, alleging that there was a considerable increase of insane people in western Pennsylvania, and that the necessity for increasing the ability to take care of them was therefore great, and asking for an increase of appropriation, several members of the committee made many inquiries of this gentleman as to this increase of insanity, and as so many questions were being put to him, I thought information as to the cause of insanity was quite as important as any sought for, so I asked him: "What, in your opinion, is the cause of this increase of insanity, that you refer to?" He said: "I have no doubt, whatever, that its great cause is the excitement produced by the use of intoxicating drinks."

Mr. WHERRY. Mr. Chairman: Will the gentleman pardon me for asking a question? Has he ever seen the French statistics on the subject with reference to tobacco, in which it is fixed to a demonstration that tobacco is five times as much a cause of insanity as intoxicating liquor?

Mr. MANN. I concede that the excessive use of tobacco is a cause of insanity. After this interview with the superintendent of the western hospital I wrote to Mr. Curwin, the superintendent of the hospital at Harrisburg, who has had the care of the insane all his active life, and he made the same statement, that any unnatural, exciting cause would lead to insanity, and he cited tobacco and intoxicating drinks as among the causes, but he put the use of intoxicating drinks first, not as the French statistics make it, second to tobacco. About the use of tobacco I am not saying anything. That is not the question before us. But I say that the testimony of these two gentlemen bear directly on this point, that the use of intoxicating drinks does lead to insanity, and I refer again to Dr. Howe, of Boston, chairman of the board of public charities of Massachusetts, who has been chairman of that body for years; and in his second published annual report of the statistics of that board he cites the use of intoxicating drinks as a great cause of insanity.

Now, I will not take up time by reading his evidence. It is still the same concurrent testimony, and I do not believe that any gentleman will doubt, after reading his evidence, that the use of intoxicating drinks is a great cause of insanity. I may add that the superintendent of the western hospital said that the insanity induced by drunkenness was more apt to fall upon the offspring of a man than upon himself, but that it was an inciting cause of insanity.

Now, sir, take it in its lowest phase. It is proved by men having charge of the subject in Pennsylvania, that the excessive use of intoxicating drinks is the exciting cause of insanity. It is, therefore, the duty of wise statesmen to see if they cannot remove the cause of this calamity. We have already three insane hospitals, and it has been stated upon this floor that there is an imperative necessity for a fourth. Now, we paid out of the State Treasury, as is shown by the Auditor General's reports on your tables, to these

three hospitals, $224,000; and, mark you, that sum will never be decreased unless the statesmen of Pennsylvania will contrive some way to decrease the cause of insanity. If that is not done then, in all probability, this sum will go on annually increasing. $224,000! And that does not include a dollar toward the maintenance of the patients of these hospitals. It is simply to maintain the buildings in which these patients are taken care of and to pay for the officers in charge of them. It costs $224,000 a year now, and this is the lowest phase which you can give to this subject —the cost of it in dollars and cents. What it costs in the anguish and the suffering of the friends of those people, I will not undertake to dwell upon——

(Here the hammer fell.)

Mr. ALRICKS. Mr. Chairman: I move unanimous consent be given the gentleman from Potter to continue.

Mr. LILLY. I object.

Mr. D. N. WHITE. Mr. Chairman: I offer the following substitute:

"The manufacture and sale of alcoholic liquors, whether fermented, brewed or distilled, or any admixture, part of which is alcoholic, and adapted to be used as a beverage, is prohibited.

"The manufacture and sale of such liquors for exportation, for medicinal, sacramental, mechanical or artistic purposes, by agents specially provided for by law, are excepted.

"The Legislature shall, within one year from the adoption of the Constitution, enact laws with adequate penalties for the enforcement of this provision."

Mr. Chairman, in offering the amendment now before the committee, it is not in any spirit of antagonism to the gentleman from Potter (Mr. Mann.) He and I have before to-day stood shoulder to shoulder in bitter warfare against this hydra-headed evil. We are both aiming at the same grand end, the overthrow of the empire of alcohol. His proposition, which was adopted by the Committee on Legislation, is a good one, but it has some defects which I think that the amendment I have had the honor to offer, remedies. His proposition prohibits license, and makes the sale of intoxicating liquors, except for mechanical and medicinal purposes, a misdemeanor.

The proposition now before the committee prohibits both the manufacture and sale of intoxicating liquors, or admixtures thereof, for use as a beverage; but excepts the manufacture and sale of such liquors for exportation, or artistic, medicinal, mechanical or sacramental purposes, by agents specially provided for by law; and it further provides, that the Legislature shall, within one year, pass adequate laws to enforce this constitutional provision.

The whole force of the proposition is aimed at the use of intoxicating liquors as a beverage, and only interferes with the manufacture and sale of such liquors when designed for a legitimate purpose, so far as to prevent a perversion of them to improper purposes. It will not prevent those who are now engaged in the business of manufacturing and selling of such liquors from selling for export to another State, or to foreign countries, or for mechanical, artistic and medicinal purposes. It will only prevent the sale as a beverage. It will cut up by the roots the dram shop, the gorgeous saloon, the hotel bar, where drunkards are made, where families are ruined, where death and hell hold high carnival, while justice whets her sword, and mercy looks on and shudders and weeps.

It is understood, Mr. Chairman, that whatever proposition is agreed to by the Convention shall be submitted to the vote of the people as a separate, independent proposition. The temperance men of this Convention stand pledged to this arrangement. We desire no other. We would not, if we could, place any proposition of this character in the Constitution, to stand or fall with the whole instrument. We have no desire to endanger the Constitution by inserting a proposition which would array against it the pecuniary interests and excited passions of those who are engaged in the business of liquor selling, nor, on the other hand, do we wish to expose this important question to the hazzards of defeat, by compelling it to stand or fall with the main document itself. Both would be weakened by such union, while both may succeed while standing alone. All we ask is, that the people of Pennsylvania, as a whole, shall be permitted to give their opinion, to express their will, on a subject which so nearly concerns their happiness. I believe they want this proposition, or some similar one, in the Constitution, and that if they are permitted to vote on it unembarrassed by any other question of religion or politics, that they will endorse the strongest proposition you can give them. Other gentlemen honestly differ with me in opinion, and say the people will repudi-

ate such doctrine. If they think so, they will have no objection to give the people a chance to decide, and they will furthermore have no objection to a good and strong proposition. The stronger the better for those opposed to it, because it will all the more likely be voted down. The stronger the better, say the opponents of the liquor traffic, because it will be of more value if we succeed. I had rather risk the loss of the prohibitory cause now, and wait for a brighter day, than to give the people something which would be of no practical use. I wish to meet the question fairly, boldly, and take the risk.

Thus we seem to be both agreed, the enemies and friends of prohibition, in this, that we both want a strong proposition; you who are opposed to prohibition because you believe it will be more easily voted down by the people, and I, because I would rather take that risk than to give them a weak one. Now, why cannot we unanimously vote for the proposition before us, and let it go to the people and stand or fall as they shall decide, and thus settle the question for long years to come? If the committee is ready to take the vote now, without further debate, I am willing to yield the floor for that purpose, with the understanding that if the proposition is adopted, that it shall be submitted as a separate proposition. But if gentlemen are not ready, and desire to debate the question for and against, I must ask the indulgence of the committee while I present some further remarks for their consideration.

It is not necessary to take up the time of the committee in picturing the evils which flow from the traffic of intoxicating drinks. The intelligent gentlemen who compose this Convention know and deplore these evils. Whose is the family which has not its skeleton, originating in this accursed traffic? How few there are who have not felt the iron entering their own souls through the baneful influence of the passion for strong drink upon some dear friend, who has been ruined physically, mentally and morally. Miserable wrecks of humanity meet us on the streets everywhere, are seen even in the sanctity of our homes, the pitiable victims of our shocking social customs, and of a traffic licensed by a christian State. Who can deny the vast pecuniary loss entailed upon society? I suppose there is not a man here but will admit that the people of this city would be as happy, and as healthy, and as moral, if not a drop of intoxicating liquor was drank in all its borders for one year from this time. How much would such abstinence save in money value to this great community? I have made some calculations, and I estimate the actual saving in money value alone at fifty millions of dollars—enough to pay the city debt. Fifty millions of dollars squandered on one vice to gratify a depraved appetite, in one city, in one year.

But I must not take up my time in depicting the evils and losses connected with this nefarious traffic. I could spend a week in enumerating them, and then have hardly made a beginning. The assertion is often made, and is repeated with apparent gusto by men who seem to have a satanic delight in uttering it, that all efforts to restrict the sale and use of intoxicating drinks are futile, and Maine, the great prohibitory law State, has been pointed to as giving proof of the assertion. More liquor, it is said, is now sold and drank than before the law was enacted, some twenty years ago. If this were true, it would not be an argument against further efforts in the same direction to overthrow so gigantic an evil. But it is not true, and to prove this assertion I present the following statements, all of recent date, which I find, compiled to my hand, in a late address to the citizens of Lancaster county. The testimony from Maine, instead of being disheartening, is indeed most gratifying and encouraging. I can only give a few brief extracts from her official, public men and citizens occupying, or who have occupied, official stations of such character as to place them among "chief citizens." The present Governor, Hon. Sidney Perham, who has been three times in succession re-elected, says, in reply to inquiries from Gen. Neal Dow:

"I think it safe to say that it (the liquor trade) is very much less than before the enactment of the law, probably not one-tenth as large. In some places liquor is sold secretly, in violation of the law, as many other offenses are committed against the statutes, and the peace and good order of society; but in large districts of the State the liquor traffic is nearly or quite unknown, where formerly it was carried on like any other trade."

Hon. William P. Frye, M. C., of Maine, and ex-Attorney General, says, under date of Washington, D. C., May 29, 1872: "I can and do, from my own personal observation, unhesitatingly affirm that the con-

sumption of intoxicating liquors in Maine is not to-day one-fourth so great as it was twenty years ago; that in the country portions of the State the sale and use have almost entirely ceased; that the law of itself, under a vigorous enforcement of its provisions, has created a temperance sentiment which is marvelous, and to which opposition is powerless. In my opinion, our remarkable temperance reform of to-day is the legitimate child of the law."

To the statements of Mr. Frye, J. G. Blaine, (the present Speaker of the United States House of Representatives,) John A. Peters, Eugene Hall, John Lynch—all of the members of Congress of Maine, and Lot M. Morrill, and H. Hamlin, ex-Vice-President of the United States, and Senators from Maine, concur in writing.

Mr. Hamlin says: "In the great good produced by the prohibitory liquor law of Maine, no man can doubt, who has seen its results. It has been of immense value."

Mayor Benj. Kingsbury, and four ex-mayors of Portland, Maine, under date of May 28, 1872, say: "Many persons, with the best means of judging, believe that the liquor trade now is not one-tenth as large as it was formerly. We do not know but such an opinion is correct, but we content ourselves with saying that the diminution of the trade is very great, and the favorable effects of the policy of prohibition are manifest to the most casual observer."

M. D. Lane, judge of the Supreme Court, with the city treasurer and city clerk of Portland, and the register of Cumberland county, say: "We are of the decided opinion that the liquor trade is not one-tenth of what it was prior to the adoption of the Maine law."

J. J. Caruthers, D. D., pastor of the Second Congregational church, with eleven of the pastors of the most prominent churches in Portland, say, May 31, 1872: "We say, without hesitation, that the trade in intoxicating liquors has been greatly reduced by it (the Maine law.) If the trade exists at all, here, it is carried on with secrecy and caution, as other unlawful practices are. All our people must agree that the benefits of this state of things are obvious and very great."

Under date of May 30, 1872, J. S. Wheelright, mayor of Bangor, the capital of Maine, with ex-Mayor A. G. Wakefield, the city clerk, two aldermen, recorder, judge of probate, professor in the theological seminary and collector of internal revenue, say: "The records of our police court show only about one-fifth the number of cases before it. For a portion of the year, the *weekly* number of commitments to the station is about the same as the *daily* last year. No resident of our State can have any doubt that the liquor traffic has been greatly repressed and reduced."

Wolcott Hamlin, supervisor of internal revenue, says, May 31, 1872: "I have become thoroughly acquainted with the state and extent of the liquor traffic in Maine, and I have no hesitation in saying that the beer trade is not more than one per cent. of what I remember it to have been, and the trade in distilled liquors is not more than ten per cent. of what it was formerly. Where liquor is sold at all, it is done secretly, through fear of the law."

Daniel Elliott, of Brunswick, Maine, the seat of Bowdoin college, June 3, 1872, says: "The Maine law is not a failure, but, on the contrary, a complete success. Scarce the least evidence of strong drink in town."

Joshua L. Chamberlain, late Governor of Maine, and now president of Bowdoin college, with Geo. C. Crawford, postmaster of Brunswick, Maine, says: "The declaration made by many persons, that the Maine law is inoperative, and that liquors are sold freely and in large quantities in this State, is not true. The liquor traffic has been greatly repressed and diminished here, and throughout the State, and in many places has been entirely swept away. The law is as well executed generally, in the State, as other criminal laws are."

The pastors of the Free Baptist church of Maine, assembled in conference, May 31, 1872, unanimously declared: "That the liquor traffic is very greatly diminished under the repressive power of the Maine law. It cannot be one tithe of what it was formerly; and where it is continued at all, it is with secrecy and caution, as other unlawful practices are. The grog shops are, by law, put in the same category with gambling houses and brothels, and are prohibited because they are at war with the interests of the State and people.

E. G. Harlow, member of the Executive Council of Maine, says, June 4, 1872: "I am thoroughly acquainted with my county, (Oxford,) and do not hestate to say there is not a gallon of liquor sold where there was a barrel before the Maine Law of 1851. At our last term of the Supreme Judicial Court, in March, not a sin-

gle indictment for any crime was found. Our county jail is empty; our work-house greatly reduced, and the improvement wonderful."

Of the same character is the testimony of G. G. Stacy, Secretary of State, B. B. Murray, Adjutant General, Joshua Nye, late State Constable of Maine, and J. J. Eveleth, mayor of Augusta, Maine, also two ex-mayors of Saco, Maine.

The Board of Overseers of the Poor of Portland say, June 4, 1872: "If liquor shops exist at all in this city it is with secrecy and great caution, and the same thing is true generally throughout the State. The favorable effect of this policy is very evident, particularly in the department of pauperism and crime. While the population increases, pauperism and crime diminish, and in the department of police the number of arrests and commitments is very much less than formerly."

But, says an objector, you have no right to prohibit a citizen from manufacturing and selling liquor; it is an indefeasible right which cannot be taken away. Gambling and lotteries were, at one time, openly practiced, and protected by law. Now they are forbidden and punished. Since we met here in Convention several men, calling themselves gentleman, one a member of the city councils, have been convicted of gambling, and sent to the penitentiary. Are not the evils arising from the traffic in alcoholic liquors tenfold worse than the evils arising from gambling? Gamblers do not usually murder anybody but themselves, but the liquor sellers' victim generally murders somebody else; his wife it may be, which has recently occurred in this city, or his innocent child. While we are here discussing this great question, in our neighboring city of New York an unfortunate victim of alcohol is preparing to expiate his awful crime on the gallows, leaving his heart-broken wife and worse than orphaned children to poverty and unutterable disgrace. Is it right to gamble, to steal, to murder? If not, it is not right to manufacture and sell intoxicating liquors as a beverage, for they lead to all these and many other crimes as certainly as foul exhalations arise from the cess-pool and the sewer. Has not society a right to protect itself from these horrible evils? What is our government, what is any government worth which cannot do this, which has not the right to do it? Happily, the question of right has been settled beyond all controversy. Judge M'Lean (Fifth Howard's Reports, 589,) says: "The acknowledged police power of a State extends often to the destruction of property. A *nuisance may be abated; everything* prejudicial to the public health or the morals of a city may be removed; merchandise from a port where contagious diseases prevail, being liable to communicate disease, may be excluded, and in extreme cases may be thrown into the sea."

If this can be done to promote health, how much stronger is the right and the obligation of the State to protect not only the health, but the morals and the lives, of the people.

In the address above quoted from I find a few extracts from the opinions of justices of the United States Supreme Court, bearing on the constitutionality of prohibitory laws, to which I ask careful attention. Judge Grier, of Pennsylvania, gives his opinion in the following clear and forcible words:

"It is not necessary to array the appalling statistics of misery, pauperism and crime, which have their origin in the use and abuse of ardent spirits. The police power, which is exclusively in the States, is alone competent to the correction of these great evils, and all measures of restraint or prohibition, necessary to effect the purpose, are within the scope of that authority. All laws for the restraint or punishment of crime, or the preservation of the public peace, health and morals, are, from their very nature, of primary importance, and lie at the foundation of social existence. They are for the protection of life and liberty, and necessarily compel all law on subjects of secondary importance, which relate only to property, convenience or luxury, to recede when they come in contact or collision, *salus populi suprema lex.* If a loss of revenue should accrue to the United States from a diminished consumption of ardent spirits, she will be the gainer a thousand fold in health, wealth and happiness of the people."—5 *Howard*, 632.

Chief Justice Taney, of Maryland, says: "If any State deems the retail and internal traffic in ardent spirits injurious to its citizens, I see nothing in the Constitution to prevent it from regulating and restraining the traffic, or from prohibiting it altogether."—5 *Howard*, 577.

Justice Catron, of Tennessee, said: "If the State has the power of restraint by license, to any extent, she has the discretionary power to judge of its limits, and

may go the length of prohibiting sales altogether."—5 *Howard*, 611.

Justice M'Lean, of Ohio, said: "A license to sell an article, foreign or domestic, as a merchant or inn-keeper or victualler, is a matter of police and revenue, within the power of the State."—5 *Howard*, 599.

Again: "It is the settled construction of every regulation of commerce that under the sanction of its general laws no person can introduce into a community malignant diseases, or anything which contaminates its morals or endangers its safety. If the article be injurious to the health and morals of the community, a State may, in the exercise of that great and comprehensive police power which lies at the foundation of its prosperity, *prohibit the sale of it.*"—5 *Howard*, 592.

"No one can claim a license to retail spirits as a matter of right."—5 *Howard*, 597.

Mr. Chairman, I must close; I stand in awe when I contemplate the magnitude of the subject under consideration. It is as far reaching as eternity itself. It is as high as heaven; it is a deep as hell.

Pennsylvania stands in the great highway of nations. The orient and the occident are stretching out their hands over our borders. The European and Asian will here meet, and mix and mingle. Oh, that we may present to them our fair State free from the curse of intoxicating drinks. When, in three years from this, all the nations shall be gathering together in this noble city, to celebrate the centennial of our nation's birth, shall it be a saturnalia of drunken debauchery, or the glad acclaim of the brotherhood of nations to the great Lord and Father of all, that we are doubly free—free from foreign foes and the domestic vice of drunkeness. Oh, how humilitating, that a chief justice of this State should disgrace his ermine and the State, by his servile lamentations over the prospect of having nothing better than Schuylkill iced water to offer to the tens of thousands who shall come up from the whole world to this fair city at the approaching anniversary. Let us draw a vail over the pitiable spectacle. Would that it could be blotted out forever.

You and I, Mr. Chairman, and all of this Convention, will come one after another to that supreme moment when all the shams of earth will be weighed in the balance and found wanting. If we give a vote here for the proposition before us, sure am I that the act will bring no sorrow, no remorse then. It may be that we shall have much to regret, on account of wasted opportunities and neglected duties, but if by a vote here we have in any measure dried up the foul sewers of vice, and poverty, and crime, it will give to that hour a sweetness which will be more precious than we can now conceive, when we hear the Master say: "He that giveth a cup of cold water in the name of a disciple shall not lose his reward, and as ye have done it to the least of these victims of the liquor traffic ye have done it unto me."

Mr. CORBETT. Mr. Chairman: I wish to make an inquiry with reference to a parliamentary rule. As this proposition now comes before the Convention in the shape in which it is presented, can we report it and recommend it to be submitted as a separate article, or, if we adopt it, must it be adopted as the other provisions of the report of the Committee on Legislation, as an additional article?

The CHAIRMAN. The Chair will reply that the section, as it is now pending before the committee, stands as part of the article to be submitted to the Convention, and will take its place in precisely the same manner as every other section of the article which the committee may recommend.

Mr. CORBETT. And there can be no condition attached to it that it is to be submitted as a separate article?

The CHAIRMAN. No condition can be appended to it as a section.

Mr. S. A. PURVIANCE. Mr. Chairman: There was a resolution offered by the gentleman from Lancaster (Mr. D. W. Patterson) that after we have passed an amendment, and connected it with an article, we can separate it by a vote of one-third of the Convention, and present it as a separate amendment.

The CHAIRMAN. That will be a question for the Convention. It is not properly pending before the committee, inasmuch as this committee has no right to order any submission of the kind. It is a question for the Convention, and not for the committee.

Mr. BEEBE. Mr. Chairman: I offer the following amendment to the amendment:

Strike out the first two paragraphs, and insert: "The sale of intoxicating liquors, or mixtures thereof containing the same, for use as a beverage, shall hereafter be prohibited. The Legislature shall, within one year after the adoption of this Constitution, enact laws, with adequate pen-

alties, for the enforcement of this provision."

I wish to say that this amendment, as proposed by me, is the substance of a carefully prepared article by an ex-judge of our county, the Hon. John S. M'Calmont, who is president of the bar association there; and it seems to me to be terse and conclusive, and such a provision as will secure the approbation of the majority of the people, and as a police regulation clearly within the scope of law. It differs from the article proposed by the gentleman from Potter, (Mr. Mann,) in that it does not prescribe a penalty as a constitutional provision, but leaves the adequate enforcement thereof to the Legislature, where, I believe, it properly belongs. I am sure, sir, that there is not a friend of the cause in Pennsylvania who will not prefer that this subject should be submitted as a separate article, and I trust the members of this Convention, in their deliberations as to whether they will vote for or against it, will take this into consideration, that no one desires that it shall be made a part of the general Constitution. I trust that they will, also, comprehend that this is a question of vital interest to the masses, interest paramount to any other subject at the present time, except, perhaps, the corruption of legislative bodies, and that a failure on the part of this Convention to adopt some such measure would imperil the safety of the whole Constitution.

I believe, Mr. Chairman, in all matters which we may call matters of experment, where there is any large representation of the body of the people of Pennsylvania opposed thereto, that we should, in each case, for our own protection, or for the protection and safety of the instrument which we are endeavoring to prepare, submit the several questions as separate propositions to the vote of the people. We thereby secure the co-operation of both sides.

I would consider it a trespass upon the time of the Convention to go into any general argument upon the subject of temperance. I apprehend that every gentleman upon the floor has, in his own mind, his position well defined, and that anything that I could say or, perhaps, that any member of the committee could say, would not result in changing the opinion of any one in this respect.

Mr. J. W. F. WHITE. Mr. Chairman: I rise merely to make a suggestion to the committee, and that is that we adopt the section reported by the Committee on Legislation, simply for the purpose of bringing the subject before the Convention on second reading. I apprehend there is not one, or if one, very few of the members of the Convention who are not willing to submit some proposition of this kind as a separate amendment to be voted ubon by the people. I suppose too, sir, there are a very few in the Convention who are not willing to put it into the Constitution absolutely. Although favoring the proposition myself, I should not vote in favor of putting it in absolutely as a section of the Constitution, and I do not know of one member upon the floor who is in favor of it. But if we bring this question before the Convention, and I apprehend that it must pass through the Convention, in some form, in order to enable us to have it submitted as a separate proposition; without discussing the subject, therefore, at this time, which strikes me as premature, without deciding on the merit of these several propositions, I suggest that we adopt the report of the committee without further debate, so as to bring the matter before the Convention on second reading, when it will properly and fairly come up for discussion, and for our selection between all the various propositions that may then be presented. My object, therefore, is to suggest that we take a vote on this subject, without further debate at this time.

Mr. MACVEAGH. Mr. Chairman: This is a very grave question, and goes to the roots of legislative authority. If there is any question that has yet been presented here that ought to receive the fullest light that can be thrown upon it by its advocates, it is this proposition for a constitutional provision upon a subject of this character. I am very sure the Convention will not shirk the duty that is imposed upon it and throw it upon the shoulders of anybody else. It is either right or wrong for us to say that the Legislature shall not authorize the sale of intoxicating drinks.

Mr. J. W. F. WHITE. Will the gentleman permit me to interrupt him for a moment. I think he misapprehends my remarks.

Mr. MACVEAGH. I think the gentleman will see in a moment that I fully understand his position.

Mr. J. W. F. WHITE. I did not mean that we would adopt this provision ultimately without discussion, but that the provision could be discussed upon second reading.

Mr. MACVEAGH. I think the committee of the whole is exactly the proper place to discuss this principle. It is utterly impossible to discuss a principle of this kind on second reading. There are limitations upon debate and rules of order that prevail on second reading which are not favorable to the widest and fullest discussion of so grave a matter as this, and we do not at all get rid of our difficulty by referring it to the people. The statement of the gentleman is utterly incomprehensible to me—that there are many members of this Convention who are unwilling to vote for this proposition directly, and yet there is not one who is unwilling that the people shall vote upon it. I cannot understand any such position. The statement might be accurate if it was admitted that this is a legitimate subject of legislation; but it is upon that very question, as I understand it, that men differ. There are persons who believe it is perfectly right for a majority of the people to say that the minority shall not drink any drink that the majority considers to be intoxicating or injurious, but that there are also gentlemen who do not believe that any majority, however vast or however wise, has any right to invade the domain of private liberty to that extent. They believe that the matter of licenses is a proper subject of the police regulation of society, as is any person who is intoxicated, but not the sober man, either in the manufacture or the use of stimulants. These are radical differences of opinion, and they are not to be removed by a vote of the people. Nor are they to be abolished by any right of suffrage, nor by any form of election.

Everything should be done that can be done properly to diminish this great evil of drunkenness, but whether the right to drink or to abstain is or is not a subject reserved to the individual judgment of a sober man, and over which society, in its organized form and by its legislative action, has no legitimate control, is a very grave question. The men who take different positions upon that question cannot be reconciled by the result of a vote upon it. I trust, therefore, the advocates of this measure will proceed to throw all possible light upon the subject. I will only be too glad to be convinced that it is a legitimate subject for the law-making power; I will listen with great patience to all the arguments gentlemen can adduce, in the hope that I shall hear reasons that will be conclusive to my mind, and that will justify me in an affirmative vote upon this proposition; but unless I hear such reasons I will not submit to the people a question which my judgment tells me they ought not to decide. Indeed, I have never yet been able to persuade myself that good would result to the cause of temperance from a prohibitory law; but in this I may be mistaken, and I am perfectly willing to be convinced.

Mr. J. W. F. WHITE. I desire to interrupt the gentleman for the purpose of asking him whether he will vote to submit any question as a separate proposition to a vote of the people?

Mr. MACVEAGH. I will vote for submitting questions which I believe to be proper for legislative action—questions upon which I believe the Legislature has a right to pass, and which, therefore, you may insert, in legislative phraseology, in your fundamental law.

Mr. BEEBE. Has not the Legislature the power to regulate, authorize and prohibit the sale of intoxicating liquors as a beverage?

Mr. MACVEAGH. Up to this time I have seen nothing to convince me that the Legislature has the right to prohibit the purchase and use of intoxicating liquors by sober men.

Mr. BEEBE. Nor to regulate?

Mr. MACVEAGH. I have no doubt that the Legislature has power to regulate the sale of intoxicating liquors, as of all other articles of merchandise, and I am perfectly willing to listen to all the arguments that can be made in favor of absolute prohibition, but a decided difference of opinion exists upon that subject in this Convention.

Mr. HANNA. I would like to ask the gentleman if he does not know that it is a proper subject for the Legislature to decide, whether license shall be issued or not?

Mr. MACVEAGH. I think the manner of issuing licenses is a proper subject of legislation at present. I do not believe it is a proper subject of legislation to prohibit the use, by sober men, of all kinds of beverages, which a majority of the community may think injurious when used to excess; but upon that question, as I have said, I am open to conviction. I am not only willing, but anxious, to receive all the light that can be thrown upon it, but what I do protest against is, to pass so very grave and important a question to a second reading, and, as an experiment,

to refer it to the votes of the people, because, as I understand it, the very question involved is whether it is a question which the people are at liberty to decide.

Mr. J. W. F. WHITE. I would like to ask the gentleman whether the people have not a right to vote whether there shall be licenses or not. Is it not proper to submit that question to the people to be voted upon, whether there shall be license, or not, and has not the submission of such a question to the votes of the people been recently declared constitutional by the highest tribunal of our State?

Mr. MACVEAGH. Undoubtedly it has been declared constitutional by a majority of a divided court, and in that decision of that question the dissenting opinion of Mr. Justice Sharswood is worthy of very careful and respectful consideration, by every lawyer of the Commonwealth; but that question does not arise here, for we can make it constitutional. All that it is necessary to discuss at this time, in the consideration of this question, is whether it is a legitimate exercise of the law-making power. If I thought it to be so, I would vote for placing it in the Constitution in the same position as its other articles, but I am not yet able to convince myself that it belongs to the category of questions in which majorities have the right to prescribe the action of minorities.

Mr. MANTOR. Mr. Chairman: For the first time in the history of this State have the friends of prohibition and temperance been favored to present their claims to a body of men whose duty it is to alter and amend the organic law of this Commonwealth. I am not aware, in the range of my knowledge, of an instance where a Convention of this kind ever had reported to it a section of this character, by a *committee* of *such importance as the Committee on Legislation.* The committee very *prudently recommend* it should be submitted to the people as a *separate* proposition, and if adopted, to be inserted in the Constitution. This section is now called up, or rather presented, by the honorable gentleman from Potter, (Mr. Mann,) and may we not hope that this or some similar section may be adopted by this Convention. I desire simply to speak of this Committee on Legislation, and give it great credit for what it done in the way of reporting the section as we find it on the Journal, page three hundred and seventy-five; yet it could not be entertained in the manner as first reported by the committee, and therefore the honorable gentleman from Potter (Mr. Mann) very wisely has taken this time to present it, and has most ably advocated its adoption.

It is true, however, that this is not the first Constitutional Convention that has been called upon to take steps to check the vices that the use and abuse of alcoholic drinks create, but propositions looking toward this end have always been presented by some *special committee*, raised for the sole purpose of taking special cognizance of the question. The Committee on Legislation has been constrained, through a sense of its solemn duty, and by the numerous petitions from all parts of the State, containing in the aggregate the names of thirty to forty thousand citizens of the Commonwealth, which is perhaps quadruple the number of names on all the petitions on all other subjects which have been introduced into the Convention. What seems most strange and most unaccountable in this question is, that the petitioners do not claim to be the adherents of any special or denominational *creed*, *order* or *sect.* Their petitions only pray that the Convention shall take this question under consideration, and to prepare a section to be submitted to the people of the State. The prayer of these petitioners is that the manufacture and sale of intoxicating liquors, as a beverage, shall be prohibited in this Commonwealth. This is a just proposition, and I think it would be an act of injustice if the voice of the people, expressing their wish in this respect, should be silenced. Such a provision should be so drawn as to give no uncertain sound as to its meaning and its force. If *such* a provision as this is prepared by this Convention, the friends of this measure will carry it through successfully, even if they fight a more desperate battle than has ever yet been fought between the followers of right and wrong. On one side of this great question will be arrayed the friends of law and order, *christianity* and *humanity*, supported by the principles of temperance and truth, which form the great corner stone of the republic, as well as the ground work of all our social and christian virtues.

The advocates of this measure will have to combat the friends of intemperance and vice, backed as they are with a moneyed interest so strong as to array the combined influences of all the liquor producers and vendors all over the land, against those who would divest pauperism of its sorrow and shame, and who would elevate manhood from the degradation to which

it has descended to that high position assigned to it by its Divine author.

The State of Pennsylvania, probably, affords as profitable a field for customers in the liquor traffic as can be found in any State in the Union, and these moneyed combinations, who have grown rich upon the hard-earned wages of the poor and the reckless hand of the rich, will not yield an inch in a contest, which, if it ends in a victory over them, will scatter swift destruction in their paths.

Mr. Chairman, this question of prohibition has been in years past, and will always continue to be, one of such vital interest as to arrest the attention of men in all the various walks of life. The people of Pennsylvania have time and time again petitioned our Legislature to enact laws looking to the suppression of this evil. Wise and good men have been enlisted in its cause. Many suggestions have been made, and various laws have been passed in favor of local option in counties, townships and boroughs. A great deal of anxiety and interest has been manifested in those localities where these laws have been made to apply, and the manner of their operation and the results which have been attained have been eagerly watched by the friends of prohibition. It is, perhaps, hardly necessary to say that the evils of intemperance have not been entirely abolished by those laws which have been enacted by the Legislature. It would be useless to deny that the remedy has not proved entirely effectual, and that the relief has been only temporary, having been confined mainly to the particular locality wherein such laws were enacted to be enforced.

The general opionion is, however, that wherever an evil exists in society, and it is necessary that it should be silenced by the law, the only remedy is to enact a provision so broad that it will cover the whole ground, and thereby leave no question for doubt.

The law that was passed last winter in relation to local option, on which the people in every city and county have the right to cast their vote, and on which many of the counties have already voted and given their decisions in favor of the law, will not, in my opinion, be sufficient to remedy this evil, which is the source of so much vice and crime, and which is occasioned by the traffic in alcoholic beverages. It will require the united efforts of the friends of this provision in all the sections, divisions and sub-divisions of the people over the State. It will be necessary for them to work with a will, and by forming combinations, supported by the influence that can be exerted by this Convention, there can be but little doubt that success shall ultimately be attained. Opinions may differ as to the wording of the section that shall be submitted to the people, but I think that an opportunity should be given to the people to vote upon it. I desire to call the attention of the Convention to the exact wording of this section, as was first reported by the Committee on Legislation, and now brought forward and offered by my friend from Potter (Mr. Mann.) The section reads:

SECTION —. No license shall be granted to sell vinous, spirituous or malt liquors, or any admixture thereof, or any other intoxicating drinks and any sale of such liquors, except for mechanical, medicinal or sacramental purposes, shall be a misdemeanor and punished as shall be provided by law.

The amendment offered by the gentleman from Venango (Mr. Beebe) is in substance the same; it may in some point be more closely drawn than the original section, but should either the section or the substitute be adopted by this Convention, I am fully convinced it will meet the wishes of the people; for one, I must say, I will be entirely satisfied, and *my only desire is* that of satisfying the people who have been petitioning us for some such section to be inserted in the Constitution.

I do not, sir, understand that this measure is entirely demanded by what are known as teetotalers or prohibitionists, or *straight out temperance men.* But I take it to be the result of calm, considerate thought and the demand of the people who have the good of society at heart. It is an uprising of the honest, sober sentiment of the people. It is no spasmodic production of the hour. It is a desire that right shall rule over wrong. It is this and nothing more.

It is not my purpose, sir, to debate the wrongs that have been committed on society by the use of alcoholic drinks. I shall not speak of wasted intellects, of scattered wealth, of broken constitutions, of once happy homes made desolate and sad, of heart broken wives, mothers, sisters and daughters, of alms houses and penitentiaries filled to almost overflowing by the victims of this terrible vice, of the long line of dissipation that has taken up its march in the van of crime, and of the

thousands who die annually from drunkenness.

No, sir; I will not speak of this here, for it will become a proper theme for those whose duty it is to carry this question before the people when this Convention shall say that such a section as this (as brought forward by the gentleman from Potter, Mr. Mann,) shall go into the Constitution. No, sir; I will not appeal to the prejudice nor to the passions of any, but if we do not obey the prayers of these people, who are daily petitioning us upon this subject, and give them an opportunity to show by their votes that alcoholic liquors shall no longer be sold as a beverage in this State, we shall have closed our ears to the pleadings of our fathers, mothers, brothers, sisters, wives, children, friends and neighbors. I know full well that this Convention is composed of men whose ideas are broad and comprehensive; men whose actions here will be criticized long after they have passed away to their final reward, and I know that, however much we may differ as to many matters relating to the interests of the State, and the best means of government for the body politic, we will all agree that it will not do for us to oppose these forty thousand prayers that have come up to us, and the many more that are reaching us day by day.

The people are in earnest, *"but calm."* They know, or they have reason to believe, that we will be just, that we will give them the opportunity to show by their votes their faith in this great reform. I remember the good old Book tells us that St. Paul said, that "it is good neither to eat flesh nor to drink wine, nor anything whereby thy brother stumbleth or is offended, or is made weak;" therefore, cannot we agree to sacrifice some of our cherished idols for the good of society? Sir, we can afford to be just to the people of this Commonwealth and give them this privilege when, on this question, the interests of the present, and the lives of future millions of people are at stake. It may dry up the fountains from which their is so much gain, but yet I believe, in due time, that the one hundred and thirty thousand persons who are, either directly or indirectly, engaged in the traffic of ardent spirits in this Commonwealth will find it to their interests to pursue a more honorable employment, will turn their attention to agriculture, mining and mineral pursuits, and thereby build up that God-given principle which will illuminate the whole of this land.

The people will not be satisfied unless we accede to their prayer in this regard, and I appeal to every gentleman upon this floor to see to it that we give to the people of the Commonwealth of Pennsylvania that which they so much demand. Let us present this section to them in such manner that they can have a free, full and satisfactory vote upon the question. That is all I desire, and I believe it to be the desire of a large majority of the delegates upon this floor. I do not believe that this question is confined to a few temperance men, nor teetotalers. Not at all. It rests deep in the hearts of the people, and it comes up out of their great hearts. It is the underlying strata which underlies the foundation of our social system, and the people over the State see and understand it. Their demand has come to us, and shall we obey it? If not, then against the work that we are doing there will be a moral influence brought to bear that will make our labor vain. Nay, I fear that if we do not heed this general voice of the people, and present this section to them, or some other one of like character, that the work we are doing will be rejected by them, and be lost to us and to the State.

Mr. CARTER. Mr. Chairman: I did not intend to make any remarks upon this subject, and so expressed myself to several members before the Convention was called to order this morning. Inasmuch as I think it is unnecessary to recapitulate the reasons why some legislation would seem to be required to correct this great evil, I do not propose to go over the so-called temperance ground; but the gentleman from Dauphin (Mr. MacVeagh) advanced positions so novel, as I hold them to be, so false in theory, and so utterly impracticable; ideas that have never been acted upon in the past, and never can be acted upon in the future, that I cannot remain quiet. He asserted and maintained the principle that neither the Legislature, nor any other power, has the right to restrain or abolish that traffic or that business which is detrimental to the interests of society, because it would interfere with private rights or natural privileges. That is the ground the gentleman takes. Why, a more startling proposition, one more false in principle, I never heard enunciated in my life. Not a right to prohibit a business when the public safety demands it? I cannot comprehend what

the gentleman can mean by so startling, so strange, and, he will permit me to say, with all respect, so absurd a proposition. Why, from the very earliest times, men have always said, and society has always held; in fact, society cannot be kept together without a recognition of that fundamental fact or principle, that there is a right inherent in the people to prohibit a business or occupation, or anything else that is inimical to the interests of society. He joins issue with that simple proprosition fair and square, or, at least, that is a perfectly fair inference from his premises.

Now, Mr. Chairman, I do not expect as much good from this proposed prohibition by the State as some other gentleman do. I well know that its preventive efficiency depends altogether on the extent of the public sentiment to sustain it in the respective localities, but I do know that where those conditions exist, that is, where a tolerable strong temperance sentiment, and moral courage to enforce, prevails, that absolute prohibition will be both a blessing and an incalculable benefit in the direction of the total eradication, in time, of the great curse.

Mr. MACVEAGH. Mr. Chairman: Do I understand the gentleman to hold that the control over the individual has no limits but the judgment of the majority as to what is injurious or not?

Mr. CARTER. I do not propose to be led from my line of argument, or to follow the gentleman into the mazes of metaphysical abstractions, but I do propose and intend to make my argument as clear as a sunbeam, and to utterly demolish that of the learned and eloquent gentleman. What I say is this, that society has always restrained and, necessarily, always must restrain, that traffic, business or occupation which is proved to be detrimental to the public good, and clearly so when the safety of the community demands it. That, sir, is the ground I take, and that is what the gentleman from Dauphin denies. And, the gentleman will permit me say, that it does seem like shirking that question when he would get up some other question. I think he must have a premonition of the fate which awaits his position, and begins to realize the position in which he has placed himself, and would withdraw or contract his scattered lines, as it were, to draw them in. But I do not intend to be led off by the abstractions which he offers to my consideration. I hold that if this business is detrimental to the interests of the public, that the public have a right, by their constituted authorities, to restrain, limit or prohibit it.

I believe that the right which has been exercised, restraining, involves the right to prohibit if prohibition be found necessary. If that be right which has always been exercised, of curtailing and restricting, then it would be right to prohibit this traffic altogether—that follows as a matter of course. Society has always placed this traffic under different regulations from any other business, and it has always been made to rest on a different footing from the selling of books, or hats, or any other kind of merchandise. Liquor saloons have been limited in number, and I submit to the gentleman from Dauphin, that if it is right to limit them, one-fourth, for instance, they have a right to limit these places one-half, or three-fourths, that then they have a right to take away the other fourth and make the restrictions absolute.

The gentleman from Dauphin has spoken in regard to the infringments of individual rights. We do not desire to interfere with any individual rights. If they are incidentally infringed upon, it is because they come in conflict with a wholesome law which the people desire or require for their protection; to that contingency all good men submit.

I assert that the principle, that it is the right of the people to put down wrong, has always been held, and society cannot exist without it, nor can public order exist without it. I might claim the right to manufacture cartridges and fireworks, or I might desire to bring in a ton or two of powder and locate it near this hall, to the imminent peril of gentlemen sitting here; and I might say that I have a right to do this thing in pursuance of my lawful employment, the manufacture of this pyrotechnical merchandise. But, very properly, you would say that I have no right to pursue any business which exposes to danger my fellow-man, or which might cause loss of life or limb.

The gentleman himself returned from Turkey recently, after a long and dangerous voyage. I want to show the extent to which the principle leads; all centering down to that one principle, that the State has a right to restrict, restrain, prohibit, if it be necessary, if the public good requires it, even to deprivation of his liberty for a time. Suppose that when the gentleman returned, that the port from which he sailed had been infected with plague. He might have been stopped

on the eve of leaving the vessel, when, of course, desiring to go home; when perhaps his health and that of his family required it, and yet he would be subjected to detention on the part of the authorities. The health officer comes and says, "this vessel has come from an infected port, and you must come with me, sir; I shall detain you, and turn lock and key on you, and you shall remain there for a period of five or six weeks." If to that conduct the inquiry was made, "why deprive a man of his liberty?" The unanswerable reply would be that "the public safety and the public good required it, and that you shall not spread disease." And I think that that principle is identical with the principle involved in this issue. I remember when the cholera was about, some years ago, that the local authorities in cities prohibited the sale of cucumbers, and of oysters, and of cabbages and turnips. In any one of those cities a man might say, "I have a right to eat turnips; they do not disagree with me, and I have a right to eat green cabbage, or oysters." The authorities did not say to that man, "you shall not eat cabbage or turnips," but they said to the man who was dealing in them, "you shall not sell them; you shall not embark in a business or pursue a business which is detrimental to the public good." Thus thousands claim, on similar grounds, that it is our right and duty to prohibit this traffic in liquor. It seems to me that this rests precisely on the same principle, the same foundation.

Self-preservation is the great law of nature. Some years past, when the rebellion had reared its bloody hydra-head in the Southland, there were men who told us that there existed no right to coerce a State. Well, I was not learned in the law, but I had a small modicum of common sense, and I knew, whether it was so in statute law or not, whether it was in the Constitution of the United States or not, that the right of self-preservation existed, and must exist necessarily in the government, and when I heard the gentleman's clarion voice waking up the hills and valleys all over Chester county, I found that he then took that view, that if there was no right to coerce a State, it would be safe to rest on the principle that there was an inherent right in the State to save its own life.

I believe that it has been decided in England, in the early days, that if two men are floating on a plank which will only sustain one man, one of them would have the right to push the other overboard, and it would not be murder. The bearing which that matter has upon the case under consideration is simply this, that the State has a right to protect itself to the extent of prohibiting any line of traffic in any business restraining its citizens, if the public good requires it.

Another thought and I am done. How can we refuse the prayers of these petitioners? Who have made this appeal? Why, the mothers, the wives, the sisters, the daughters and the numberless sons of this Commonwealth. I cannot so steel my heart against their appeal. Nor they alone. The poor victim himself. Among the crowd that are now flocking to the polls over this wide-spread Commonwealth to-day are hundreds, nay thousands, of men who are victims of this evil habit. They find themselves unable to restrain themselves, and are asking the people by their votes that they shall be protected, that this curse, this temptation shall be removed from them. They feel their own impotence to resist. They feel that they are descending the rapids leading to a fearful cataract that they can no longer stem, a current that is carrying them to the whirlpool of destruction; and they desire that some power shall intervene to save them. Can I here, if my voice and my vote will aid in granting the prayers of the people, silence the one or withhold the other? God forbid. May my final appeal to mercy, which we all need, be rejected if I reject the appeal of a sinking, drowning man, or of a pleading, heart-broken wife or mother in such a way as that.

I have not the slightest doubt, sir, but what, sooner or later, the cause of temperance will triumph, and I have no desire as I said before, to go into any elaborate argument in regard to this matter, but simply to reply to what I hold to be the utterly false doctrine of the gentleman from Dauphin (Mr. MacVeagh.)

I will only add I was struck with the remark of the gentleman from Crawford, (Mr. Mantor,) that it is unsafe for us to refuse to submit this matter as a separate proposition to the people. I beleve that the people of the State of Pennsylvania are so interested in this matter that we will awaken a feeling of hostility against the whole work of the Convention; and it is a matter that we should consider well.

Mr. CURRY. Mr. Chairman: I am in favor of the proposition as it came from the Committee on Legislation, because it

strikes at the very foundation of a great evil which has existed in our Commonwealth from its existence. The people of the Commonwealth have asked us, by their petitions, to insert a clause in the Constitution that will prevent the manufacturing and sale of intoxicating drinks as a beverage in this Commonwealth. I am aware that to many of the members of this Convention, who have heard of the evils of intemperance from their childhood up to this time, the discussion of this subject is perhaps as irksome as any subject that could be introduced. This is the first time that I have asked the attention of this Convention, and I shall promise not to detain you very long, while I call the attention of the Convention to one or two facts.

Is the proposition submitted by the Committee on Legislation a proper one? Is it such a proposition as the people of this Commonwealth demand? Will it meet the expectation of those whom we represent? If it does not, we should vote it down, and submit something that will meet their views. The reason that I favor the proposition and believe that it will meet the expectation of the people of this Commonwealth, is because it will strike at the very root of intemperance. It will uproot it entirely, and drive from our borders that iniquity of which we have heard so many most fearful complaints.

The objection meets us right here, and says that we have not the right or the power thus to submit a proposition of this kind. I ask, if we are the representatives of a free people, if we represent the people of this Commonwealth, and if they have delegated to us the right and the power thus to alter and amend the Constitution, or the fundamental law of the Commonwealth, have we not the right to submit to them the proposition for their ratification that may touch the appetites and the interests of the men who neither fear God nor regard man?

I claim that we have the right, and I claim that the people of this Commonwealth expect us to exercise that right, and in doing so we will simply do our duty. If these propositions shall be submitted to the people as they came from the hands of the Convention and the people of this Commonwealth shall ratify them, then I ask what will be the result? Will we not be relieved of the great evil of which we have heard year after year? Will not the people rise up *en masse* and sustain the Convention that had the nerve and the manliness to hear the prayers of the thousands of petitioners who have presented memorials here, asking for a provision of this kind? In case we do not adopt a provision of this kind the enemy will have gained a victory. The great eye of this Commonwealth to-day is turned upon this Convention. All the temperance organizations throughout the Commonwealth are watching our movement with a jealous eye. They are watching carefully every step we take in this direction. Should we fail it will be a triumph for those who seek to destroy the happiness of mankind for the sake of gain.

In this case the objectors ask, in what way have we injured society? A thousand voices come up from every section of the Commonwealth and say: "Behold what intemperance has done! Behold the families that have been impoverished, and the happy homes made desolate and friendless because of the terrible ravages of the traffic in ardent spirits."

One case this moment presents itself to me. In our own little county of Blair, right at the base of the Allegheny mountains, where, a few days ago, the people rose up in their might, and by a majority of over two thousand expressed themselves in favor of a measure like this, a young man from a neighboring county was arraigned in our court for the terrible crime of murder. A lawyer, a member of this Convention, who is looking me in the eye, appeared in his defense. "Why," said he, "he is a young man from my own town of Chambersburg;" and he plead eloquently for the young man's life. What had the prisoner to say in his defense? "I was drunk in the town of Altoona. I did not know that I sent a bullet whistling through the heart of that man Devine. No; I did not do it." But the stern arm of the law held him tight in its grasp, and the young man, notwithstanding the tears, and sympathies and prayers of a mother, lies within the walls of the Western Penitentiary.

I ask if there was no other case, as one of the legitimate fruits of intemperance, that this should be sufficient; but at this moment it occurs to me that in the city of New York, while the clock is pointing to mid-day, behold there suspended that man Foster who is expiating his crime. For what reason? Because he was under the influence of liquor when he committed the fatal deed. The tears of that wife

who stood by him, and the poor little children who gathered around him, will be an incentive for every man who fears God and desires to stand by that which is right. There is nothing under Heaven that is so honorable and so noble in man as to do that which he believes to be right, and right will bear him out in all his actions. Scores of cases present themselves to my mind of similar import; and lawyers who are members of this Convention know full well what horrors intemperance has brought upon the land.

Now, our people ask us to submit to them a proposition. They are willing to hear us, and they are willing to do all that it is proper for us to ask them to do. All they ask is, "let us have a chance to speak, and if we fail to endorse your action let the blame be with us." Are they asking too much? Oh, no! Therefore I shall, with all my heart, vote for this proposition or any proposition that will strike at the foundation of this most terrible evil.

During the session of this Convention we have heard men of eloquence and of great power denounce our railroad corporations. We have heard denunciations of the iniquitous crimes of which they are said to be guilty, and of wickedness in legislation from time to time. But, sir, I ask you to compare all the alleged crimes of all the corporations in the Commonwealth, and place them in the scale against all the crimes resulting from intoxicating drinks, and I will venture the assertion that every honest man will say that the crime of intemperance is above them all.

Railroad corporations, in many respects, inasmuch as they facilitate trade, and open up commerce between the east and the west, are a blessing. If there are some injurious influences connected with them, what are they in comparison with the infamous crimes of the manufacturing and selling the very essence of iniquity under a legalized form.

Mr. Chairman, if the Convention will submit this question to the people for their ratification or rejection, my conviction is that they will ratify it by a very large majority. All I ask is a chance for the people to speak on this subject before the bar of public opinion. We shall wait patiently for their verdict.

Mr. DE FRANCE. Mr. Chairman: I do not wish to detain the committee more than five minutes at the furthest. Perhaps, sir, I have presented more petitions from the people for this measure than any other member of the Convention. I have presented the petitions of at least six thousand people who are in favor of submitting this proposition as a separate proposition for the peoples' ratification or rejection. I hope the Convention will adopt this plan to have the amendment submitted to a separate vote of the people. It does not appear to be a mere matter that belongs to the temperance people. The votes of the people in the country seem to indicate that more than just the temperance people are in favor of this measure. If we obey the petitions of the people, and the people have called for this one proposition perhaps more than any other since we came to the Conventian, it would seem that we would be required to submit it as a separate proposition. I have not heard any argument advanced by any gentleman on this floor against so submitting it, except the argument of the gentleman from Dauphin, (Mr. MacVeagh,) and that argument has some weight in it.

Government cannot exercise more than the admitted governmental powers. It cannot go beyond that, and the question is whether the power of taking away this privilege to manufacture drink or sell liquor is a governmental power or not. A majority of the people cannot take your property and give it to me, or the property of the gentleman from Dauphin, (Mr. MacVeagh,) and give it to the gentleman from Lancaster (Mr. Carter.) That, indeed, is not a governmental power; but this question is not of that kind.

It was maintained for a very long while that the school law was unconstitutional for that very reason. The claim was that one man's property or money could not be taken or given for the use of another man or his children, but the general belief, and what has been established in this State, is that where the necessities of the State require it you can take a qualified liberty from a person, or even an amount of money, and give it, not to the other man, but for the benefit of the State. That is the power of this government. I do not think that this proposition infringes upon the doctrine that we cannot take the property of one man and give it to another.

I am satisfied that the temperance movement, if it could be carried out to any great extent, would be a great benefit to the people of the State; and for that reason we ought to submit that proposition. Let any person here, for instance any lawyer, take his classmates and run them

over. How many of them are in their graves from drinking whisky to-day? I would venture to say that more than one-half of the classmates of the men of this Convention are in their graves to-day from drinking whisky, or some other kind of alcoholic drink. A proposition of this kind, if adopted, would lessen the number of our penitentiaries; it would stop pauperism to a great extent; it would be of incalculable benefit to the State, and if we would only enforce it, and, in my judgment, this proposition, if adopted by the people, would approximate to such enforcement. I do not believe it will *entirely* do it. I do not believe that anybody here thinks we can entirely prevent the drinking of alcoholic liquors, but if we can only decrease it one-half, or one-third, or even one-tenth, we will have done a great deal. For these reasons, without detaining the committee any further, I shall vote for the proposition.

Mr. STEWART. Mr. Chairman: The remarks of the gentleman from Dauphin (Mr. MacVeagh) suggested to my mind one question, which I will respectfully submit to him, in order that I may the better understand his views.

It is possible that the individual views of a majority of the members of this Convention are not in accord with those of the majority of the people of this Commonwealth upon this subject. We know there is a serious division in the public mind on this question, but no man can say upon which side a majority of the people will array themselves. The chances are even that the action of this committee, if it be definite upon this subject, will run counter to the wishes of a majority of the people. This being so, I ask the gentleman from Dauphin (Mr. MacVeagh) whether it is not incumbent upon us, having due regard to this fact, to refer this matter to the people for their final decision? I do not lose sight of the fact that the gentleman makes a distinction between legislative enactment and constitutional provision. The office of each is clearly defined by the rules of political science, but the people themselves, being sovereign, are above political science, and the rules recognized by that science, and being so, is it not incumbent upon us to submit this question to the people for their determination?

Mr. MACVEAGH. I am glad of the opportunity of answering the gentleman, and I trust the Convention will bear with an answer of a little length. I will make it as short as I possibly can.

But I do not wish to be misunderstood in this matter. I understand the question to be simply this: Not a distinction between constitutional law and legislative enactment, for that, I agree, may be waived—not whether the people will vote one way or another, for I can verily believe that in many sections the people are so appalled by the enormity of the evil of intemperance, that they might vote for prohibition, and if it is right for them to vote upon it at all, I repeat, many sections will so vote, but I doubt whether all the sections of this State will do so.

My difficulty, however, is wholly different. Political thinkers for a long time past have held that this is not a proper subject of prohibitory legislation. This view has been elaborated with great care by Mr. John Stuart Mill, in his very suggestive essay "On Liberty," and presented with remakable force by the late Governor Andrew, of Massachusetts, to the people of that Commonwealth, when this question was before them. Let me give as fair an example as I can: A person takes ten bushels of malt to a brewer and says: "I desire to drink beer, and I wish you to manufacture this malt into beer for my use." Two of his neighbors present themselves to the brewer and say: "You cannot do that, because we have voted that you shall not manufacture beer for this man, and that he shall not drink it. We do not consider it to be good for him." Now the question is, whether that is a matter that ought to be reserved to the individual judgment, and not to the judgment of society in the form of law. In other words, whether it does or does not fall within the class of police and health regulations to which allusion has been made this morning, and, therefore, passes from the domain of individual judgment into the domain of judgment of society, as expressed in law, either constitutional or legislative. I rose only to warn the Convention against the folly, and what, with all respect to it, seems to me the *cowardice* of shirking the question now and turning that matter over to the people themselves, when it was a radical, fundamental, vital difference of opinion, which we ought to accept the responsiblity of settling as far as our votes are concerned, and upon which, for one, I was very anxious to have all the light I could get. I stated then, and I repeat frankly now, that as far as I have

been able to understand the argument on the one side and the other, the balance of my judgment was that it was a question for the decision of the individual judgment, and that it was not permitted to society to decide it in the form of a legal enactment, constitutional or legislative, but that I was open to conviction upon it, and my only protest was that the Convention should not pass it over by any assumption that we would leave it to the people to decide, until we have decided whether it was or was not properly a subject of legal enactment.

Mr. STEWART. But, I submit, the question recurs that notwithstanding it may be an invasion of that right, what limit do you assign to the capacity or power of the people in this particular case? They being sovereign, and forming their organic law, have they not the right to decree what shall be individual and what public rights?

Mr. MACVEAGH. I will answer the gentleman by saying that they have the *power* undoubtedly, but whatever ought to be reserved from their action as a society, by legal enactment, it is our duty upon our responsibilities to reserve, and when I am asked to permit them to vote "yea" or "nay" upon any question, I must first be satisfied that it is a question which falls within the domain of organized society to decide, and not one that in all properly constituted societies ought to be left to the domain of individual judgment. They may to-morrow, nay they may to-day, by the voice of a majority of this Convention, if ratified by their vote, declare that a form of religious worship obnoxious to them shall never be committed in this Commonwealth, but I, for one, even though it were a form of religious worship most obnoxious to all my training, and all my convictions, would protest, first and last, that while the people have the *power*, they have not the *right* to interfere to that extent with individual judgment. That is an extreme case, I grant, but this is also a very important question, and I sincerely submit to the committee my conviction that, however they may vote, a large majority of this Convention is earnestly of opinion that the people do not possess any right, whether by constitutional provision or legislative enactment, to prohibit other men from drinking such beverages as they choose.

Mr. STEWART. Well, then, I desire to say that I recognize no limit to the power of the people on this subject, except such as is put upon them by the Constitution of the United States. That being the only limit upon them, I think, under the circumstances, that no matter how the people would array themselves on this subject, it is incumbent upon us to put it to them for their decision.

Mr. MANN. Mr. Chairman: The question raised by the gentleman from Dauphin (Mr. MacVeagh) has been decided by the highest authority in the United States, to wit: the Supreme Court, in the case testing the constitutionality of the prohibitory law of Massachusetts. So that as to the right of the Legislature to prohibit the sale of intoxicating drinks, there is no doubt. It is, therefore, merely a matter of policy whether the people of Pennsylvania will exercise that right. It is as well settled as any principle of the common law under which we live, that the people have the right to prohibit the sale of any articles in the community that will be injurious to them. As stated by the gentleman from Lancaster, (Mr. Carter,) if any individual or association of individuals should seek to erect a slaughter-house near the residence of the gentleman from Dauphin (Mr. MacVeagh) he would know very quick how to restrain the parties and to put a stop to their project, or any other offensive business that any man should undertake to carry on in the immediate vicinity of his property. The gentleman knows very well how to secure the authority of the court to restrain any such injurious business, and will it be said that a slaughter-house is more injurious to the health and welfare of society than a grog shop? The common sense of the community has passed upon that question long ago. A slaughter-house, a tannery or any other offensive business, cannot be carried on near the residence of any citizen of this Commonwealth to his injury. There is, therefore, no question as to the right of the people to abate nuisances of every description. I maintain that a grog shop is a greater nuisance and a greater injury to society than many a slaughter-house, or many other nuisances which the courts readily abate. The idea that the people have not the right to abate a nuisance a hundredfold worse and more injurious to the health of the community than any slaughter-house possibly can be, is an absurdity that I am utterly astonished any lawyer should present to this Convention. It is simply a question of policy, for the right was long ago settled.

I did intend this morning to make some additional remarks in support of the section under discussion, but the course of the debate and the impatience which seems to be manifested to come to a vote upon the subject restrains me from saying anything more, except upon this question of right. Upon that point there is and can be no shadow of doubt. It is, therefore, only a question of policy whether the people shall exercise this undoubted right to prohibit the sale of intoxicating drinks. Clearly it is proper that the Convention should submit that question to the people for their own decision. That is what the advocates of this section propose to do.

Mr. MINOR. Mr. Chairman: My only regret is that the gentleman from Dauphin (Mr. MacVeagh) confined himself to answering inquiries, and did not enter fully into the exposition of the principles to which he alluded. I should have listened with great interest to his remarks; for I know of no question that affects every person in the State so materially as does this question in its practical bearings. I think we ought to have all the light we can possibly obtain upon it; but as he had not entered upon its discussion in full I will not advert to it further. I only throw out this remark now, with the hope that we may at a future time receive all the light he can give us on the legal aspect of the question he has indicated; that is, how far law may rightfully control individual judgment upon such subjects.

Now, sir, one or two words as to the amendments and the section which are before us. There is the section proposed by the committee; then the amendment, and then the amendment to the amendment, offered by the gentleman from Venango (Mr. Beebe.) I am free to say that the last amendment presents the only true form in which we should vote upon the question. I cannot, therefore, agree with members that it makes no difference how we may act on such a proposition, for I think it does. Upon reading these various propositions it will be observed that the last proposition brings the question down to a prohibition of the sale and use of intoxicating liquors as a beverage. That is the proposition. The other propositions go further and refer to the manufacture and sale of intoxicating liquors, without appropriate limitations as to commerce and to some other things, about which there may be legal difficulties, and others of a practical nature. I look upon them, therefore, as unsafe.

Now, in order to illustrate my views, I will advert to a fact which occurred in the State of Michigan. In 1850 a constitutional prohibition was introduced. The people of that State lived under that law for several years. That law contained no reference, in terms, to the use of intoxicating liquors as a beverage. It simply prohibited the granting of licenses for the sale of liquor. The construction given by many was that, as licenses could not be issued for its sale, that therefore it might be sold without licenses; and as there was no reference to its use as a beverage it therefore did not refer to the subject in that particular. The people of that State labored under great difficulty, and the object of the section largely failed in many places. In the last Convention of 1867, that difficulty was discovered and obviated, but as the whole Constitution fell, that provision, of course, fell with it. I hope, therefore, that any provision that may be adopted by this Convention will not be encumbered or burdened by any doubtful proposition. If there is anything that is clear as to this proposition it is, that you may prohibit the use of liquor as a beverage; and for that reason and others which might be mentioned, but which I will not take time to state, I am in favor of the substance of that which was indicated by the gentleman from Venango (Mr. Beebe.)

Now, a word further. There are three modes of disposing of this whole question. One is to insert an article in the Constitution itself. Another is to prepare an article and vote for its submission to the people. Another is to take no action whatever on the subject affirmatively, but to leave it to be regulated entirely by the Legislature; and minds may differ as to which of these modes is the best. My own personal impression is that it had better be submitted to a vote of the people, but that we cannot do in committee of the whole; and I want to say that members may vote for the proposition in committee of the whole, but that does not necessarily commit them to any view as to the propriety or impropriety of the provision when it shall be submitted to the people. It does not bind them to vote for its submission to the people, or, if submitted, to vote for it as individuals. But I shall vote for this last amendment now, in order that we may have it before us in the right form, and then dispose of it

either by retaining it or submitting it as a separate article on second reading. I deem it proper to make these allusions to some of the difficulties that present themselves, first upon the amendments themselves and also in regard to the nature of the vote that may be taken, and partly by way of explanation of the reasons for my vote, and to prevent myself and others from being misunderstood. Let us plant ourselves upon a proposition safe, legally, and as free as possible from difficulties, practically, and then at the proper time submit such a proposition to the vote of the people.

Mr. COCHRAN. Mr. Chairman: The Convention is certainly brought to face a great evil, the existence of which nobody is disposed to dispute or deny, and which the facts will not permit to be denied. We may almost literally say of its ravages in this State and other States, as was said in Egypt in the olden times, after the destroying angel passed through, that there is not a house in which there is not one death; and that being really a fact, without exaggeration, and almost every individual, in some form or other, having felt its effects, we are called upon, as it seems to me, to treat it with seriousness, and dispose of it according to the best convictions that we can entertain on the subject. If a proposition was made here which would undertake to say that no individual should indulge in the use of liquor of any kind as a beverage, I should unquestionably meet it at the threshold and oppose it, when presented in that form; but when it is a proposition that does not undertake to control the rights of the individual in that respect, but to determine whether or not the manufacture and sale of liquors as a beverage in this Commonwealth shall be permitted, I am prepared, for one, to offer the opportunity to the people to determine whether or not they will adopt such a principle in their Constitution, and when I vote, as I shall vote, to put one or the other of these pending measures into the Constitution, I shall do it with the purpose hereafter of segregating it from the mass by submitting it to the distinct vote of the people. I believe that is what prudence dictates. I believe it is what the people themselves, who have memoralized this convention, ask for. I believe this is a judicious course. I shall adopt it, and vote for putting this section in the Constitution here, and afterwards for separating it and making it a distinct proposition to be submitted to the people.

Mr. HAZZARD. Mr. Chairman: I desire to say a few words in regard to this question. On one occasion during the war General Grant visited the Secretary of War's Office, and informed that official that he was going to the front and that everything was in readiness to move the army. The Secretary of War was very glad that General Grant was to take command of the army, and he asked him if he left Washington well protected. He said no, and that he had taken all the men from the works around the city, and that he needed every man at the front. The Secretary of War said that that would not do; that Washington would have to be protected. General Grant replied that he could not spare a man, but that he would take care of the city. The Secretary of War said he would order the army back. General Grant said no, you cannot; I out-rank you. The Secretary of the War had forgotten that General Grant had been appointed General of the army. General Grant told him that he could not spare a man, and that he would take care of the city. "Oh," said the Secretary; "I will order the army back." "No," said General Grant; "I out-rank you and you cannot." The Secretary had forgotten that General Grant had been given the rank of General. "Then I must appeal to the President," says the Secretary. "Very good," says the General; "he out-ranks us both and we will go to the President." They went to the President, and the great President, crossing his legs in his quaint way, said; "You know, Mr. Secretary, that we have been running this war for three years, and we have made a poor job of it, and we have called General Grant over here and given him supreme command. We will throw the responsibilities of the whole matter on his shoulders, and let him have the command."

Now then, it is proposed that we leave this question of liquor to the Legislature of Pennsylvania. I confess that these people are not always chosen with a view to their strict temperance principles. They have been going to do something at Harrisburg for a great many years, and we have been waiting a hundred years, that this thing should be regulated in some way that will better the condition of things generally, without being gratified. The country has been disappointed like the directory at Washington, in time of

war; they have made a poor thing out of it, and it is now proposed that we do something else. There is no subject that has been introduced before this Convention, that has called forth so many petitions in reference to it from the earnest, honest people of this Commonwealth; and all these petitions are on the one side, asking for the enactment of laws to control and regulate this subject without any remonstrance against the action prayed for.

I am not going to harangue this Convention about the evils of intemperance, but we must come to this conclusion, that this subject is the very subject that interests the people, who have sent us here more petitions on this subject than any other question that has or will call for the judgment and action of this Convention. Now, it is not proposed, as it is feared by the gentleman from Dauphin, (Mr. MacVeagh,) that personal rights are to be interfered with, because it will be lawful for a man to drink just as much liquor as he pleases, but it is proposed that the State shall be divorced from being accessory, before the fact, to licensing a business that taxes me against my will. You are taxed and I am taxed to correct the very mischief that this thing has put upon us. We propose that we will not license a crime or injustice of this sort. Not that people may not drink just as much as they please, but that it shall not be set up at the confederate cross-roads, in two or three places, or at any other cross-roads, because wherever there is a cross-roads you find one of these places where whisky is sold and drank. And what is the use of them? We merely wish to restrain the license system, and we propose that these men shall not engage in a business which will precipitate crime, disorder and despair upon the neighborhood in which we live. That it shall not fill our poor houses with paupers, to be supported at the public expense, and that it shall not do all those evils which, of course, I am not going to enumerate. That is all we propose. Nothing less, nothing more. And now it is told us that we cannot submit this to the people; that they shall not pass upon the questions which are vital to them, and that where society exists, as I understand it, they shall not be allowed to vote upon the question of license or not. Why, Mr. Chairman, it seems to me to be one of the most proper and fit things to be voted upon that will be submitted by this Convention. I understand that there will be several questions submitted to the people for a separate vote, and why not this, which is among the most important and grave questions that have heretofore engaged our attention?

In regard to that malt there seems to be at the very bottom of that, in political science, something more than appears on the surface. When a gentleman has a lot of malt, and he wants two barrels of beer made from the malt, the gentleman says it is his privilege, and that it would be a very harsh thing to say to a man that he shall not have his barrel of malt made into two kegs of beer. But there is another thing involved, namely: The question of society. Suppose I was to be met with the statement that it was against law that a man shall not have his malt manufactured, that the principle which would prevent him from doing so would be an infringement upon his personal right. My answer would be, that society has rights as well as individual members of it, and I would state to such a man: "If you get this barrel of malt made into beer, my six sons will go to your shop, and you will sell it to them; you will corrupt their morals, and debauch their integrity, and you are interfering with my rights, and with the public good as well." When a question arises between an individual right and the public good, the public good must be paramount.

Mr. Chairman, the duty imposed upon us, it is clear in my mind, is a duty of putting some sort of restraint upon the manufacture and sale of intoxicating drinks. We already have many sorts of regulations which are called for, in order to promote the public health. We regulate the sale of stale meat. We say that there shall be no unwholesome food exposed in the market. Now, is it not equally right and just that we should regulate the sale of this unwholesome stuff? I do not know that I would object if they would keep better whisky, [laughter,] at least I would not make so much fuss about it [laughter.] But I know something about it. I live in a region where a great deal of it is made, and I know that they put tobacco in it, because I have seen them do it, and I know they manufacture a liquor, one barrel of which, at least, did dissolve a piece of iron about eighteen inches long, in a very few months, and turn the whole thing as black as ink. That is an unwholesome drink, [laughter,] and I think we ought to regulate it, or, at least, compel them to make as good whisky as our

forefathers used to drink, when, although they did get drunk, it would never make their heads ache like this stuff does at present. If they would do this the people would not be so much exercised about it, but they don't do it, and they make a vile stuff that is sold at all the saloons, of which I understand some five thousand are in this city. I don't know that there are so many, but I looked along the streets as I came down to the Convention this morning, and I believe that on some of the streets, in the central part of the city, about every third house is a place where you can buy beer or whisky, and this vile stuff. I looked out of the window at my hotel, and I counted one hundred and eighty men go into a drinking shop in a little over an hour. I do not want such stuff sold to poison the community. If people must drink it, let them drink it at home, and manufacture a better article. If we must have whisky drank, let us have good whisky, and not this rifle whisky that kills at so long a distance. [Laughter.]

But, Mr. Chairman, the people demand this temperance reform. They expect it from this Convention, and they are calling for it from every county in this broad Commonwealth. No other subject which has engaged the attention of the committee of the whole has been presented with so much earnestness by the people of the State. It is right and proper that it should be submitted to them for their vote. It is constitutional, lawful and right, and has so been decided by our highest tribunal. The proposition that is submitted is not intended to abridge the right of any man if he desires to drink whisky at home. It simply will prevent his getting it at the street corners, and the cross-roads, and at the thousand and one "holes in the wall," and "two headed colts," and the other queer names by which the saloons are designated.

Mr. CRAIG. Mr. Chairman: It strikes me that there is a radical difference between the propositions that are now presented to this Convention. Inasmuch as it has been demanded of us that we shall submit an article of this kind to a separate vote of the people, it will be very easy for us to make a mistake upon this subject. I take it that if the original proposition submitted by the Committee on Legislation be adopted, we shall make a mistake and shall not have conformed to the will of the people as expressed in their petitions. In so far as I have seen any of these petitions they have requested of us to adopt an article which shall prohibit the sale of intoxicating drinks *for use as a beverage*. Now, I call attention to the article reported, and desire to point out to the committee of the whole that it prohibits the sales of intoxicating drinks as an article of commerce. It may be a disputed question, and it has been disputed, whether it is within the power of the State of Pennsylvania to prohibit the sale of liquors as an *article of commerce*. The people, in their petitions, have placed this matter upon the correct basis that is proposed for it. They request us to prohibit its sale for use as a beverage. That is putting it upon police grounds, and upon that ground we are able to reach it. The proposition reported by the Committee on Legislation is in these words: "Any sale of such liquors, except for mechanical, medicinal or sacramental purposes, shall be a misdemeanor." Now, in a prosecution under that section of the Constitution it will only be necessary to show that it had not been sold for any of these purposes. For the defendant to show that it had been sold only for commercial purposes, or as an article of commerce, would be no defense whatever to him under this Constitution. I take it that is not the point intended to be reached by the petitions with which we have been flooded, but that it is to break up the business of grog shops and saloons, and the selling of intoxicating liquors as a traffic for use as a beverage. Therefore it is that the amendment of the gentleman from Venango (Mr. Beebe) exactly meets the popular requirements, and is in accordance with the express spirit of our power. That is that we shall place this matter on the basis of a police regulation, prohibiting the sale for use as a beverage, because it affects injuriously the public peace and welfare, and that all sales which are a mere matter of commerce, or which seem to be so, shall not be touched by this article.

Now, in order to a conviction under such an article as this, it would be necessary to allege in the indictment and to prove on the trial that it had been sold for use as a beverage, and what would be proof of that? Why, if it merely appeared that some man had gone into an estabment where liquor was sold, and that he had bought a certain quantity, and nothing appeared as to the *use* which was to be made of it, no conviction could be had. Actual proof of the fact of sale for the pro-

hibited use would have to be affirmatively proven. And that, I take it, is the true position; that when it is sold as an article of commerce simply, we have no right to touch or disturb it; but that, in accordance with the prayer of the people, we shall prohibit its sale for *use as a beverage*, and for *that* only.

Now, upon the question of power, it seems to me plain that this power is a police power, and police only. The great functions of government are those of police. It has been said that government is only a great police officer, compelling one man to keep his hands off another. It may be that the government would have no right to prohibit me from eating plum pudding at dinner, because that does not affect the rights of the public. But when I use intoxicating drinks to excess, and thereby bring about a disturbance of the public peace, the public have the right to interfere. They do interfere now, and when I have so done they lock me up. It may be that the government would have no right, under ordinary circumstances, to declare that I shall not wear gray clothing. But in case of internecine disturbance, in case of war, when my gray clothing would be an insignia of disloyalty, then I say that it is the right of the government to say that I shall not wear that particular kind of clothing, because it tends directly to a disturbance of the public peace. That is the line of distinction in regard to all the questions which may be involved in this as a matter of *power*. Whenever the acts or practices become the occasion of a disturbance of the public peace, the government has the right to interfere.

Mr. M'MURRAY. Mr. Chairman: I do not desire to make a temperance speech. I never have made one, and shall not do so now. But I desire, briefly, to give a few reasons for supporting this proposition now pending before the committee; and I am not particular whether I vote for it in the form in which it is presented by the gentleman from Potter, (Mr. Mann,) the amendment of the gentleman from Allegheny (Mr. D. N. White) or the amendment to the amendment, offered by the gentleman from Venango, (Mr. Beebe.)

Man, in his natural state, has a right to do whatever is not prohibited by his Creator. If the Creator did not forbid man to manufacture, traffic in, and use as a beverage, intoxicating drinks, then he has a natural right to do so. But even if he has a *natural* right to do a certain thing; as a member of society, as a citizen of the State, he may be prohibited from doing so, if the exercise of that natural right is against the best interests of the majority of the members of the State. And this is no violation of man's civil liberty; for civil liberty is natural liberty, so far restrained as is necessary for the best interest of this whole community.

Has man a natural right to manufacture, traffic in and use as a beverage intoxicating drinks? I think not. To my mind the revealed will of the Creator is clear on this point. The Divine law is plain and clear: "Look not upon the wine when it is red, when it moveth itself aright, when it giveth its color in the cup; at the last it biteth like a serpent and stingeth like an adder." There is the command. There is the law; and the punishment to be inflicted for a violation of this law is clear and unmistakable: "Cursed is every one that putteth the bottle to his neighbor's mouth and maketh him drunken also." The drunkard shall have his portion in the lake that burneth with fire and brimstone is clearly set forth in Holy Writ. There is the evidence that man has not the natural right to do this thing.

But it is urged that the State has no right, and ought not to interfere in this matter, because it only concerns each individual personally. This is not the case. In its results it concerns the whole State, and has come to be a great and fearful evil; it is a monster whose shadow darkens the whole land; it is the Upas tree of this great land, whose foliage sends forth on every breeze poison and misery and death. We might, with great propriety and truthfulness, change the words of the poet a little, and say:

> Go wing thy flight from star to star,
> From world to luminous world, as far
> As the universe spreads her —— wall;
> Take all the *evils* of all the spheres,
> And multiply these by endless years;
> The *evils* of intemperance outweigh them all.

In my own county one murder, the direct cause of drunkenness, cost the county more in dollars and cents than has been realized from license fees since the formation of the county.

Then, taking it for granted that the evil is so great, has not the State a right to curtail it, or banish it entirely, if that were possible? Certainly it has. The State is bound to see to, and secure the best interests of, the greatest number of

its citizens. This is the province of government, and the rules of any State failing to do this are derelict in duty. One of the first truths that stand out boldly on the page of Holy Writ is that man is his brother's keeper. "And the Lord said unto Cain, where is Abel, thy brother?" If we see this great evil abroad in the land, and do not put forth our hand to stay it, we fail to do our duty.

So far as I am concerned, personally, on the abstract question, I am prepared to put a prohibitory clause in the Constitution, without submitting it to a vote of the people separately. But I think it is expedient for us to submit this question to a separate vote of the people, and I vote for the pending proposition with the understanding that it will be so submitted. I think it would be very impolitic to pursue any other course. If we were to make this section a part of the instrument, the same as any other, when the whole would come to be voted on every man who is opposed to prohibition would vote against the Constitution. All who imagine themselves aggrieved by any of its provisions would strike hands, and make common cause against the proposed Constitution, and the great probability is that all our labor would be lost, and we would find ourselves just where we were when we began our labors.

By submitting this matter to the people we are certainly doing no harm. They are the sovereigns, and have the ultimate right to deal with the question. If there is a majority in the State opposed to the traffic, surely the minority do not wish to force it upon us. All I ask is that the question may be dealt with in such a manner that the people may have a fair opportunity to say on which side they are. If they are in favor of temperance and sobriety, and desire to do what they can in assisting their fellows to lead sober and temperate lives, give them a chance to say so. But if they are in favor of drunkenness and debauchery, I want to throw nothing in their way that will hinder them from so declaring. This is a long, agitated and vexed question. Let it now be settled one way or the other. Forty thousand citizens, by their petitions, have asked us to take the course now proposed. Let us do so.

Mr. D. N. WHITE. Mr. Chairman: For the purpose of bringing the question squarely before the committee, and waiting for the second reading to bring in my amendment, I accept of the amendment of the gentleman from Venango (Mr. Beebe.)

The CHAIRMAN. The amendment of the gentleman from Venango (Mr. Beebe) will be read.

The CLERK read:

"The sale of intoxicating liquors, or mixtures thereof containing the same, for use as a beverage, shall hereafter be prohibited. The Legislature shall, within one year from the adoption of this Constitution, enact laws, with adequate penalties, for the enforcement of this provision.

Mr. BUCKALEW. Mr. Chairman: I move to amend, by prefixing the words, "license for," to the amendment.

Mr. CRAIG. Mr. Chairman: I hope the amendment to the amendment will not prevail. The thing which is desired to be prohibited is the *sale* of the liquor as a beverage, and not a prohibition of the granting of licenses. Consider for a moment what will be the effect if you prohibit the granting of licenses. Every man will have a right to sell. We will be remitted to the old condition of things, when there were no licenses for the sale of intoxicating drinks, when liquor was sold at every cross-roads, confederate or otherwise.

I hope that this amendment to the amendment will not prevail, but that the committee will keep its eye upon the thing demanded by the people, and that it will strike at the evil, the selling of intoxicating liquors for use as a beverage only. I desire to remark, further, that in conforming thus closely to the view of the people upon this subject we do not prohibit, when we adopt the article, the sale of intoxicating drinks as a matter of commerce, while the original proposition would have done so. A man comes into my establishment and buys any quantity of liquor, put up in bottles or in kegs, as may be. There is no contract as to its use, and nothing said about what is to be done with it. It is not drank upon my premises, but is taken away, and I know no more about it. That is sold as an article of commerce, not as a beverage; but the prohibition will reach all the sales in grog-shops and places where liquor is retailed and doled out, and sold as a traffic for use as a beverage, plainly and clearly.

Mr. BOYD. Will the gentleman allow himself to be interrogated?

Mr. CRAIG. If the question is not too hard.

Mr. BOYD. What do you propose to do with the liquor after it is brought here?

Mr. CRAIG. They are not going to bring any in *here*, I hope.

Mr. BOYD. That is your answer to the question, is it?

Mr. CRAIG. It is—to *that* question.

Mr. BOYD. I understood the gentleman to say that he did not object to their importing or manufacturing liquors, but simply to the sale of them.

Mr. CRAIG. I did not say a word about that, sir.

Mr. BUCKALEW. Mr. Chairman: This amendment is not directed against the manufacture of intoxicating liquors of any sort, nor against their importation, nor against their transfer as an article of commerce. Especially it is not directed against their free sale for medicinal and mechanical purposes. It is confined to the object for which, as I understand it, application has been made to this Convention to frame an amendment. That application to us, on the part of a portion of the people of the State, and the original proposition, introduced by the gentleman from Potter, (Mr. Mann,) was that spirituous liquors should not be made a matter of traffic as a beverage; that is, that license should not be granted and houses opened in all parts of the State for the purpose of supplying persons with spirituous liquors as a drink. I understand, sir, that our attention has been confined to that one question.

Now, under the amendment which is pending, a gentleman who would go into an importing house in this city and buy a box of claret, and take it to his home to be used, as occasion might require, in his family, will render the person who sells to him liable to a criminal prosecution, because, to some extent, the article purchased might be used as a beverage, and if the seller was informed, at the time of sale, of such intent of use, certainly he would be liable as a criminal, not under a statute which might be amended and shaped to suit the condition of the people, but by an unchangeable constitutional provision. My amendment, therefore, to prefix to this amendment the words, "licenses for" the sale of intoxicating liquors, will put the amendment in the form in which, I suppose, the intelligent and judicious friends of the proposition throughout the State desire it to be placed; whereas, if it is left in the absolute, unconditional form in which it stands as proposed, it will either make shipwreck of the whole sublect, or involve us in difficulty hereafter.

Mr. J. W. F. WHITE. It is for that very reason that I hope the amendment to the amendment will not be adopted. If we are to do anything at all let us do what we have been asked to do. If we wish to meet the prayers of the ten thousand petitioners who have been calling upon us to do something, let us do that which will meet with their approbation. Now, if the amendment proposed by the gentleman from Columbia (Mr. Buckalew) should be adopted, as has been suggested by the gentleman from Lawrence, (Mr. Craig,) it merely prohibits the granting of licenses for the sale of intoxicating liquors as a beverage. What will be the effect of such a provision? It will unquestionably throw open the sale of intoxicating liquors to every person in the State, without any qualification whatever. Now, is that what the temperaece men of Pennsylvania ask? Has there been a petition sent here asking anything of that kind? I must confess, for one, I misapprehend the entire movement in the State, if this is what we have been asked to do, simply to prohibit licenses and throw the liquor trade open to everybody in the State, without restriction or qualification. We are asked to place a provision in the Constitution that will prohibit the sale of intoxicating liquors as a beverage. That is what we have been called upon to do. We do not propose to incorporate it absolutely in the Constitution, but we are now discussing a proposition that is to be submitted to the vote of the people as a separate amendment. Now, shall we mock the voters of this State by a proposition that will do the very opposite of what we have been asked to do? It would seem to me that this amendment to the amendment would be little less than a direct mockery of the people of the Commonwealth. I trust, therefore, it will not be adopted, but the amendment proposed by the gentleman from Venango, (Mr. Beebe,) or the section reported by the committee, I trust will be adopted, because they raise the direct question that we have been called upon to submit to the people.

Mr. BUCKALEW. I would like to ask the gentleman if the amendment I have offered is not similar to the section reported by the committee?

Mr. J. W. F. WHITE. If I remember the reading of the section it not only prohibits licenses, but it prohibits the sale of intoxicating liquors as a beverage. The

section reported by the committee reads as follows:

"No license shall be granted to sell vinous, spirituous or malt liquors, or any admixture thereof, or any other intoxicating drink; and the sale of such liquors, except for mechanical, medicinal or sacramental purposes, shall be a misdemeanor, and punishable as shall be prescribed by law."

Now, the amendment does away with all the virtues and excellencies there would be in such a provision, and I might just add that, while I favor the amendment proposed by the gentleman from Venango, (Mr. Beebe,) it strikes directly at intoxicating liquors. It is the sale of intoxicating liquors, or any admixture thereof, which shall be prohibited. It does not extend to the baskets of champagne referred to by the gentleman from Columbia, provided it is not intoxicating. (Laughter.) It is simply intoxicating liquors that are referred to. It does not refer to and necessarily embrace all malt liquors. I shall, therefore, favor the amendment, because I think it calculated really and truly to meet the wishes of the people of this State, without sweeping down everything before it; but I especially protest against the amendment that has been offered by the gentleman from Columbia.

Mr. BEEBE. Mr. Chairman: It strikes me that the amendment which has been offered by the gentleman from Columbia (Mr. Buckalew) leaves the question as it now exists in the State of Michigan.

Mr. BUCKALEW. I ask leave to withdraw my amendment, because I find that objections have been urged against it.

Mr. BEEBE. I was about to say, Mr. Chairman, that the amendment left the question substantially as the clause in the Constitution in relation to the same proposition in the State of Michigan, as I understand it. As the gentleman from Lawrence (Mr. Craig) suggested, it leaves the whole subject open, without any prohibitory law in relation to the sale of intoxicating liquors, as it exists in that State. I therefore think that the amendment leaves the question for the people, to be represented by public sentiment upon the subject, as it did in that State, and where there was a strong feeling upon the subject of temperance, then it was always enforced, and where there was not free liquor, was the order of the day, and the opinion in that State was that it was no curative prohibition.

The question being then taken, on the amendment offered by Mr. J. W. F. White, of Allegheny, a division was called, which resulted as follows: Ayes, fifty-four; noes, sixteen.

So the amendment was agreed to.

The CHAIRMAN. The question recurs upon the section as amended.

Mr. STRUTHERS. Mr. Chairman: I offer the following amendment: To add to the end of the section the following proviso:

"*Provided*, This section shall be submitted separately to the people for their approval or disapproval."

Mr. CRAIG. Mr. Chairman: I rise to a point of order, and it is that this amendment cannot be considered in committee of the whole.

The CHAIRMAN. The Chair will sustain the point of order. It is a question for the Convention, and not for the committee of the whole, and in order that there may be no misapprehension about it the Chair will read from the fourth section of the act:

"*Provided*, One-third of all the members of the Convention shall have the right to require the separate and distinct submission to the popular vote any change or amendment proposed by the Convention."

Mr. STRUTHERS. Mr. Chairman: I think the committee of the whole has a right to report to the Convention any section that they may deem proper to add to the report, and therefore I think the action of the committee will not conflict, in any way, with that rule.

The CHAIRMAN. The Chair will state that, in its judgment, the proposition of the gentleman from Warren (Mr. Struthers) is not a modification of any previous section of the article. It is therefore not in order. It is a distinct proposition to submit an article to the vote of the people, which may be done by a vote of one-third of the Convention, but cannot be done in committee of the whole. It is not a question which is properly before the committee at this time, and it is therefore ruled out of order.

Mr. J. W. F. WHITE. Mr. Chairman: I would just remark to the gentleman from Warren, (Mr. Struthers,) and to all others, that there will be no objection on the part of the friends of this measure if it is required to be submitted as a separate amendment, if gentlemen contemplate placing it absolutely in the Constitution.

Mr. GOWEN. Mr. Chairman: I should like to detain the committee for a few moments. I am very much opposed to the adoption of this section, or to the adoption, by this Convention, of any sumptuary laws whatever. I would go as far as any man in this Convention to cure the evils of intemperance; but I do not believe that they are to be cured, either by legislation or by a constitutional prohibition of intemperance. Take any other parallel case; we have a law in this State which makes the rate of interest six per cent., and which prescribes a penalty for a violation of that law, and yet openly, glaringly, and notoriously, the banks of this State and this city, when money becomes tight, throw out the paper of their customers and go on the market and buy it at ten and twelve per cent., and everybody knows it. During the war an attempt was made to regulate the price of gold by congressional enactment, and though the bill did not pass, it is well known that had it passed, it would have been of no service whatever. There are laws——

Mr. BUCKALEW. The act did pass, and was repealed at a subsequent session of Congress.

Mr. GOWEN. I did not know it was passed; but its short existence furnishes the proof of the truth of the assertion that it is impossible for legislative power to control the price of commodities or the instincts of the people. You can no more control the desire to drink by legislation than you can control the desire to eat. You can no more prescribe the kind of drink that is to be be taken, than you can prescribe the kind of food to be eaten; and if the legislative power, or the constitutional power, in any State, has the right to control the individual instincts of the citizens in the matter of drink or food, I cannot see why it should not have the right to control them in the matter of dress, and in the matter of religion. The objection urged against it is, therefore, that it will do no good. Why, let me illustrate from my own experience. I reside in a ward in this city, the twenty-second, which was the first to adopt the local option law. It was adopted by a very large majority, and for two days, I believe, all drinking places were closed. Then they were opened, and notwithstanding the law, and notwithstanding its adoption, and notwithstanding the vote by which it was adopted, those drinking places have remained open to this day; and liquor is bought and drank and sold as openly, and as notoriously, as it was before the adoption of the law.

Mr. EWING. I would like to ask the gentleman whether that was not occasioned by the law having been declared invalid, and that by the tacit consent of the authorities and the people the law was not enforced?

Mr. GOWEN. I think not. I did not follow the case through the courts, but I think the court refused to give its assent.

Mr. EWING. I heard it stated that the Supreme Court had so decided.

Mr. BIDDLE. No consent was given at all. The law was pronounced constitutional by the lower court, and was treated so, just as any other law during the interim of the appeal.

Mr. GOWEN. So I thought, and, notwithstanding that, the people have gone on buying and selling liquor, and you cannot stop it by legislation, and it is one of the worst things to do to attempt to pass a law which you know will not be obeyed.

Mr. BEEBE. I would like to ask the gentleman whether the same result would be effected by a constitutional regulation?

Mr. SIMPSON. I would like to ask the gentleman whether that argument will not apply to every statute defining crime, and whether or not all laws would be abolished?

Mr. GOWEN. No; because the law of God prescribes punishment for crime, and the moral sense of the community yields implicit obedience to that law.

Mr. HAZZARD. I would like to ask the gentleman whether sumptuary laws are not passed regulating the rations of our soldiers, matters of dress, and matters of food?

Mr. GOWEN. They are not sumptuary laws by any means.

Mr. HAZZARD. Is not the provision regulating food a sumptuary law?

Mr. GOWEN. The regulation prescribing the food for soldiers in our military service is a proper and necessary police regulation of war, but the right to worship God in any way we please—the right to eat what we please—the right to drink what we please, and wear what we please, is an inherent personal right which I submit no legislation or no Constitution in a free government has a right to take away from the individual.

Mr. DARLINGTON. Will the gentleman admit that drinking to excess is an offense?

Mr. GOWEN. Certainly. And the moment it is carried to an excess, it becomes a crime, and society properly punishes it by law, but it is only the excess that is the crime.

Mr. DARLINGTON. Is it not for the good of society to take away the means of temptation and remove the cause of the vice?

Mr. GOWEN. No. Not to that extent. When a man becomes insane, society takes charge of his property and the custody of his person. Mental application may produce insanity, but the legislative power has no right to take hold of a sane man and prevent him from exercising the functions of his brain, because mental application may possibly render him insane. The moment a man oversteps the lines, and becomes either insane or intoxicated, he is in the one case a fit subject for the protection of society, and in the other he is a proper subject for its punishment.

Mr. DARLINGTON. Is it not the duty of society to protect its citizens by stopping the fountain of this vice?

Mr. GOWEN. No, it is not, and that is the point I take; and worse than that, and more than that, and beyond that, it will do no good. It never has done good in the past, and it never will do good in the future.

Mr. D. N. WHITE. I would like to ask the gentleman whether ——

Mr. BUCKALEW. Mr. Chairman: I rise to a point of order. A speaker upon the floor is certainly entitled to utter two sentences somewhere in his speech without interruption.

The CHAIRMAN. The Chair sustains the point of order.

Mr. D. N. WHITE. The gentleman asserts that this law has never accomplished any good results. I refer him to the overwhelming testimony of the Governors, judges, mayors, and the ablest magistrates of the people of Maine.

Mr. GOWEN. I am not familiar with that. I do not know how it is in Maine. I speak from a pretty general knowledge of the people in this State. I do not believe this law will accomplish any good results. Let me go a little further. This section, if adopted, will be unjust in its application. It does not prohibit drinking. You cannot prohibit drinking, for you cannot stand as a sentinel at the door of every house and cabin, and see what a man raises to his lips; but it may remove this privilege from a certain class and permit it to remain with another.

I will say that there are two classes of people in this Convention, by way of illustration. One is a class of people who can afford to purchase anything they desire, whether it is sold in Pennsylvania or not. They can send to New York for New York champagne, and if they do not like New York champagne they can go to New Jersey and purchase New Jersey champagne. Then there is another class of people that do not care about drinking at all. I believe I am one of this class. I do not care much about it, and I could go for twenty years without, but I do not think we should

> "Compound for sins we are inclined to,
> By damning those we have no mind to."

I do not think it is right to permit one class to enjoy this luxury simply because they can afford it, and deprive another class from participating in the same privileges.

I remember, some years ago, when this subject was of considerable importance and of discussion in England, that *Punch* came out with two cartoons. It was either the Sunday law, or the total abstinence question. I do not remember which. One of the cartoons represented a rugged, honest laboring man, trudging along with his wife and child on a dusty road on Sunday, who had just stopped at a wayside inn to procure a glass of ale to quench his thirst, and the scene represented was the inn-keeper telling him that it was against the law and he could not sell any. The other cartoon represented a prominent bishop of the church of England, who had been instrumental in securing the passage of this prohibitory law, who was sitting after dinner in an elegant conservatory with his bottle of port, drinking success to the law he had succeeded in establishing, and which prevented other people from drinking without any annoyance to himself. Now, that is the justice and wisdom of the creation of such an act as this in this State. Why, we have one class of citizens in our midst particularly in Philadelphia——

Mr. BEEBE. I would ask if the people, under this section, have not the privilege of objecting to the adoption of this prohibitory law?

Mr. GOWEN. Yes, but the privilege which fifty-one people have, of assenting to such a law, should not bind the forty-nine that differ from them. That is just the point involved in a subject like this.

I was going to remark that there is a class of people in Philadelphia who come from Germany, and they are accustomed to hold periodical celebrations. I believe they are always conducted with as much decorum, as much quietness, peace and order as any other celebrations, and they, nevertheless, drink large quantities of their national beverage—lager beer. They are an excellent class of our citizens, and a class that are particularly desired in this State, but if they are not permitted here, as in their fatherland, to walk out with their wives and children, and sit down in one of the numerous gardens of this city to drink a glass of beer, they will be driven to some other State. Why should we do this?

Again, I believe that instead of passing this prohibitory law the cause of intemperance would be correspondingly removed if we were to throw the door still wider open, and were to take means to bring into this country the excellent and cheap wines of Europe which are not very intoxicating, and substitute them, among the poorer classes of our people, for the vile poisonous whisky which kills both mind, body and soul. If there is to be any legislation, or any Constitution making, looking to the cure of intemperance, let it be directed towards stopping the stills that are now producing this vile compound, but do not let us attempt to do by legislation what it is impossible to do, and what, if it does any good at all, will simply draw an invidious distinction between two classes of our people by permitting one class to drink as much as they please and preventing the other from participating in the same privilege.

Mr. WRIGHT. Mr. Chairman: I have noticed that the courtesy of members differing with us in opinion on this question has been very marked during the morning discussion. We have had the discussion all our own way. The vote that was taken on the amendment was one that greatly gratified my heart. Fifty-six votes in a Convention not full in membership, I consider to be a ratification of this proposition, to which the friends of the measure here present, or outside of the Convention, will most heartily respond. Now, sir, we have had it fully discussed upon our side, and I am glad no disposition has been manifested on the other side to interpose any objection to the submission of this principle to the vote of the people. I would, therefore, desire that the vote should now be taken on the original proposition as reported by the committee, and as amended in the vote which has just been decided.

Mr. LAWRENCE. Mr. Chairman: I agree with the gentleman who has just taken his seat, (Mr. Wright,) that we should take the vote now upon this question. When the question came up this morning I entertained the same views as the gentleman from Potter, (Mr. Mann,) and was hopeful that the discussion would not be continued, and that the vote might have been taken upon the question, because I was satisfied that every member in this Convention had made up his mind in regard to it. I supposed this was the case, because it is a question that has been discussed before the people. I was prepared to vote then, and I am prepared to vote now, but I desire that the Convention should give me five minutes time in which to say a word in reply to the gentleman from Philadelphia (Mr. Gowen.) I desire to speak of my own experience in reference to this question in a locality where the cause of temperance has, probably, been agitated to a greater extent than in any other portion of the State.

I understand the gentleman from Philadelpnia (Mr. Gowen) to take the ground, that in his own ward, his own precinct, where they have had prohibitory laws, the laws have been violated and drunkenness has increased, or, at any rate, been continued.

Now, sir, it will not do for men, in this age of the world, to stand up in this Convention, or anywhere else, and say that these prohibitory laws, or the practice of the courts in prohibiting these licenses, does not tend to temperance.

Let me tell you what has been the result in my own county, where we have as temperate, intelligent and upright a population as there is on this broad green earth. We have a judge, who is a Republican, an upright man, and we have two asssociate judges, who are Democrats, and under the "Buckalew" law, as they call it there, they refuse to grant licenses wherever a majority of the people in the district where the public house is sought to be established, remonstrate against it. The consequence is, that in our county we have but one, certainly not more than *two* licensed houses for the sale of liquor. In the town in which I live, now composed of about two thousand inhabitants, we have had no license law for the last five or six years. We have seen the marked effect

of it upon the population there, where we have many miners—men working in the mines along the river, digging bituminous coal.

I do not recollect having seen in the last two years, in my own town, more than a few persons intoxicated. I repeat, sir, there are but two licensed houses in the county of Washington, and the good effect of the restriction has been seen all over the county. There is not a man who is a candidate for any office to-day that would dare, in Washington county, to go into a public house and treat any portion of the people; if he did do so he would be almost sure to be defeated, not only by the Republicans, but by the Democrats at the polls. That, sir, is the condition of public sentiment in my district. It was not so, however, a few years ago. I recollect, when I first went into the county of Greene, as a candidate, how common it was to have the bottle set out on the bar, and to have every body drink at the expense of the candidate, the bill being presented to him before his departure, generally five dollars or upwards, the next morning, to cover expenses. I am glad to know that in that county, as we have been informed this morning, they sustained the local option act by a majority of one thousand five hundred.

Mr. KAINE. They have fifteen hundred Democratic majority in that county.

Mr. LAWRENCE. Very well. My friend from Fayette (Mr. Kaine) always takes an opportunity of showing up the virtues of the "Democratic majority." [Laughter.] At any rate, I understand they have a good majority for local option, which is, to some extent, the same point that we have before us here. When my friend from Philadelphia (Mr. Gowen) comes down to the question of individual taste, &c., I would agree with him in much he says, but when he comes to talk about this great general question which is agitating the people everywhere throughout the State—for they talk about it in their homes and at their school houses, and preach it from their pulpits—it effects the moral position of every man in the State, and his argument does not fairly meet the demands of the times. Let us get above this question of individual tastes, and let us put something in this fundamental law which will save our children from the degradation to which this vice exposes them. I speak not so much for my own people as for others. We do not need any such law in my county, because our courts refuse to grant licenses, and there is little whisky manufactured in the county. There are doubtless other parts of the State where there is none used.

That I may be correctly understood on this subject, I desire to state that I never belonged to any temperance organization. Yet I passed the first prohibitory law that was ever passed in my own county, and if I could do it by my vote here, or at the polls, I would banish this vice of drunkenness from the State and the world. Since this Convention has been in session we have had from all parts of the State petitions for an amendment of this character. It is our duty to see that the moral sentiment of our State, the christian sentiment of our people, should be stamped upon the Constitution of Pennsylvania, the State that was once called "the old blind giant," because she was so slow to see her own resources and her power.

This voice comes up to us from almost every house, hamlet or village in the State, to restrain the vice of intemperance. I have thought it my duty to say this much in reply to what my friend from Philadelphia (Mr. Gowen) has said on this subject, to show the feeling of my own people, and my own feeling as well, on this subject.

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

INVESTMENT OF TRUST FUNDS.

Mr. KAINE. I now renew the motion that I made this morning to reconsider the vote taken the other day on the section of this bill offered by the gentleman from Philadelphia, (Mr. Biddle,) which is as follows: "No act of the Legislature shall authorize the investment of trust funds by executors, administrators, guardians, or other trustees, on the bonds or stock of any private corporation; and existing laws so authorizing are nulled and avoided, save such investments as have heretofore been made in good faith."

The question being upon the reconsideration, it was not agreed to.

Mr. WM. H. SMITH. Mr. Chairman: I beg leave to offer, now, another section as a new section, which I will send to the desk.

The CLERK read:

"The Legislature shall by law empower the Secretary of Internal Affairs to prepare a system of weights and measures and gauges for solid and liquid merchandise, and also the requisite implements, tests and instructions, and complements

of these shall be furnished to each county and municipality, which may, each for itself, appoint officers for the inspection of merchandise, manufactures or live stock; but no State office shall be continued or created for such purpose."

Mr. MACVEAGH. Mr. Chairman: I rise to a point of order. My point is, that the committee of the whole, having considered the entire report, should now submit it to the Convention, without considering any propositions that were not presented during the consideration of the report.

The CHAIRMAN. The Chair will remind the gentleman that it has been the uniform practice of the committee of the whole of this Convention to entertain propositions of this kind, so far as the Chair is aware, without exception.

Mr. MACVEAGH. After the report has been gone through with?

The CHAIRMAN. Yes.

Mr. MACVEAGH. Then I withdraw my objection.

Mr. CORSON. Mr. Chairman: I think that was only when gentlemen had the consent of the Chair to bring it in afterwards.

The CHAIRMAN. I think not.

Mr. CORSON. Mr. Chairman: The gentleman from Potter (Mr. Mann) asked permission of the committee to offer the amendment after the report had been gone through with, and the Chair held that he, having asked permission, could then offer it.

The CHAIRMAN. The Chair will state that, to his recollection, there were in the report of the Committee on Suffrage two distinct sections added after the committee had gone through with the entire bill. The Chair, therefore, in pursuance of the practice of the Convention, is constrained to over-rule the point of order.

Mr. W. H. SMITH. Mr. Chairman: We have heard a good deal to-day about what we should drink. I think we should pay some attention also to what we should eat. I am justified in presuming that some such provision as this is necessary, by the long and animated debate which took place on the subject, as presented by the Committee on Legislation. Besides, sir, I have been asked by several letters from my constituents to introduce some such proposition as this.

I know the feelings of manufacturing and trading community on this matter. As a wholesale merchant for twenty-five years, I have had experience on the subject. Merchants have suffered from the want of a well digested system of weights and measures that could be respected and relied upon, and they have been subjected to the petty extortion of the class of sealers of weights and measures. They wish to have these things remedied. And I submit, Mr. Chairman, that it is not a little thing that, for the want of stringent local inspection laws, the people have, in certain cities, at least, had to feed upon hogs that have the *trichinæ* or measels, and cattle that have died of disease.

I would offer this as a separate section, or rather an additional one, to take the place of section No. 25, which was voted down two days ago. I inferred from the fact that the Committee on Legislation reported section No. 25, and from the general tenor of the discussion concerning it, that some such section was needed, or is thought to be so. I do not discover in other reports, any provision that will supply the place of this section. Moreover, I have a letter from a constituent, speaking for others and himself, who wishes some action to be taken in regard to liquid measures. I therefore respectfully ask the Convention to consider this section, and determine whether it will meet the necessity which section No. 25 was intended to supply.

The appointment of inspectors, &c., by the State, has made, for the last twenty years, pleasant places of refuge for many decayed politicians, who, it would seem, *had* to be taken care of, and they *were* taken care of at an expense of, perhaps, $150,000 a year to the people, who paid it through the dealers in the articles which, it was *pretended*, had undergone inspection. Then the sealers of weights and measures are another tribe of blood-suckers, sustained by business men, and they generally know as much about the construction and adjustment of a scale or a balance as they do about building a steamship. All these offices have afforded rich pickings for the hangers-on of political parties, but for the pay they receive they give no equivalent in public health or safety; it is mere plunder.

It was the opinion of the committee that something should be done toward getting up an uniform and reliable system of weights and measures. This new section provides for this. That committee thought, too, that the counties and cities—not the State—should select the inspectors of articles of food and of merchandise. This section so orders, and abolishes State inspectors.

I submit, Mr. Chairman, that if it were necessary at all, as it would seem to have been, to put section No. 25 in the report, something should be done to supply the deficiency resulting from the fact that the committee did not seem able to agree upon the section and it, and all the amendments, were voted down. But we discussed it here for a day, and from that discussion I think the subject worthy of consideration.

These matters of inspection have been mere mockery heretofore, and as for the standard of weights and measures, nobody has paid any attention to them. A proper, efficient, and careful system of this sort, I think, would be very beneficial to the people of this Commonwealth, whether in trade or out of it. Every man who buys and sells would find advantage in it.

Mr. HAZZARD. Mr. Chairman: I hope, sir, that this will pass. In my own county I have, on several occasions, seen the difficulties that have arisen from the absense of proper standards. Heretofore we have had an officer called "sealer of weights and measures." A grocer in our town, who was dissatisfied with the system, as the inspectors kept adjusting his weights and measures every little while, and charging him for it. He did not care about it, for he did not care whether his weights and measures were right or not, so long as they didn't weigh or measure too much, so he set to work to have the law repealed, and it was repealed. I took occasion last summer to go around to nearly every place in the town and test the scales, and I found that there were scarcely any two of them alike. We do not know when we buy articles, whether we are getting a proper quantity or not. It is better for the people, decidedly, that there should be some such standard as this proposition provides for.

Mr. W. H. SMITH. Mr. Chairman: The great necessity for this, as explained by the gentleman from Washington, (Mr. Hazzard,) is felt everywhere. Those who are in trade know very well what a grievance it is to be without an authentic and reliable system of weights and measures. We have to take the inspection of people who do not understand anything about it. As to the office of "sealer of weights and measures," it is a mere sinecure given to people who have no knowledge whatever, and no judgment of any worth, as to a single particular of the duties which should devolve upon such an officer. Whenever any dispute has to be settled, the merchants or parties in dispute go to the scale makers, who are obliged to set them right. If a proper officer were appointed for the purpose, and proper standards provided and insisted upon, there would be no necessity for that.

Mr. CORSON. Mr. Chairman: I believe myself with the gentleman from Allegheny, (Mr. W. H. Smith,) that this is a wise provision, and as it is new, will require some further discussion, I trust that it may be adopted here in committee of the whole, so that we can have an opportunity of acting on it fully, when it comes into the Convention.

The section offered by Mr. W. H. Smith was agreed to.

Mr. BANNAN. Mr. Chairman: I propose the following section: "No law shall take effect until the fifth day of July next, after its passage, unless, in case of the emergency, the Legislature shall, by a vote of two-thirds of all the members elected to each House, otherwise direct."

It was rejected.

Mr. MACVEAGH. I move the committee rise and report the article to the Convention, with amendments.

The motion was agreed to.

IN CONVENTION.

Mr. ARMSTRONG. Mr. President: The committee of the whole have had under consideration the report of the Committee on Legislation, and have instructed me to report the same to the Convention, with amendments.

The PRESIDENT. The article as amended will be read.

THE AMENDED ARTICLE ON LEGISLATION.

The CLERK read:

SECTION 1. Each House shall judge of the qualifications of its members; but contested elections for members of either House shall be determined by the court of common pleas of the county in which the returned member lives, in such manner as shall be prescribed by law.

SECTION 2. Each House shall keep a Journal of its proceedings, and publish them daily, except such parts as may require secrecy; and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the Journals.

SECTION 3. Either House shall have power to punish for contempt or disorderly behavior in its presence; to enforce obedience to its process; to preserve order in the House, or in committees; protect its

members against violence, or offers of bribes, or private solicitation, and with a concurrence of two-thirds expel a member for misconduct, not a second time, for the same cause; but a member who has been expelled for corruption shall not be eligible thereafter to either House. Punishment for contempt, or disorderly behavior, shall not bar an indictment for the same act.

SECTION 4. No law shall pass except by bill; and no bill shall be so altered or amended, in the course of its passage through either House, as to change its original purpose.

SECTION 5. Bills may originate in either House, but may be altered, amended or rejected in the other. No bill shall be considered unless reported from a committee, and printed for the use of the members.

SECTION 6. No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except appropriation bills.

SECTION 7. Every bill shall be read at length on three different days in each House; all amendments thereto shall be printed before the final vote is taken, and no bill shall become a law unless, on its final passage, the vote be taken by yeas and nays, the names of the persons voting for and against be entered on the Journal; and a majority of the members elected to each House be recorded on the Journal thereof, as voting in its favor.

SECTION 8. No amendment to bills, by one House returned to the other for concurrence, shall be concurred in except by the vote of a majority of the members elected to the House to which the amendments are so returned, taken by yeas and nays, and the names of those voting for and against recorded upon the Journal thereof; and reports of committees of conference shall be adopted in either House, only by the vote of a majority of the members elected to each House, taken by yeas and nays; and the names of those voting for and against recorded upon the Journals.

SECTION 9. No law shall be revived, amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended or conferred, shall be re-enacted and published at length.

SECTION 10. The Legislature shall not pass any local or special law.

Authorizing the creation, extension or impairing of liens.

Regulating the affairs of counties, cities, townships, wards, boroughs or school districts.

Changing the names of persons or places.

Changing the venue in civil or criminal cases.

Authorizing the laying out, opening, altering or maintaining roads, highways, streets or alleys.

Relating to ferries or bridges, or incorporating ferry and bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State.

Relating to or incorporating ferries or bridges.

Vacating roads, town plats, streets or alleys.

Relating to cemeteries, grave-yards or public grounds.

Authorizing the adoption or legitimating of children.

Locating or changing county seats, erecting new counties or changing county lines.

Incorporating cities, towns or villages, or changing their charters.

For the opening and conducting of elections, or fixing or changing the place of voting.

Granting divorces.

Erecting new townships or boroughs, changing township lines or borough limits.

Creating offices or prescribing the powers and duties of officers in counties, cities, boroughs, townships, election or school districts.

Changing the law of descent or succession.

Regulating the practice or jurisdiction of, or changing the rules of evidence in, any judicial proceeding or inquiry before courts, aldermen, justices of the peace, commissioners, arbitrators, auditors, masters in chancery or other tribunals.

Or providing or changing methods for the collection of debts, or the enforcing of judgments, or providing the effect of judicial sales of real estate

Regulating the fees, or extending the powers and duties of aldermen, justices of the peace, magistrates or constables.

Regulating the management of public schools, the building or repairing of school houses, and the raising of money for school purposes.

Fixing the rates of interest.

Affecting the estates of minors or persons under disability, except after due

notice to all parties in interest, to be recited in the special enactment.

Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury.

Exempting property from taxation, regulating labor, trade, mining or manufacturing.

Creating corporations, or amending, renewing or extending the charters thereof.

Granting to any corporation, association or individual, any special or exclusive privilege or immunity.

Granting to any corporation, association or individual, the right to lay down a railroad track. Nor shall the Legislature indirectly create such special or local law by the partial repeal of any general law.

Nor shall any bill be passed granting any powers or privileges in any case where the manner, form or authority to grant such powers and privileges shall have been provided for by general law; and in no case where a general law can be made applicable, nor in any other case where the courts have jurisdiction, or are competent to grant the powers or give the relief asked for: *Provided*, That bills may be passed repealing local or special acts.

SECTION 11. No local or special bill shall be passed, unless public notice of the intention to apply therefore shall have been published in the locality where the matter or thing to be affected may be situated; which notice shall be at least sixty days prior to the introduction into the Legislature of such bill, and in the manner to be provided by law. The evidence of such notice having been published, shall be exhibited in the Legislature before such act shall be passed.

SECTION 12. The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the Legislature after their titles have been publicly read, immediately before signing, and the fact of signing to be entered on the Journal.

SECTION 13. The Legislature shall prescribe by law the number, duties and compensation of the officers and employees of each House; and no payment shall be made from the State Treasury, or be in any way authorized to any person acting officer or employee, elected or appointed in pursuance of law.

SECTION 14. All stationery, printing paper and fuel used in the legislative and other departments of government, shall be furnished, and the printing, binding and distributing of the laws, Journals, department reports, and all other printing and binding, and the repairing and furnishing the halls and rooms used for the meetings of the Legislature and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price, and under such regulations as shall be prescribed by law. No member or officer of any department of the government shall be in any way interested in such contracts; and all such contracts shall be subject to the approval of the Governor, Auditor General and State Treasurer.

SECTION 15. No law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment.

SECTION 16. All bills for raising reveuue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills.

SECTION 17. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the Commonwealth, interest on the public debt, and for public schools; all other appropriations shall be made by separate bill, each embracing but one subject.

SECTION 19. No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, other than normal schools, established by law for the professional training of teachers for the public schools of the State, except by a vote of two-thirds of all the members elected to each House.

SECTION 20. No appropriation (except for pensions and gratuities for military services) shall be made for charitable, educational or benevolent purposes to any person or community, nor to any denominational or sectarian institution, corporation or association.

SECTION 21. The credit of the Commonwealth shall not, in any manner or event, be pledged or loaned to any individual, company, corporation or association whatever; nor shall the Commonwealth hereafter become a joint owner or stockholder in any company or association or corporation.

SECTION 22. The Legislature shall not authorize any county, city, borough, township or incorporated district, by virtue of a vote of its citizens or otherwise, to become a stockholder in any company,

association or corporation, or to obtain or appropriate money for or to loan its credit to any corporation, association, institution, company or individual.

SECTION 23. The Legislature shall not delegate to any special commission, corporation or association any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever.

SECTION 25. No act of the Legislature shall limit the amount to be recovered for injuries to person or property, and in case of death from such injuries resulting in death, or for injuries, the right of action shall survive, and the Legislature shall prescribe for whose benefit such action shall be prosecuted. Nor shall any act prescribe any limitation of time within which suits may be brought against corporations for injuries to person or property, or for other causes different from that fixed by the general laws prescribing the time for the limitation of actions, and existing laws so prescribing are annulled and avoided.

SECTION 26. The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be regulated by law.

SECTION 27. No money shall be paid out of the treasury but in consequence of appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof.

SECTION 28. No obligation or liability of any railroad, or other corporation, held or owned by the Commonwealth, shall ever be exchanged, transferred, remitted, postponed, or in any way diminished by the Legislature, nor shall such liability or obligation be released, except by payment thereof into the State Treasury.

SECTION 29. No bill shall be passed giving any extra compensation to any public officer, servant, employee, agent or contractor after services shall have been rendered or contract made, nor providing for the payment of any claim or part thereof, now existing or hereafter created, against the Commonwealth without previous authority of law, and all such unauthorized contracts and agreements shall be void.

SECTION —. "When the Legislature shall be convened in special session there shall be no legislation upon subjects other than those particularly mentioned in the proclamation of the Governor as reasons for holding such session."

SECTION 30. Every order, resolution or vote, to which the concurrence of both Houses may be necessary, except on the question of adjournment, shall be presented to the Governor, and, before it shall take effect, be approved by him; or, being disproved, shall be re-passed by two-thirds of both Houses, according to the rules and limitations prescribed in case of a bill.

SECTION 31. A member of the Legislature who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation, or person, any money, office, appointment, employment, testimonial, reward, thing of value or enjoyment, or of personal advantage, or promise thereof, for his vote or official influence, or for withholding the same, or with an understanding expressed or implied that his vote or official action shall be in any way influenced thereby, or who shall solicit or demand any such money or other advantage, matter or thing aforesaid, for another, as the consideration for his vote, or official influence, or for withholding the same, or shall give or withhold his vote or influence, in consideration of the payment or promise of such money, advantage, matter or thing to another, shall be held guilty of bribery, within the meaning of this Constitution, and shall incur the disabilities provided thereby for said offence, and such additional punishment as is, or shall be provided by law.

SECTION 32. Any person who shall, directly or indirectly, or by means of or through any artful or dishonest device, offer, give or promise any money, goods, thing of value, testimonial, privilege or personal advantage to any executive or judicial officer or member of the Legislature of this Commonwealth, to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and punished in such manner as shall be provided by law.

SECTION 33. Any person who may have offered or promised a bribe, or solicited or received one, may be compelled to testify in any judicial proceeding against any person who may have committed the offense of bribery as defined in the foregoing sections, and the testimony of such witness shall not be used against him in any judicial proceeding; and any person convicted of the offense of bribery,

as hereinbefore defined, shall, as part of the punishment therefor, be disqualified from holding office or position of honor, trust or profit in this Commonwealth.

SECTION 34. The Legislature shall have no power to pass retrospective laws, but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties and officers, by curing omissions, defects and errors in instruments and proceedings arising out of their want of conformity with the laws of this State.

SECTION 35. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature, shall disclose the fact to the House of which he is a member, and shall not have the right to vote thereon.

SECTION 36. The sale of intoxicating liquors, or mixtures thereof, containing the same for use as a beverage, shall hereafter be prohibited. The Legislature shall, within one year from the adoption of the Constitution, enact laws with adequate penalties for the enforcement of this provision.

SECTION 37. The Legislature shall, by law, empower the Secretary of Internal Affairs to prepare a system of weights and measures and gauges, for solid or liquid merchandize, and also the requisite implements, tests and instructions; and complements of these shall be furnished to each county and municipality, which may, each for itself, appoint officers for the inspection of merchandize, manufactures or live stock; but no State office shall be continued or created for such purposes.

CITIES AND CITY CHARTERS.

Mr. MACVEAGH. Mr. President: I now move that the Convention resolve itself into committee of the whole for the further consideration of the article reported by the Committee on Cities and City Charters.

It was agreed to.

COMMITTEE OF THE WHOLE.

The Convention then resolved itself into the committee of the whole, Mr. Darlington in the chair, for the further consideration of the report of the Committee on Cities and City Charters.

The CHAIRMAN. When the committee last rose the third section was under consideration. It will be read.

The CLERK read:

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

The CHAIRMAN. The gentleman from Philadelphia (Mr. Littleton) had proposed to amend, by adding these words, after the word "shall," in the second line, "by and with the consent of the select and common councils, appoint all heads of departments and municipal officers not elected by the people, and shall." The other gentleman from Philadelphia (Mr. Cuyler) proposed to amend that, by striking out and inserting as follows: "The mayor shall nominate and, by the advice of the select council, appoint and remove all heads of municipal departments, with the exception of the controller, the treasurer and the receiver of taxes, and all others not made elective by general law; he shall have a qualified veto on all the acts and ordinances passed by the councils; shall see that the duties of the several officers are faithfully performed; but shall exercise no judicial functions, civil or criminal."

Mr. WALKER. Mr. Chairman: The gentleman who proposed that amendment is not, I believe, at present in the Hall. I trust, however, that the committee will not agree to that amendment. It would make the article totally inapplicable to municipal organizations of every other portion of the State, except the city of Philadelphia. The officers there spoken of are not known to the other portions of the State. I propose, if that is voted down, to ask that the section be amended in this way: "The mayor shall nominate, and, with the advice of the select and common council, appoint and remove all municipal officers not elected by the people," which nearly corresponds with the amendment proposed by the gentleman from the city (Mr. Littleton.) I trust that, unless the committee is satisfied from information derived from the gentlemen of the committee, that the amendment will be voted down.

Mr. JOHN PRICE WETHERILL. Mr. Chairman: I entirely concur with the remarks of the gentleman from Erie, (Mr. Walker,) the chairman of this committee, but at the same time I prefer the section as it came from the committee, merely providing that the mayor shall have a qualified veto over all the acts and ordinances passed by councils, and shall see that the duties of the several officers are faithfully performed. I do that for this

reason: I take the ground that all the cities throughout the State are fully able, as far as local self government is concerned, to take care of themselves and manage their own affairs. We start out with that principal, and therefore say in that committee's report that there shall be no interference whatever from the Legislature—that, in other words, the mayor and select and common councils of any large city shall not have a partial control over the city. They shall not be controlled by twenty-two men selected by the people and sent to Harrisburg. The objection to that is obvious—that because supreme power is not given to the mayor and select and common councils of the city, therefore we have legislation at Harrisburg, and therefore the trouble. It is impossible, sir, for twenty-two men in the Legislature to known what the wants of the city are, and therefore I say that the councils of the city must be supreme, and that they must govern.

Now, if we take that as a principle, sir, why not leave it to the councils to govern in this matter. Why should we say in Convention what the committee do not want the Legislature to say at Harrisburg? We say, by the report of this committee, that supreme power in all local government is wanted, and yet by this amendment we would say that the mayor shall have certain duties, and that the select and common council shall have duties, and that the mayor shall be an executive officer, and absolutely designating what the duties of a mayor and his subordinates shall be. When we say the Legislature shall not do this thing, I think that is wise. I think that is a fair proposition, and no good reason can be assigned why, if it is perfectly right for us to be independent, as we desire to be, of the Legislature of the State; we also desire city legislation to be independent of this Convention. Look at it. Carry out the idea. If the amendment of the gentleman from Erie (Mr. Walker) prevails, the mayor of the city of Philadelphia will have the appointment and selection of all the officers of the city. Now, I do not know that that would be objectionable if we have a good mayor.

I do not say that the present mayor of Philadelphia is not fully as well qualified as any mayor that can be had; on the contrary, I affirm that he is fully qualified. He discharges his duties faithfully and honestly. I do not say but what it would be right, perhaps, to delegate that immense power, that immense patronage, and that immense influence to him, and I do not know but what it would have been right also in the cases of his predecessors. We have been signally fortunate in that respect, because the officers elected to control the affairs of the city have always been such officers as commanded the respect and esteem of all our citizens. But I see danger in it nevertheless. If we load down an office, such as this one, in a city like Philadelphia, with so much patronage and power—if we let that officer control, directly and indirectly, through his appointing, an immense patronage—if we allow him supreme power over expenditures of not less, in all the departments, than six to eight millions of dollars a year—if we allow him to be a dictator, which he would be in a large city like this, with a population almost as large as a State, it would be most decidedly objectionable.

If this Convention will give us a good election law; if they will prevent fraud and corruptions in the elections; if they will say, by their acts, that we can guarantee to the city of Philadelphia pure elections, and a pure ballot, then I have no objection whatever to this amendment, as proposed by the gentleman from Erie (Mr. Walker.) I know that the people themselves will, in that event, take care that they are properly represented by the mayor of the city of Philadelphia. They will give us a good mayor; then there will be no danger if we will give him supreme power.

Mr. WALKER. Mr. Chairman: That amendment is not now before the committee. Let us dispose of the amendment that *is* before us. Then if I offer, or if any other gentleman offers, an amendment not acceptable to the gentleman from Philadelphia, it can be discussed. I think the pending amendment ought to be voted down, and I believe the gentleman (Mr. John Price Wetherill) concurs with me in that.

Mr. JOHN PRICE WETHERILL. The amendment to the amendment, as I understand it, is now before the committee, and therefore I take it that both the amendments are under discussion. I want to call the attention of the committee clearly to this fact, first, of the enormous power it will give and the enormous patronage it will give; of the enormous amount of money which this officer can, directly and indirectly, control, and in the present inefficient condition of our

election laws it may perhaps give us a corrupt officer as mayor of the city. Heretofore we have had to go to the Legislature to correct some of our minor department evils, and the danger has been referred to on this floor, that we will load down even the courts by giving them so much power and patronage, and leave them liable to the influences of rings. We may, I say, by piling up patronage and power upon the office of mayor of the city of Philadelphia, make his office so desirable that improper combinations may be made to secure the election of that officer, and enable him to hold his seat almost *in perpetuo*, and in that way give us a government with which the "Tweed" government of New York would hardly compare.

Mr. BROOMALL. Mr. Chairman: The objection I have to the amendment to the the amendment is, that it is especially adapted to one city, Philadelphia, whereas the article itself is to be applicable to all cities. The objection is that it names officers perfectly well understood in the city, but officers who do not exist in other cities. If the mover of that amendment were here, I would ask him to modify it, so as to read according to an amendment that I have here, and which I will now read, and I call the attention of the gentleman from Philadelphia (Mr. Jno. Price Whetherill) to say whether it will not suit all cities: "The mayor shall appoint, by and with the advice and consent of the select and common councils, all city officers except those whose election or appointment shall be provided for by general law." That, I think, ought to meet the views of the gentlemen from Philadelphia, and it has the advantage of being adapted to all the cities in the Commonwealth. I ask, then, that the Convention vote down the amendment, as the gentleman who offered it is not here to modify it, and take this, or something like this, so that all cities shall be alike.

Mr. HANNA. Mr. Chairman: In my opinion the section, as reported by the committee, is sufficient for the purpose we have in view. I submit that we are not providing legislation, that we are not about to incorporate into our State Constitution articles affecting only one large city, or two large cities, but we must remember that we have other cities than Philadelphia or Pittsburg, and that, therefore, in the Constitution of the State we should only provide such measures as will meet with general satisfaction and approval. Now, the section as reported, to my mind, is sufficient. The amendment offered by the learned chairman of the committee certainly will not cover the objection I have in view. It is certainly objectionable, because it goes to the great extent of providing that the mayor of the city shall appoint all the officers of the city.

Now, that might do in some minor instances, but I simply wish to call the attention of the committee of the whole to a few facts in regard to that, in addition to what has been so well said by my colleague, Mr. Wetherill. Let us take any one single instance. Suppose that we provide that the mayor of the city of Philadelphia shall have the power to appoint all the officers of the municipality. Why, sir, we would be placing in the hands of one man more power, more patronage and more influence, perhaps, than any officer throughout the country, save the President of the United States. In the first place, look at the police power. That alone is more than any Governor of the Commonwealth has ever wielded. The mayor of the city of Philadelphia would have the police appointments, and the police force numbers 1,200 men, including the men and officers, or nearly that. Then, again, look at the immense public works which are continually being constructed by the city authorities. At this moment we are about constructing, in East Fairmount park, a reservoir covering one hundred and sixteen acres of land. Suppose we authorize the mayor to employ the head of that construction. Why, under the superintendence of the contractor for that work he would have, during the summer season, perhaps one thousand men under his employ. Again, take our department for supplying the city with gas. Why, to-day they must have from two thousand five hundred to three thousand men under their control continually. Why, sir, where are we to stop? We may safely calculate that if we give this almost unlimited power to one single individual that he will have, in this city alone, ten thousand to fifteen thousand men under his influence and control.

Now, sir, I think that this alone should cause us to hesitate before we pass anything covering so much as that contemplated by the amendment of the gentleman from Erie (Mr. Walker.)

Mr. WALKER. Mr. Chairman: I have not offered an amendment. I only indi-

cated what I proposed to offer as an amendment.

Mr. HANNA. I was under the impression that the gentleman had offered it as an amendment.

Mr. WALKER. Oh, no! I offered no amendment.

Mr. HANNA. In view of all that we know in regard to this subject, I decidedly think that it would be unsafe for the interest of our great cities to repose such vast power, patronage and influence in one single individual. I am therefore willing to adopt the section as reported by the committee, but if the committee of the whole should prefer that proposed to be offered by the gentleman from Delaware, (Mr. Broomall,) I do not see such grave objection to that. But here is a proposition which will not give satisfaction to the people of the different sections of the State. I therefore hope that the amendment offered upon this question will not be agreed to by the committee.

Mr. TEMPLE. Mr. Chairman: I call for the reading of the amendment.

The CLERK read as follows:

"The mayor shall nominate and, with the advice of select council, appoint all heads of municipal departments, with the exception of the controller, treasurer and the receiver of taxes, and all others not made elective by general law. He shall have a qualified veto on all acts and opinions passed by councils, shall see that the duties of the several officers are faithfully performed, and shall exercise no judicial functions, civil or criminal."

Mr. STANTON. Mr. Chairman: I do not desire to take up the time of this committee of the whole by longer discussing this question. All that I could have said has been fully and more ably set forth by my colleagues, (Mr. Wetherill and Mr. Hanna,) that I can add nothing which will be of advantage to the pending question. But I do desire to say that any increase of the appointing power now vested in the hands of the mayor would be a mistake. Such a proposition may be needed in other sections of the State. It may work beneficially elsewhere, but in all seriousness I say that it will not do in the city of Philadelphia.

Why, sir, it would not be entering upon an untried field. We have tried this extensive grant of power in this city, and the Legislature wisely withdrew from the mayor a power that was too great for the exercise of one man. To restore that power, now that the patronage of the office has increase a thousand fold, would be a step backward. The two gentlemen from this city, who have spoken on this question, have specifically covered all the ground necessary to be gone over. They truthfully stated that the mayor would, at the present time, have the control of nearly fifteen thousand men, a power too great to be reposed in the hands of any man.

Mr. TEMPLE. Does not the gentleman know that a large number of these men are engaged under contractors employed by the city, and not by the mayor?

Mr. STANTON. Certainly, and I know equally well that the mayor would, under this amendment, have the control of the contractors; therefore I hope the amendment will be defeated, and the section, as reported from the committee, agreed upon.

Mr. BIDDLE. Mr. Chairman: Enough has been said by gentlemen near me to satisfy me, and I suppose satisfy the committee of the whole, that this is a subject of vast importance, vast magnitude. I know there are gentlemen absent who have had large experience upon the subject, and who desire to discuss it so that we may receive the benefit of their views. I, for one, feel embarrassed as to my vote upon this section. I have heard views expressed here almost diametrically opposite, and feel in a state of doubt as to which would be best. I know that the gentleman from Philadelphia, (Mr. Cuyler,) to whom we always listen with a great deal of pleasure, has left the Hall, not expecting that this article would be under discussion. It is now half past two o'clock.

Mr. BOYD. Mr. Chairman: If the gentleman will allow me, I will move that the committee rise.

Mr. BIDDLE. I would like that done. I yield for that purpose.

The motion was agreed to.

The committee rose, and the President resumed his chair.

IN CONVENTION.

Mr. DARLINGTON, chairman of the committee of the whole, reported that the committee had again considered the report of the Committee on Cities and City Charters, and had instructed him to report progress and ask leave to sit again.

On the question, shall the committee of the whole have leave to sit again?

It was determined in the affirmative.

On the question, when shall the committee of the whole have leave to sit again?

To-morrow was named and agreed upon.

LEAVE OF ABSENCE.

Mr. TEMPLE. Mr. President: I ask unanimous consent to ask leave of absence for myself until Monday.

Unanimous consent was given, and the leave of absence granted.

ADJOURNMENT UNTIL MONDAY.

Mr. BRODHEAD. Mr. President: I ask unanimous consent to offer a resolution.

Unanimous consent was given, and the resolution read as follows:

Resolved, That when this Convention adjourn to-day, it be to meet on Monday next at ten A. M.

Mr. RUSSELL. Mr. President: Is that resolution in order at this time?

The PRESIDENT. It is in order, because the gentleman had unanimous consent to introduce it.

On the question of proceeding to the second reading of the resolution, the yeas and nays were required by Mr. T. H. B. Patterson and Mr. Hazzard, and were as follow, viz:

YEAS.

Messrs. Armstrong, Biddle, Black, Chas. A., Brodhead, Broomall, Buckalew, Church, Cochran, Corson, Fell, Gowen, Hanna, Kaine, Lilly, Runk, Sharpe, Smith, H. W., Stanton, Temple, White J. W. F. and Woodward—21.

NAYS.

Messrs. Baily, (Perry,) Bailey, (Huntingdon,) Baker, Bowman, Boyd, Brown, Craig, Dallas, Darlington, Dodd, Edwards, Ellis, Ewing, Guthrie, Hay, Hazzard, Horton, Lamberton, Lawrence, MacConnell, M'Culloch, M,Murray, MacVeagh, Mann, Mantor, Metzger, Minor, Mott, Newlin, Patterson, T. H. B., Purviance, Jno. N., Purviance, S. A., Read, Jno. R., Reed, Andrew, Russell, Simpson, Smith, W. H., Struthers, Walker, White, David N. and Meredith, *President*—41.

So the question was determined in the negative.

ABSENT OR NOT VOTING.—Messrs. Achenbach, Addicks, Ainey, Alricks, Andrews, Baer, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Black, J. S., Campbell, Carey, Carter, Cassidy, Clark, Collies, Corbett, Cronmiller, Curry, Curtin, Cuyler, Davis, De France, Dunning, Elliott, Finney, Fulton, Funck, Gibson, Gilpin, Green, Hall, Harvey, Hemphill, Hevverin, Howard, Hunsicker, Knight, Landis, Lear, Littleton, Long, M'Allister, M'Camant, M'Clean, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patton, Porter, Pughe, Purman, Reynolds, Jas. L., Reynolds, S. H., Rooke, Ross, Smith, H. G., Stewart, Turrell, Van-Reed, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, Harry, Worrell and Wright—71.

Mr. BIDDLE. Mr. President: There seems to be no quorum present.

Mr. LILLY moved to adjourn, which was agreed to, and the Convention at 2:55 P.M., adjourned until ten A. M. to-morrow.

SEVENTY-THIRD DAY.

SATURDAY, *March* 22, 1873.

The Convention met at 10 o'clock, A. M., the President, Hon Wm. M. Meredith, in the chair.

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

The Journal of yesterday was read and approved.

PROHIBITION.

Mr. JOHN N. PURVIANCE presented five (5) petitions from the citizens of Harrisville, Butler county, praying for the insertion in the Constitution of a provision prohibiting the manufacture and sale of intoxicating liquors, &c., as a beverage, which were laid on the table.

SECOND READING OF ARTICLES.

Mr. ARMSTRONG offered the following resolution, which was read, which was laid over under the rules:

Resolved, That the Convention will not proceed to the consideration, on second reading, of any article of the Constitution, until all the articles reported from standing committees have been considered in committee of the whole.

THE COMMITTEE ON HOUSE.

Mr. ADDICKS, chairman of the Committee on House, presented the following report:

That the annexed bills for cost of maintaining the property of the Convention, for the purchase of additional furniture for the use of the Convention and its officers, for the purchase of fuel, for draping the Hall, &c., have been presented for payment. They, therefore, submit the following resolution, viz:

Resolved, That the bills presented to the House Committee for certain expenses incurred for the use of the Convention, be referred to the Committee on Accounts for examination and payment.

The resolution was twice read and agreed to.

Mr. HAY. Mr. President: I report the following resolution from the Committee on Accounts and Expenditures:

Resolved, That a warrant be drawn in favor of Benjamin Singerly, Printer for the Convention, for the sum of $5,000, on account of printing done and books furnished for the Convention.

The PRESIDENT. The chair would observe that the rules require this to be from the Committee on Accounts.

Mr. HAY. Mr. President: That is from the Committtee on Accounts and Expenditures?

The PRESIDENT: It appears to be a simple resolution, and on the Journal will not appear to be from the Committee on Accounts. It had better be withdrawn and porperly submitted.

Mr. HAY. Then I will withdraw it.

CITIES AND CITY CHARTERS.

Mr. WALKER. Mr. President: I move that the Convention proceed to the consideration, in committee of the whole, of article number six, on cities and city charters.

IN COMMITTEE OF THE WHOLE.

This was agreed to, and the Convention resolved itself into committee of the whole, Mr. Darlington in the chair.

The CHAIRMAN. The pending section before the Convention is section three, which will be read.

The CLERK read as follows:

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

It is proposed to amend this, by making the section read:

"The mayor shall have a qualified veto on all the acts and ordinances passed by councils; shall, by and with the consent of select council, appoint all municipal officers not elective by the people, and shall see that the duties of the several officers are faithfully performed, but shall exercise no judicial functions, civil or criminal."

It is proposed again to amend that, by striking out the entire section, and inserting the following:

"SECTION 3. The mayor shall nominate, and, with the advice of the select

council, appoint and remove all heads of municipal departments, with the exception of the controller, the treasurer and the receiver of taxes, and all others not made elective by general laws; he shall have a qualified veto on all the acts and ordinances passed by council; shall see that the duties of the several officers are faithfully performed, but shall exercise no judicial functions, civil or criminal."

The CHAIRMAN. The question is upon the amendment to the amendment, offered by the gentleman from Philadelphia (Mr. Cuyler.)

Mr. BUCKALEW. Mr. Chairman: I would like to ask the gentleman from Erie, chairman of the Committee on Cities and City Charters, (Mr. Walker,) what the meaning of the words "qualified veto" is, and what effect they will have in the section or in this amendment. I suppose a qualified veto would mean the right to reject any ordinance passed by councils, which could not be carried over his veto by a two-thirds vote or a three-fourths vote, as the Legislature should determine. I submit that if we are to have any provision on this subject at all in the section, we ought to define what a qualified veto is to be. It may mean a great deal or it may mean nothing, and may be changed by the Legislature from time to time, at their discretion, unless we definitely fix it here.

Mr. WALKER. Mr. Chairman: The word in the report is open to the objection made by the delegate from Columbia. When the committee acted upon and inserted the word, it was taken from the same word as used in some one of the Constitutions, but I am satisfied that it is not the word that should be used.

I propose at the proper time, when it is in order, to offer an amendment in these words:

"The Mayor shall have the same power to veto all acts and ordinances passed by the councils as by this Constitution is vested in the Governor, as to bills passed by the Legislature."

That will remove the difficulty that suggests itself to the delegate from Columbia, as it suggested itself to me, and I presume to other members of the committee, and I propose to offer it when the vote is taken upon the amendment now pending before the committee. Allow me to say, while I am up, that I trust the amendment of the delegate from the city will be voted down, as it will, if adopted, make this article inapplicable to any other city than Philadelphia.

The amendment to the amendment was rejected.

Mr. LITTLETON. Mr. Chairman: I desire to strike out the words, "municipal officers," from my amendment, so that the amendment shall read simply: The mayor "shall, by and with the advice of select council, appoint all heads of department not elective by the people."

The CHAIRMAN. The gentleman from Philadelphia so modifies his amendment.

Mr. LITTLETON. The amendment, as originally proposed, was too general in its character and was adopted by me at the suggestion of some members on the floor. I think it would give too much power, and might also be misunderstood.

Mr. J. PRICE WETHERILL. Mr. Chairman: I should like to ask my colleague a question. I notice in the manual of councils, under the head of departments of the city, that there are twenty-seven of these departments. I would like to know whether the gentleman from Philadelphia, desires by his amendment, that the mayor shall appoint all the heads of departments, as included in that schedule.

Mr. LITTLETON. Mr. Chairman: That is what my amendment proposes, but I do not want it carried out to the extent of saying that the mayor shall appoint the subordinate officers in any department, which the original amendment, perhaps, would have done. I therefore desire to restrict it so that the heads of departments alone shall be elected by the mayor. I will ask a vote to be taken on the amendment to the amendment first.

The CHAIRMAN. There is only one amendment pending.

Mr. STANTON. Mr. Chairman: I desire the original amendment of the gentleman from Philadelphia read:

The Clerk read as follows:

To insert after the word "shall," where it occurs the second time, the words:

"By and with the consent of select council, shall appoint all municipal officers not elective by the people."

Mr. LITTLETON. Mr. Chairman: I have modified my amendment so as to read "heads of departments," instead of municipal officers."

Mr. STANTON. Mr. Chairman: Has the gentleman the power to so change an amendment after it has been discussed.

The CHAIRMAN. Only by common consent. The Chair understood the gentleman to ask common consent, and heard

no objection offered. However, he will put the question.

Shall the gentleman from Philadelphia have unanimous consent to modify his amendment?

Unanimous consent was given, and the amendment was so modified.

Mr. EWING. Mr. Chairman: I offer the following amendment in the nature of a substitute for the amendment.

To strike out the amendment to the amendment, and insert:——

The CHAIRMAN. That is not an amendment to the amendment, and not in order at this time.

Mr. LITTLETON. Mr. Chairman: I desire to say a word on this subject before the vote is taken, and I regret that I was not here yesterday when this report was again called up for consideration. Unless some such amendment as this proposed by me is adopted, then, in my opinion, there is no necessity for adopting this section, for it is almost precisely, if not precisely, the law at the present time. The mayor does have a qualified veto, and has other duties to perform similar to those laid down in this section.

What we desire to reach is a more effective system of municipal government. I do not think that the present plan for the government of a large city by a municipal legislature is the best. I may be mistaken in that, but it is my opinion. Therefore, this amendment looks to placing in the hands of the mayor increased power, and also increased responsibility, so that the community can have at least some one official clothed with sufficient authority to whom they may look not only in case of necessity, but in case of a violation of duty. Some one upon whom they may place their hands and say, "thou art the man." It cannot be done under the present system. Responsibility is so divided that it is hard to tell who is accountable, and it is for this reason that I desire to see adopted some such amendment as this which I have proposed.

I believe that we can safely trust this power in the hands of the mayor. There have been five or six gentleman who have occupied this office since consolidation, and no one of them has ever been suspected of being dishonest, no one has ever had his integrity questioned. I think that this can safely be said of those gentleman, whether Democrats or Republicans, who have occupied the position of chief magistrate of this city, and I therefore believe that if we can place in the hands of any one man such authority as this, that it will be greatly to the improvement of municipal affairs.

Elsewhere we see the same struggle going on. Who does not sympathize with a man of the character and standing of the gentleman who is now chief magistrate of the city of New York, and what one of us, if he lived in that city, would not rather trust this gentleman than the councilmen elected by the people of that great city? These are not questions which affect the special rights of individuals who are governed and protected by a State or a nationality, but real questions of business which come home to everyone and touch the pocket of every owner of property within the jurisdiction of the town or municipalty which should have the most effective government which can be devised.

I think this amendment would be an improvement on the present plan, and before I sit down I desire to read from the last message of one of our mayors, which he sent to councils on this subject. The committee will indulge me for a moment. I read from the message of Hon. Morton M'Michael, sent to councils in the last year of his term as mayor of the city of Philadelphia:

"In connection with this matter of the departments, I am constrained to say that an experience of two years has satisfied me that the powers of the mayor should be greatly enlarged. I have no fault to find with the gentlemen who, at present, fill the principal places in these departments. I believe them to be well qualified for the situations they occupy; I am sure they endeavor faithfully to execute the trusts confided to them. But the system under which they are appointed is defective, in that it does not subject them to any direct responsibility. I do not forget that councils have the power of impeachment, but that is a remedy only applied in desperate cases. As things now stand, the community looks to the mayor for the redress of all grievances which come within the scope of executive municipal authority. Yet the only persons expressly commanded to 'obey his orders,' are 'policemen and watchmen.' Over the numerous employees of the different departments, and even the departments themselves, he has no control whatever. By a curious provision of the law organizing the highway department, he has a limited right of selection as to supervisors, but no right to enforce upon them the

performance of any duties; and with this exception, and the exception of the police force, he has no power of appointment, regulation or dismissal of any persons connected with the public service.

"It was the original purpose of those who prepared the consolidation act, that the mayor of the city should be clothed with such powers, and be subjected to such liabilities, as would make him, in fact as well as in name, the responsible executive head of the whole city. But owing to the adjustments and concessions and conciliations which were necessarily involved in the transition from the complex and manifold machinery of our former disjointed system to the more compact organizatien which succeeded, this purpose was in a great measure frustrated; and apart from the share allotted to him in legislation, through the exercise of his approval or veto, and the performauce of certain ministerial functions, he is practically no more than a chief of police.

"I respectfully suggest to the councils that the present is a suitable period to enter upon the consideration of this subject. The rapid spread of the city in all directions, its constant growth in manufactures and industries of every description, and its enormous increase in population and wealth, indicate that its future is to be of incalculable importance. As that future must be largely effected by its municipal institutions, care should be taken to improve them wherever it is practicable. To this end I recommend that an appropriate committee be directed to inquire whether any, and, if any, what changes or modifications in the particular referred to, can be advantageously adopted. During the coming season of comparative respite from more urgent labors, there will be ample opportunity for examining the question in all its bearings, and such conclusions may be deliberately arrived at as will best promote the public interest. For myself I have the less hesitation in presenting this matter as long before any proposition could be matured and accepted; even if the general idea should meet the sanction of councils, I shall have ceased to occupy the official position I now hold."

That, sir, is the opinion of a gentleman who held the position of mayor of this city, who was well qualified to judge of the subject of which he spoke, and his opinion was given at a time when his motives could not be misunderstood, for he was about to retire from office. I trust, therefore, that this amendment will be adopted. I believe it will prove of great benefit to the city of Philadelphia, and I trust that the committee will accept it.

Mr. HANNA. Mr. Chairman: I would like to ask my colleague whether his amendment would not be better if he used some other term than "heads of departments." I am informed that there is no other city in the State where the officers are called heads of departments. Would it not be better to use some general terms?

Mr. LITTLETON. If my friend will only suggest what the particular term shall be, I will have no hesitation in adopting it.

Mr. HANNA. Mr. Chairman: I move to amend, by striking out the words, "heads of departments," and inserting "city officers."

Mr. J. PRICE WETHERILL. Mr. Chairman: This only shows the difficulty of going into detail in a matter of this kind. It is simply impossible for us to do it. One gentleman defines heads of departments to be one thing, and another gentleman defines them to be another; and I am satisfied that unless we leave this matter to the proper authorities, as delegated by the people of the city, we will never do what, in my opinion, is right and proper.

Now, it is here proposed to give the mayor of the city of Philadelphia—I use the city of Philadelphia only as an illustration—full power to appoint all our municipal officers, by and with the consent of select council. Now, I ask, do we give him full power, do we make him responsible, when his acts must be confirmed by another body? Heretofore we have drawn our mayors from the select councilmen, and it is a supposable case that the gentleman who has offered the amendment now under consideration may some day fill that position. He is already president of select council. Now, carrying out my illustration, if he were to be chosen to that position and we give him supreme power, he would, of course, as he is a Republican, appoint Republicans to office, other things being equal.

Mr. LITTLETON. Whether they were or not. [Laughter.]

Mr. J. PRICE WETHERILL. Still stronger. [Laughter.] Now, I can imagine a case where the supreme power, vested in the hands of the mayor, may be a Republican, and the select council may be Democrats. They, in caucus, will demand that the Democrats shall have a share of

these offices. You see the conflict; you see the trouble. I tell you, Mr. Chairman, the more I think of it the better I am satisfied that we had better leave this power of detail in the hands of the proper representatives of the State, and not to undertake ourselves to make a code of laws. To put into the organic law, to last for all time, any such details as this would, in my opinion, be a terrible mistake.

Mr. MINOR. Mr. Chairman: I am very glad to return, by way of echo from the western part of the State, the sentiments which have just fallen from the lips of the gentleman from Philadelphia (Mr. J. Price Whetherill.) I was about to arise when he rose, in order to show the utter impossibility, here in this Constitution, of picking out a single man connected with the city affairs, and undertaking to define specifically and minutely his duties, when we know comparatively nothing, professedly, of the different systems in vogue in this State or what the Legislature may yet introduce.

Why, gentlemen, look at this article. It proposes to leave almost everything to the Legislature, and through the Legislature to the various cities. To that I do not object; but if we are to carry out the theory of that article and the general theory of this Constitution, in laying the foundation, certainly we will not be entering into this minutiæ upon every particular little thing. If we undertake to define these specific duties of the mayor, how do we know they will fit into the laws the Legislature will pass describing the general powers of a city? How do we know they will fit into the system of the different cities? Why, sir, I know that not a single amendment which has yet been proposed to this section could be carried out for three days in either of the cities in the county where I reside without great trouble. It is all wrong. We cannot anticipate in this way. The section itself even goes too far, and we cannot amend it unless we amend it by cutting it down even smaller than it is. I will not enlarge upon this, however; it seems so apparent. Every attempt to improve makes it worse than the place where it started.

Mr. GUTHRIE. Mr. Chairman: Is the pending amendment agreed to by the chairman of the Committee on Cities and City Charters?

Mr. WALKER. Mr. Chairman: It is not for the chairman of the committee which submitted this article, or for the committee itself, to agree to anything. Their report is before the committee of the whole, and it is for that committee to determine what is best to be done.

While I am up, allow me just one remark. It is not divulging what took place in a committee to say that at first the article as prepared read: "The mayor shall nominate and, with the advice of select council, appoint or remove all municipal officers not elected by the people," but we afterwards changed the wording, and left out out this clause. The Committee on Cities and City Charters acted with a design to procure the best advice and information possible. They called before them gentlemen of high standing in the city of Philadelphia, who advised us as to the article in general. It was advised by these gentlemen that the committee drop from its article that which it is now proposed to be introduced. At first, I am free to say, my judgment was against leaving it out, but the majority of the committee thought differently, and I accepted their views. And, from reflection, I must say that I believe the committee was right in dropping out the words now proposed to be inserted. If it is left as the Committee on Cities and City Charters reported it, it will then be for the select and the common council to appoint and remove all officers not elected by the people. If the section is amended, as it is now proposed by the gentleman from the city, then will be vested in the mayor a power which may be, politically, dangerously exercised. It is for the committee of the whole to determine whether the words shall be inserted or not.

Mr. GUTHRIE. Mr. Chairman: As the section has been opened to general amendment, I would desire to offer a substitute for the entire section, but as it would not be in order now, I will read it in the hearing of the committee of the whole, to indicate my position on this subject. Then at the proper time I will offer my substitute. The substitute which I desire to read is:

"The mayor shall be elected by the qualified voters of the city, for the term of three years, and the select and common councilmen for such term or terms as may be provided for by ordinance. The mayor shall exercise no judicial functions, civil or criminal. He shall nominate and, by and with the consent of the select council, appoint and remove all municipal officers, except city comptroller, or

auditor, city treasurer, city solicitor and city engineer, who shall be elected by the qualified voters of the city, each for the term of three years. In case of a vacancy occurring by death, resignation or otherwise, in the offices of city comptroller or auditor, city treasurer, city solicitor or city engineer, the mayor shall nominate and, by and with the consent of the select council, appoint a successor, who shall discharge the duties of the office until the next succeeding annual election. The mayor shall have a qualified veto on all acts and ordinances passed by councils."

Now, Mr. Chairman, these are my ideas of what a city government should be. I think that the head of the city government should be the mayor, who should have full executive power; but the legislative power should be in the councils. If you want an efficient mayor, you must give him responsibility, and you must give him power. Therefore I say that he should have all the appointments in his hands, and should be responsible for the discharge of the duties of those officers. If you do not give him this responsibility he will be of but little consequence to the city. But give him this responsibility, and the people will understand and accept the situation, and will elect only good mayors, and, having once elected them, will hold them accountable, and at the end of their terms will turn them out if they have not done their duty faithfully.

But, sir, my proposition, while it would give the mayor the necessary responsibility to enable him to successfully administer his office, will at the same time restrain him from an undue exercise of his authority. The select council must confirm his appointments. Certainly this power should be vested in him. The police should be in his hands, and he should be the chief executive officer of that department. The power will be where the people can reach it, and the power will be tempered by the necessity for confirmation by the select council. Under this plan no harm can result, and I care not which party be in power, the public good will be promoted. This is my idea of a city government, and I have no doubt that, if adopted, it will work well in all sections of the State. Philadelphia will be just as much benefited by it as we will be in Pittsburg. I shall withhold my substitute for the present, but offer it when in order. I do not think the amendments heretofore offered by the gentlemen from Philadelphia meet the question fairly.

Mr. MACCONNELL. Mr. Chairman: I would like to ask my colleague a question. Some years ago, as he will recollect, the city of Pittsburg elected a gentleman—I suppose I must call him a gentleman—as mayor who happened to be in jail at the time under the sentence of the court of quarter sessions for a criminal offense. In order to allow him to fill the office of mayor he had to apply to the Governor for pardon. Now, the question I want to ask is this: Suppose the people of Pittsburg should do the same thing again, and elect a person who is under sentence, and upon appeal to the Governor for pardon he should refuse, would the gentleman then have the mayor appoint all the city officers?

Mr. GUTHRIE. I undoubtedly would, with the consent of the select council. It is hardly true that the select council might be just as crazy as the people might be on some certain occasion, and I would trust them. The responsibility would make them careful, and no matter how bad the mayor might be, they would control and restrain him. The system could do no harm.

Mr. J. W. F. WHITE. Mr. Chairman: I have taken some interest in the matter before the committee of the whole, not particularly in the section now before us, but in the general subject. I am free to say that I feel a great deal of difficulty as to what is proper for us to put into our Constitution on this subject. I suppose, too, that from my connection with the city government of Pittsburg, for a number of years, that the people there will look to me, to a certain extent at least, in reference to the provisions of our Constitution on the subject of city charters.

A large portion of this committee are not, perhaps, personally and directly interested in the subject of city charters. It does not apply with equal force to all parts of the Commonwealth. It affects more particularly the citizens of Philadelphia and of Pittsburg, than it does any other city in the State. The small cities have not had the experience that these large cities have had; have not known the difficulties arrising in the administration of municipal affairs, and have not seen the necessity of certain checks and guards around the legislation for cities. Hence, I cannot but feel that in this Convention there is a very great danger that some

provision or provisions which will not be wise or prudent may be inserted in the Constitution, and that the future will prove such provisions to be objectionable.

I would call the attention of the committee to the fact that everything we propose with reference to cities and to city charters is pure legislation. In our present Constitution we have nothing on the subject, and I am free to say, that after what we have adopted in the report of the Committee on Legislation, I have serious doubts as to the propriety of now saying anything more on the subject of city charters. Now, every section of the report of the committee here, I believe, may be called mere legislation, and almost everything that we can propose is of that character. I have undertaken myself, guided by my experience as the solicitor of the city of Pittsburg, and connected with the administration of that city for the last twelve years, to draw up certain sections that would meet my own views as proper sections of the Constitution. But on looking over them I have my doubts as to the propriety of inserting any of them in the Constitution. They are all pure matters of legislation. I say this in view of the qualifications and limitations inserted as to the powers of the Legislature. If that report should be adopted by the Convention, as I suppose it will be, in the spape in which it has passed the committee of the whole, there can be no special laws with reference to cities. They must be chartered and organized under a general law. All charters must be amended under a general law. There can be no special laws in reference to the streets or to the government of cities. All municipal affairs are to be regulated by general laws. We have cut up, therefore, by the roots, all special laws with reference to cities. Now, when we have done that, it seems to me that we have perhaps guarded as well as we can against the abuse arising out of special legislation for cities. Philadelphia, Pittsburg, and no other city, will go to Harrisburg asking for special legislation, but every law on the subject must apply equally to all the cities in the State, thus probably securing for all wise and prudent, and well guarded legislation.

Now, to the section immediately before us. If we are to adopt anything at all, I favor the section as reported by the Committee on Cities and City Charters, because it is harmless, and because it asserts two or three principles to which, I presume, there will be no objection, or to which, at least, there ought to be no objection; and that I believe to be now the policy of the State, perhaps, in every city of the State. The section says: "The mayor shall have a qualified veto on all the acts and ordinances passed by the council," leaving it to the Legislature to define this qualified veto. It simply asserts that he shall have a veto, and that that veto shall not be an absolute one, leaving it to the Legislature to say that a vetoed ordinance may be passed by a majority, or by two-thirds of the councils, as may be determined by general law.

Then, further, the section says, that the mayor "shall see that the duties of the several officers are faithfully performed, but shall exercise no judicial functions, civil or criminal." That appears to be a wise principle. Now, I should oppose saying that the mayor shall have the nomination of any officer whatever, just simply because that matter had better be referred to the Legislature. At present, there are in Philadelphia heads of departments. No other city in the State now has heads of departments. In a charter for the city of Pittsburg, now before the Legislature, the establishment of civil departments is provided for, each with a separate head, and provision is made for the mode of their appointment. I know not how it is in Philadelphia now, but a provision in our Constitution, that the mayor shall appoint heads of departments, would, at present, apply only to this city.

I should certainly oppose vesting in the mayor absolutely the appointment of any officer. Why not leave that for the Legislature, to be determined by the experience of the future. Then, if it is found wise and proper to invest the appointment of certain officers in the mayor, the Legislature can, by general law, on that subject, provide for such nominations. If, afterward, this is found injurious, and does not meet the wishes of the people, the Legislature can change it. Why not trust all of these details with reference to city government to the wisdom of the Legislature, under general laws, for the cities of the State?

Mr. GUTHRIE. Mr. Chairman: My colleague is speaking of a charter for the city of Pittsburg, at this time before the Legislature. Will he pardon me the inquiry whether that charter is satisfactory to the people of that city?

Mr. J. W. F. WHITE. I do not know, sir. I never read the charter; never saw it.

Mr. GUTHRIE. Mr. Chairman: On the other hand, does not my colleague know that this charter is very unsatisfactory to them?

Mr. J. W. F. WHITE. Mr. Chairman: In answer to the inquiry of my colleague, I will state that some time ago I saw what purported to be a draft of a new charter for the city of Pittsburg. I objected very seriously to that charter. I wrote to one of our city attorneys on the subject, objecting to a number of features in it. I have since heard that it has been very greatly modified, and that those features of the charter which were objectionable to me, as I understand it, have been changed. I have never seen the present charter before the Legislature, but I understand that it had passed both Houses of the Legislature day before yesterday, and was re-called yesterday. I do not know what its provisions are.

Mr. GUTHRIE. Mr. Chairman: I am obliged to my colleague. That is all I wished to say; merely to call attention to the fact that the people of Pittsburg were not satisfied with the charter.

Mr. J. W. F. WHITE. Mr. Chairman: That is one of the strongest reasons why we should not undertake to pass a charter of the cities of the State here in this Convention.

It has been objected to the general view I have taken of this subject, that the cities cannot get the Legislature to do what is wanted. Well, were we sent here to frame a statute on that subject, with reference to the organization of the cities of the State? Are we as well qualified to frame a statute on that subject as the members of the Legislature? I apprehend not, because we are not here for the purpose of legislating. We are not here to frame statutes on the subject of city charters, and we are not as well qualified to do so as is the Legislature; for we have not the whole subject before us in the manner in which we should have it, if we were passing a statute and comparing it with the statutes now existing on the subject.

I therefore object to inserting into the Constitution these absolute requirements, unless they are so essential and so important that we cannot trust them to the Legislature of our State.

A provision put into our Constitution becomes unchangeable, at least for many years, in the future. If one Legislature does not pass what a certain portion of the citizens of Pittsburg or Philadelphia may deem to be wise and proper, it can be brought up again before the next Legislature, and if they pass any law that does not work well or is objectionable, it can be repealed or modified, but what we insert in the Constitution cannot be thus changed or modified, at least for many years to come. Therefore, Mr. Chairman, I am favor of the section as reported by the committee. I believe it to be all that is necessary on this subject.

Mr. LITTLETON. This section says that the mayor shall see that the duties of the several officers are faithfully performed. I would like to ask how any man can be expected to do so, unless he has power commensurate with his responsibilities.

Mr. J. W. F. WHITE. I will answer the question of my friend by saying that a similar provision in the Constitution may be found in reference to the Governor of our State. He shall see that the laws are faithfully executed. That implies just as much as the section now before us. This section is not in the precise language of the Constitution in reference to the Governor, but means just the same thing.

The mayor is the chief executive of the municipality, and it is his duty to see that the laws are faithfully executed and that every officer does his duty, and nothing more. I trust that the Convention will never give the power of removal to the mayors of the cities, knowing how they are elected, and how easily they are changed. If the mayor of Philadelphia has the power of removing all city officers, the whole municipal government may be changed in the course of a few years. I think you had better leave all these questions to the wisdom of the Legislature and to the experience of the future.

Mr. MACCONNELL. Mr. Chairman: There is a provision in the section reported by the committee, to this effect: "He shall exercise no judicial functions, civil or criminal." Now, sir, looking at a Pittsburg paper yesterday, I saw it stated that "the mayor disposed of twenty-one common case the previous day." One of them he sent to the workhouse for ninety days, another for a month, and so on. The mayor of Pittsburg has all along been the principal committing magistrate of that city. He has had that criminal juridiction. He exercises it continually. There is scarcely a day that he does not send vagrants or other persons to some prison or other for a number of days.

Now, it seems to me that if you pass this section, as reported by the commit-

tee, with that provision in it, the mayor will have no criminal functions; that is that he will exercise no criminal jurisdiction; you will cut him off entirely from being a committing magistrate. I do not think that will work well; I do not think that the provision is one that we ought to adopt.

Now, with regard to this appointing power of the mayor. I am entirely opposed to it. We have been told frequently upon this floor that one of the great purposes that caused the Convention of 1838 to be called, was to take the appointing power from the Governor, in whom that was vested by the Constitution of 1790. That Constitution vested in him an immense power and authority, and consequently gave to him an overpowering influence, by virtue of the vast number of appointments that it gave him the control of. That Convention was called for the purpose of remedying this, and it took away, to a great extent, the appointing power from the Governor; and from that time to this we have, from year to year, at least at short periods, been taking still more of the power from him. We have taken the power to appoint judges, by and with the advice of the Senate, which was left in him by the Constitution of 1838, and no longer ago than this year we have made the State Treasurer elective. The people have been taking the power back into their own hands from 1838 up to this time, and now it is proposed that we will go back on this whole thing and take the power from the people and vest it in the Governor or the chief officers of a city, as is proposed in this case.

Some gentlemen have even proposed to give the Governor the appointment of all the judges; some without and some with the consent of the Senate. That will just be undoing what was done by the people heretofore by constitutional provisions, and it will be going back to the system that prevailed under the Constitution of 1790, and which the people repudiated because a long experience had proven to them that it was not suitable. This provision now before us is one step in that direction, and it is a very long step. I am opposed to it. I am in favor of keeping the power in the people, and I will say that I coincide with my colleague (Mr. J. W. F. White) that it will be wiser and better to leave this whole thing to be managed by general laws passed, from time to time, by the Legislature, as the exigencies and experiences of the people of the State prove that changes should be made and improvements adopted. These are my sentiments with regard to the matter, Mr. Chairman, and I have nothing more to say.

Mr. W. H. SMITH. Mr. Chairman: I agree with my colleague (Mr. J. W. F. White) that there ought to be some general rule by which the Legislature should be governed in the granting of city charters. I do not know, in the history of legislative abuses, that there ever was a greater abuse than that committed in the granting of the arbitrary privileges given under the city charter forced on Pittsburg a few years ago. That charter was prepared by a few persons, without the approval or knowledge or desire of the majority of the people. I have the authority of one of the most learned lawyers in the Commonwealth for saying that that charter was one of the most arbitrary grants that he ever knew to be given to a city corporation. You might do, he said anything—perpetrate any outrage or wrong under that charter, and there seemed to be no accountability anywhere. I think there ought to be something in the Constitution regulating, in general terms, the granting of charters to cities that may need them, and apply for them.

The very absence of an article of this kind in our old Constitution, has given to scheming and unscrupulous people the power and opportunity of going to the Legislature with a charter in their pockets, and to get almost anything done that they might please. This could not be done if there were general rules prescribed in reference to the subject. I think that we ought to adopt something like the section proposed by my colleague (Mr. Guthrie.) We ought to say at least which of the city officers should be elected by the people, which by the councils, and which should be appointed by the mayor. And I submit, sir, that the mayor ought to have the power of appointment and removal, absolutely, of his own immediate ministers and agents; he should select the people whom he controls, to whom he confides his police business. He should have the appointment and removal of the high constables, his clerks, and all officers that are immediately responsible to him, and for whom he is responsible.

Then I think the people ought to elect their own accounting officers, those who are in charge of their money, and that these officers ought not to be responsible

to the mayor, and that he should not have any control over them. I think that the city treasurer, receiver of taxes, and the city engineer, at least, should be elected.

It has been objected by gentlemen with whom I have talked about the matter of civil engineer, that, inasmuch as he must be a skilled officer, or ought to be, the people were not entirely competent to choose such an officer. Now, I submit that they are just as competent to choose an engineer as they are to choose a man skilled in accounts for treasurer or commissioner, and that the officers having charge of the money of the people ought to be independent of the mayor, and that the persons by whom and through whom he does his police business ought to be left to his control and discretion. Of course, that will involve the necessity of getting some person that is capable of appointing these persons; some person that will represent the community; not a man forced upon the people, without any fitness for the office, as has too often been done in Pittsburg, at least.

I hope that we may finally determine on something like the article proposed by my colleague (Mr. Guthrie.)

Mr. NEWLIN. Mr. Chairman: There seems to be some difficulty about the term, "heads of departments," and I would suggest to my colleague, (Mr. Littleton,) that the term, "principal officer" of each executive department, would perhaps be better. I think that that expression would avoid some of the objections urged against the amendment. I suggest these words because I see they are used for the same purpose in the Constitution of the Confederate States government. I am heartily in favor of the general proposition of giving to the mayor the appointment of these officers.

Mr. STANTON. Mr. Chairman: I have no objection to vesting the power of appointing the heads of departments in the mayor, but I think the proposition before the committee now is too sweeping in its character, and it may be dangerous to adopt it. If we now irrevocably fix it in our Constitution, and in the future find that it does not work to our advantage in the city of Philadelphia, we will have no way of correcting it, except after great trouble. I do not agree with some gentlemen, who think that the Legislature cannot be trusted to legislate directly for our city. I think they can. Their legislation on this subject has not been unfriendly in the past. I do not remember that we ever asked the Legislature to give the mayor more power than he has at present. We were satisfied with the situation. But I think if we were to so petition the Legislature, and they they were persuaded that it was wise to confer additional power upon the executive of this city, I am confident they would grant it. Then, if that did not work well, we would have a remedy and could change it; but if we now incorporate this feature in the organic law, we cannot change it. I am, therefore, opposed to this proposition, particularly on that ground. Although in other respects it does not meet my judgment, I am not wedded to the idea that we can never change for the better.

I believe with my colleague (Mr. Littleton) that we have had excellent men as mayors of our city. I do not think we can find better or purer men than they who have represented the people of Philadelphia in that office since consolidation; and so, though we know not who the coming men may be, we may safely trust that the same discretion will control us in the future. True, we may make mistakes; an improper person may be elected to that position, but will this proposition help us in that case? Will it not be a hindrance in the way of reform? Why, if a bad man have such unlimited power as this amendment will give him he would be mayor or anything else that he desired, in Philadelphia, for years and years, and we would be without remedy.

Therefore I trust that the amendment now pending before this committee will not be adopted. Whatever provision we may desire to introduce here, let us so frame it that it can be changed if we find it does not work to our advantage. I am not afraid to trust the Legislature. Notwithstanding the corruptions that have been referred to here, I believe them to be the proper repository of this power. I think they are just as able and competent to represent the local wants of this city as we are in this Convention. Let us then leave this subject in their hands, where it can be changed as experience suggests, or the public good may demand.

Mr. HAY. Mr. Chairman: I desire to say that I think the apprehensions of the gentleman from Philadelphia, (Mr. Stanton,) that an incompetent person may be chosen for mayor of the city of Philadelphia, at the next election, are entirely groundless. I have no doubt that the person next elected to that office will be the fittest person that could be chosen, as it is

understood that the friends of the gentleman himself (Mr. Stanton) propose that he shall be the man. [Laughter.]

Mr. WRIGHT. Mr. Chairman: As I understand the matter now before the committee, it is that the mayor shall appoint, by and with the advice and consent of the select and common council. I favor that, sir, because I think the mayor should make the appointments, and I think it should be embraced within the organic law. I would not favor leaving it to the Legislature, that the rule of practice might be changed with every change of political sentiment that takes place in a city. When such changes take place, it should not follow that any change should take place in the system of executive management of the city. We elect the mayor, and we hold him responsible. The people of the city look to him for the proper execution of the law, and I do not know how he can enforce the law unless he has the power of appointment. It is necessary he should have the power of removal also, because otherwise he cannot insure the proper discharge of the duties for which he is held responsible. As to the question of the ratification of the mayor's appointments by council, I have to say that I partially represent three cities, and that each one of them has a mayor and follow that plan. I therefore prefer it, because my people are interested in it, and I would like to see embraced in the Constitution the power of the mayor to make the appointment, and one of the councils to have the power of ratification.

In order to have a good government in a city where the people must necessarily look to some responsible officer for the proper execution of the law, the power should be so placed that irresponsible changes may not be made. I would not leave it to the Legislature, therefore, to make these changes. I favor the proposition before the committee because it gives to the mayor the power to appoint and the council the power to ratify. If this power is left in the hands of anybody else, I apprehend that the ends of good government will not be so well subserved.

Mr. CUYLER. Mr Chairman: Is an amendment in order to strike out and substitute?

The CHAIRMAN. There is an amendment pending.

Mr. CUYLER. Mr. Chairman: If the record assumes such a shape as to permit me, I will offer this substitute: In all cities having a population exceeding one hundred thousand or more, the mayor shall be responsible for the general efficiency of the administration of the city government, and shall have such authority over the appointment and removal of those having charge of highways, police, water, cleansing and lighting the city as shall insure their faithful discharge of duty. He shall have a qualfied veto on all acts and ordinances of councils, and shall exercise no judicial functions, civil or military, except the amendment which I offered when this matter was before the committee, and which covers this point, though not, perhaps, so effectually as this amendment, was voted down before I came into the Hall, and I had not the opportunity of saying a few words about it. My idea of city government is, that the nearer it approaches to autocracy the better. When you provide for those common things that come home to the personal comfort of the people of the city, the more complete the authority of the presiding officer the better the city government you are likely to have. Therefore it is that my view is that the mayor should be held to a very large responsibility, and should of course, be clothed with a power commensurate with the responsibility.

Naturally, when anything is astray with the police or the highways of the city, or anything that has to do with the comfort of the inhabitants, we turn to the mayor and complain to him, as the responsible man, and ask him to correct the difficulty. Instantly he answers, at least in the city of Philadelphia, "I agree with you entirely. I see the trouble, but I have no power." The citizens who have been appointed to the heads of departments are, of course, men who have rendered political service in the past, or who are expected to render political service in the future. They are not selected with any special reference to their fitness for the discharge of the duties of the office. We, in the city of Philadelphia, have been remarkably fortunate, considering all things. In many instances the heads of departments have been and are now very excellent and reputable gentlemen. In many other instances, since 1854, when the city and districts were consolidated, men have been selected who have fallen short of a proper discharge of the duties, and just so long as the system of their selection is vicious, just so long as the mo-

tives for the selection are other than efficiency and fitness for the discharge of the duties of the office, just so long you will have an officer acting either from unworthy motives or with some intent different from that which belongs to his office.

The mayor of the city usually has been, and always ought to be, a citizen of very high character and large intelligence. His position is so conspicuous, and his relation to the citizen so marked, that he cannot afford, if he is clothed with a large power, to do otherwise than use that power for the good of the citizens.

The little matters and the large matters that come before mayor and the city councils more nearly affect the happiness and comfort of the city than any legislation, either of the State or of the general government.

My idea, therefore, is, as I have said, that the mayor, being a conspicuous officer, to whom the citizens commonly turn for the redress of civil grievances, ought to be held to a large responsibility; and if held to that large responsibility, he ought to be clothed with power equal to it.

The advantage of the proposition which I propose to offer as an amendment over that which has been under consideration, consists largely in the fact that, while it indicates largely the direction in which the authority of the Legislature is to be exercised, it does not take away from the Legislature that power of modification and adaptation which time, or even the condition of the present, time may require. While it does provide that the mayor shall be responsible for the proper administration of city government, and while it does clothe him with power equal to this responsibility, by giving him power over the appointment and removal of those having charge of these specific departments, it does also leave in the Legislature a large discretion as to the mode in which that is to be accomplished. They are to give him this power under such qualifications as prudence and policy indicate, but still it is to be that power, and it is to be that power to such an extent as to make him efficient in the discharge of his duty.

As to the judicial functions of the mayor, it provides that he may exercise them as a committing magistrate only, as in times past he has done in our city and in other cities of the Commonwealth.

I propose, if the record assumes the shape necessary for my purpose, to move this as a substitute.

The CHAIRMAN. Not at present; the question is on the amendment offered by the gentleman from Philadelphia (Mr. Littleton.)

Mr. CUYLER. Mr. Chairman: One word more, sir. The words, "not elected by the people," leave with the Legislature the power of practically nullifying the whole provision of the Constitution. If it is left for the Legislature to prescribe who shall be elected by the people, the whole thing is gone.

Mr. LITTLETON'S amendment was rejected.

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

The CLERK read:

"The mayor shall be elected by the qualified voters of the city, for the term of three years, and the select and common councilmen for such term or terms as may be provided by ordinance. He shall nominate and, by and with the advice and consent of select council, appoint and remove all the city officers, except the city controller or auditor, city treasurer, city solicitor and city engineer, who shall be elected by the qualified voters of the city, each for the term of three years. In case of a vacancy occurring by death, resignation or otherwise, in the office of city controller or auditor, or city treasurer, city solicitor or city engineer, the mayor shall nominate and, by and with the consent of the select council, appoint a successor, who shall discharge the duties of the office until the next succeeding annual election. The mayor shall have a qualified veto on all acts and ordinances passed by councils."

The CHAIRMAN. I understand the gentleman from Philadelphia (Mr. Biddle) moved to strike out "city," and insert "municipal."

Mr. BIDDLE. Mr. Chairman: I move to amend, by striking out "city," and inserting "municipal," and adding these words, "that by this Constitution is vested in the Governor, as to bills passed by the Legislature," and also striking out the words, "city solicitor" and "city engineer," in order to harmonize with the preceding sentence.

The question being taken, the amendment was not agreed to.

Mr. CUYLER. Mr. Chairman: I offer the following amendment: "And all cit-

ies having a population exceeding one hundred thousand, the mayor shall be responsible for the general efficiency of the administration of the city government, and shall have such authority over the appointment and removal of those having charge of the highways, police, water, health, cleansing and lighting the city as shall ensure their faithful discharge of duty. He shall have a qualified veto on all acts and ordinances of council, but shall exercise no judicial function, civil or criminal, except those of committing magistrates."

Mr. WRIGHT. I move to strike out the words, "having a population exceeding one hundred thousand."

Mr. CUYLER. I accept the amendment.

Mr. J. PRICE WETHERILL. Mr. Chairman: I think we would naturally be led to suppose, from the remarks of my colleague from Philadelphia, (Mr. Cuyler,) that this amendment really gives to the mayors of cities of over one hundred thousand inhabitants supreme power. He argues in that way, and desires that the mayor shall have supreme power, and yet he only specifies about one-half of the departments over which he shall have control.

Mr. CUYLER. Will the gentleman permit me to explain? I specified those departments which more directly related to the enjoyment and comfort of our citizens. I did not desire to include the financial departments of the city, because I do not think the mayor should have that kind of authority over them. I desired to include only those departments that contributed to the personal comfort of our citizens.

Mr. JOHN. PRICE WETHERILL. In reply to the gentleman I would like to ask what commission gives the city of Philadelphia more enjoyment than the park commission, created for that purpose? The gentleman from Philadelphia, my colleague, (Mr. Cuyler,) is a member of that commission, and he holds his appointment from the court. He does not desire to disturb that commission in his amendment, because he knows very well that as at present constituted it could not be improved upon, and that if the mayor of the city of Philadelphia to-day had the appointing power of the park commission we should lose the valuable services of my colleague from Philadelphia. Now, sir, the members of the park commission are not appointed solely by the courts. The councils of Philadelphia appoint, indirectly, three of its members, and two of its members are members of the select and common councils. I am not aware that a word of complaint has ever been uttered against the excellent management of that commission, and, sir, I might say the same with regard to other commissions, and yet if occasion for complaint should arise in the future against any of the commissions appointed by the councils of the city and the courts, the mayor of the city can only say that he has nothing to do with the park commission, the department of the poor, and the half dozen other departments named in this amendment, and therefore redress cannot be sought for at his hands. I fear, sir, we are getting ourselves so mixed up in these details that we will be at sea unless we take the bold ground that all these details should not be inserted in the organic law of the State.

Mr. EDWARDS. Mr. Chairman: In addition to the objections that have been urged against this amendment I entertain another, and it is that under this amendment the mayor will have control of our health departments and to that I am opposed. In the city in which I reside the health department is governed under an act of Assembly, and it is under the control of the city government. It would not, therefore, apply to our city so far as this particular amendment is concerned.

Mr. CUYLER. I would state to the gentleman that the health department of the city of Philadelphia is governed, under a special act of Assembly, by a board appointed by the courts. I am radically hostile to the whole business of appointing commissions by the courts, and I hope, when the Judiciary Committee make their report upon the subject, they will cover this whole ground. While the abuses hitherto have been very slight, if indeed they have existed at all, the tendency of judicial appointments, such as these, is very bad indeed. The tendency of clothing the judges of our courts with any authority not purely judicial, I think is very bad. Now, in regard to the remarks of my friend and colleague, (Mr. J. Price Wetherill,) I thank him, as a member of the park commission from its inception, for the kindly way in which he has spoken of that commission. I believe they deserve the generous things he has said of them, but I have no sensitiveness on that subject whatever. It was my intention to include in the list of the departments enumerated in the amendment I have offered those that pertained, not so much to the enjoyment, as to the personal

safety and the personal comfort of our citizens. Therefore I did not enlarge the list, but if, in his judgment, it is desirable to enlarge it, I have not the slightest objection. The gentleman is mistaken if he supposes that I omitted the park commission through so an unworthy motive as the fear I should lose my position as a member of that commission.

Mr. J. PRICE WETHERILL. No, I beg the gentleman's pardon; we would lose his important services.

Mr. CUYLER. It has certainly been a source of great gratification to me, and I trust of some service to the public, but I have no fear whatever. I have great respect for the personal worth and integrity of the present mayor of the city of Philadelphia, who, by virtue of his office, is a member of that park commission, and who I am sure knows full well what that commission requires, and how it should be conducted. I have too much respect for that gentleman, and believe that he loves the city of Philadelphia well enough to see that, without regard to mere party considerations, the park commission shall be filled with suitable men. I have no fear, therefore, that he would make a re-selection, and if he did, I would feel if he selected an individual to take my place, that he did so because he was better qualified to perform its duties than I am. My only reason for enumerating the departments in the manner I have in the amendment is the one I have mentioned. I do not desire to give the mayor any more power over the departments of the city than shall enable him to take hold of those things that more particularly appertain to the safety and comfort of our citizens, as the police and the fire departments; and to our personal comfort, as the water, the lighting, the grading and cleansing of our highways. In respect to other matters I am willing to trust the Legislature with as large discretion as any body can desire, but when we come down to the departments I have enumerated, I think they are elementary and, therefore, may properly be provided for in the constitution. These are, briefly, the reasons which have influenced me in offering this amendment.

Mr. MINOR. Mr. Chairman: I dislike exceedingly to differ from my friend from Philadelphia, (Mr. Cuyler,) but my experience compels me to do so. I resided once in a city where, had this large power of appointment been lodged in the hands of the mayor, in the manner proposed by the gentleman in this amendment, we would have found it in the hands of almost the last man in that city with whom we could have safely trusted it. I have again lived under mayors of cities where such a power would be perfectly safe. I think this whole question should be entrusted to the State Legislature, so that when they pass upon it they may prescribe the powers and duties of the mayors of our cities, and then surround them with all the necessary guards; and in order that the whole machinery may work in the best possible manner, especially under the varying circumstances arising out of the characters of the men that may be called upon to fill these important municipal offices. For this reason I think this subject presents insuperable difficulties so far as placing a provision of this kind in the Constitution is concerned.

I think the Convention ought not to encumber the Legislature and restrict that body in a manner which will prevent them from establishing a just and desireable system, which will be acceptable to all the municipal governments in the State. I think unnecessary time is being used in the discussion of this question. The Convention has been assembled here for the purpose of laying the foundations of an organic law; and instead of confining our attention to legitimate enactments we are wasting it in discussing minute and special matters. I think that there are more important matters that ought to engage our attention than prescribing the special duties of particular city departments.

Mr. STRUTHERS. Mr. Chairman: It appears to me that the discussion of this question is confined almost entirely to the interests of the city of Philadelphia and the city of Pittsburg, where undoubtedly the largest experience in these matters has been obtained, but there seems to be a manifest difference of opinion among the various delegates representing these cities. Some of the delegates are in favor of vesting the power of these municipal appointments in the councils of the cities, and others appear to be disposed to confine it largely in the hands of the mayor. For the purposes of legislation it must be granted by all that it will be safe and proper to allow a veto power to the mayor, to a certain extent, over the legislation of a city. Now, sir, why not extend that important power over the appointing power exercised by

the city councils. Let the councils have the power to make these appointments, and then let the mayor exercise a veto power over them as he would over legislation; and if he entertains any objections to the appointments, require him to communicate them to councils, and if councils do not sustain his objections by a two-thirds vote, they can carry the appointments over his veto, as they would in any other case of legislation. This plan would give an opportunity to the mayor of suggesting the objections or reasons he entertains why a particular selection should not be made; and I think it would be a proper and judicious course, because it would afford councils an opportunity of again re-considering their action upon the subject. It appears to me that this mode would cover the whole ground, and arrange this matter so that the city councils would have the whole charge of the selection of the officers of the various departments of the city.

The amendment suggested by the chairman of the committee, I think, will cover the whole ground, if the veto power of the mayor was extended to the selection of officers by councils. I make this suggestion, and for these reasons I hope that the section will be so amended as to meet the approval of the entire Convention.

Mr. S. A. PURVIANCE. Mr. Chairman: It seems to be evident that there is such a diversity of opinion in regard to this section as will prevent the Convention from arriving at any just or proper conclusion. I must confess that the section is drawn in such a way as not to meet with my approval. I think it is somewhat inconsistent in its language. In the previous part of the section the power of a qualified veto is conferred upon the mayor. In the latter part of the section it is declared that the mayor shall exercise no functions, either civil or criminal. Now, I think the exercise of the veto power is a function, and therefore the language in the latter part of the section is inconsistent. Again, sir, for the reasons assigned by my colleague on my right, (Mr. MacConnell,) I am equally opposed to the section. It strips the mayor of the exercise of that important and valuable power now lodged in the mayor of the city of Pittsburg. There are cases in that city, as my colleague has observed, which come before the mayor that cannot be determined by any person else, unless it is a magistrate, and if the Convention intends, as I understand, to make some regulation in regard to magistrates, I hope we will defer our action in this matter until the report of the committee is placed before the Convention, and until we know whether it is proper to strip the mayor of the exercise of the important power that is now lodged with him. Therefore, in view of the differences of opinion which exist among the gentlemen representing the city of Philadelphia, and with the view of reconciling these differences, I would suggest the following as a short amendment to the section, which, I think, will prove satisfactorily to all the members of the Convention. The amendment to which I refer will make the section read in the following manner: "The mayor shall have such jurisdiction and perform such duties as may be prescribed by law."

This will require a general law, and when passed will embrace all the jurisdiction to be conferred upon the mayor, as well as the duties to be performed by him, while the various ideas enunciated by the gentlemen representing the city of Philadelphia, may be embodied, if they are approved by the Legislature. It will then embrace all the cities of the Commonwealth, instead of applying merely to cities of one hundred thousand inhabitants—the city of Pittsburg and the city of Philadelphia.

Mr. CUYLER. The words, "having a population exceeding one hundred thousand," have been stricken out.

Mr. S. A. PURVIANCE. Very well. A general law would apply to all the cities, and it seems to me it would reconcile all the differences of opinion on the subject. We have been here this morning for several hours, engaged in a debate upon this one section, and I trust, therefore, we will either vote this section down or adopt it, with an amendment, such as I have suggested, which gives the power to the Legislature to prescribe the duties of the mayors of our cities.

Mr. MACVEAGH. Mr. Chairman: The amendment of the gentleman from Philadelphia, (Mr. Cuyler,) it seems to me, is extremely vague as far as I can understand it, and I cannot vote to place such a proposition in the fundamental law of the State. If I understand it correctly it is that the mayor shall be responsible for the general efficiency of the municipal government, and that he shall see that certain subordinate officers discharge their duty.

Mr. DALLAS. I ask that the amendment may be read for the information of the gentleman.

The CLERK read the amendment.

Mr. MACVEAGH. The amendment reads: "He shall have such power as shall be necessary to secure their discharge of their duties." Why not say that he shall appoint and remove at will certain officers?

Mr. CUYLER. Because I would give a discretion to the Legislature as to the method of the exercise of that power.

Mr. MACVEAGH. Then, in reality, the amendment does not amount to anything, except it proposes that a suggestion shall be placed in the Constitution that the Legislature may provide a method in which the mayor shall exercise his power.

Mr. CUYLER. I intended it as a requirement, and I think it is so written. If it is not, let it be so amended as to express that idea. The extent and method of the exercise of the power of the mayor would then be required by a constitutional enactment, and would be regulated in the matter of appointment and removal in such a manner as to enable the mayor to assume the responsibility.

Mr. MACVEAGH. I submit to the committee that this is an accurate statement of the gentleman's views of a municipal government, but that it is no form that should justify its adoption in the Constitution, for it leaves the subject entirely at sea, and can be construed in any direction. It will virtually amount to nothing, in my judgment, and therefore I shall vote against it.

Mr. J. W. F. WHITE. Mr. Chairman: I think the amendment of the gentleman from Philadelphia (Mr. Cuyler) is entirely too indefinite, but he seems to construe it, however, as changing the city government of Philadelphia. Now, if that amendment contains the power to change the regulation of this city, or the regulation of any other city in the State, it vests more power than it seems to vest, in my mind, and I know not where it may strike or what it may do. Therefore, I cannot vote for the amendment, and it seems to me it is useless in us, as a Convention, to vest a power in the Legislature in reference to cities. There is no need of inserting a provision in the Constitution vesting power in the Legislature to regulate the municipal affairs of our cities, unless there has been a general limitation somewhere in the Constitution upon the subject, because unless the power has been restricted in some way, the Legislature already possesses all power necessary in the matter. Why, therefore, should a clause be inserted in the Constitution in reference to city charters, which will give the power to the Legislature to regulate municipal affairs. The Legislature already possesses that power, but, upon reflection, I believe I shall move to amend the section if the amendment offered by the gentleman from Philadelphia (Mr. Cuyler) should not be adopted. I believe, in that event, I shall move to strike out the words, "but shall exercise no judicial function, either civil or criminal." I think these words had better be stricken out, and then give the mayor a veto power, which I think he ought to possess, and which I believe he does possess in almost every city of the country; but still it might be taken away from him by the Legislature unless we secure it in the Constitution. The veto power makes the mayor the chief executive of a city, which he ought to be, and the amendment makes it obligatory upon him to see that every city officer performs his duty and prevents the Legislature from taking that power away from him. I think that principle ought to be placed in the Constitution, and I believe it will carry everything with it that ought to be secured in the Constitution. It has been suggested that the mayor may appoint better men than councils may appoint to office. I know not how these matters are regulated in the city of Philadelphia.

I presume the mayor appoints the police officers, as he does in Pittsburg, and, perhaps, in every other city in the State; but I do not know how the officers of the water department are appointed. Perhaps the city councils elect them; but it matters not, for I apprehend the city councils can be trusted as well as the mayor, and experience will show where the power of appointment ought to be vested.

Mr. S. A. PURVIANCE. I would like to ask the gentleman whether the officers of the various departments enumerated in the amendment are not amenable to the power specified in the law creating them.

Mr. J. W. F. WHITE. I think the section means this: That it shall be the duty of the mayor to see that the city officers perform their duty. It enjoins it upon him as a duty, and he cannot, therefore, avoid the responsibility which the Constitution throws upon him, in making it obligatory that he shall see their duties

are faithfully performed. The Legislature cannot take it away from him and vest it in any person else, and he cannot, by any means, avoid the performance of that duty.

I was just about making this remark, Mr. Chairman. It appeared from the argument of the gentleman from Philadelphia, (Mr. Cuyler,) that he thought the mayor could be more safely trusted with these appointments than any person else, and that he would not be so likely to be partisan. I apprehend that there never was a mayor elected in Philadelphia, nor anywhere else, who was not a partisan, as much or more so than the members of councils; and I guarantee that the history of Philadelphia will show that you never had a mayor who did not, as a general rule, appoint members of his own party to every office within his gift. We cannot get clear of partisan appointments by vesting the power of appointment in the mayor instead of in the councils; and I take it that while we have had good mayors in Philadelphia, yet very many of our best citizens, including some of the members of this Convention, have been and are now members of your councils. Cannot they be trusted as well as any person who may be elected mayor? I know, in reference to my own city, that among the very best of its citizens are to-day members of the city councils.

It does seem to me that we are arguing upon a false premise when we say that the city councils are not to be trusted, but that a mayor is better than the two bodies, known as the select and common councils of a city. I object, therefore, to this section as proposed by the gentleman from Philadelphia, (Mr. Cuyler,) because I do not know where it is going to strike. I cannot see what effect it has, if it has any effect, beyond the annunciation of a glittering generality. I therefore believe that we had better insert no provisions in the Constitution, the effect of which we cannot properly foresee.

Mr. WORRELL. Mr. Chairman: I desire to say one word about the importance of having some constitutional provision with regard to the management of the affairs of the various municipalities. There are perhaps but two arguments to which I should invite the attention of this committee. The first is that, by the report of the Committee on Legislation, as adopted, we have divested the Legislature of a great portion of its power and control over the various municipalities, and functions which have been heretofore exercised by the Legislature are to be vested in the councils of the different cities. Now, if any restraint and restriction were necessary upon the exercise of these powers by the Legislature, I think that the same restriction and the same restraint should be placed upon the exercise of the same powers by the councils of the municipalities.

I would like to call the attention of the committee to a few figures in connection with this line of argument. The total revenue collected by the State during the last year was $7,148,637 45, and the general expenses of the government amounted to $956,211 66. The revenue collected in the city of Philadelphia during the last year amounted to $16,655,721 70, and the total expenditures of the city, exclusive of loans, to $15,360,808 68, and the expense of the departments alone of the city of Philadelphia was $5,694,444 53. The expenses of the departments of this city were six times the expenses of the departments of the general State government. Now, I think it important, sir, looking at this subject from this stand point, and having regard to the fact that additional powers are to be vested in the legislative bodies of the different municipalities, and not unmindful of the enormous expenditures of the different cities; an expenditure during the last year in the city of Philadelphia of over $15,000,000, of which the departments alone cost over $5,000,000, that there should be some restriction and some limitation placed upon the exercise of legislative power by city councils. It seems to me that the amendment of the gentleman from Philadelphia (Mr. Cuyler) covers the whole ground.

The mayor should be the responsible executive officer of the city. He should be responsible to the people for the proper discharge of duties by the various heads of departments. He should have the power of appointment, and the power of removal, for it is only in that way that the proper accountability can be maintained, and the affairs of the city be properly administered. It seems to me that unless the proposition that has been made by the gentleman from Allegheny (Mr. S. A. Purviance) was to be accompanied with the provision that all legislation upon this subject should be by a *general* law, providing for the government of every municipality in the State, that we would not arrive at that reform which our experience seems to demand.

Mr. CUYLER'S amendment was not agreed to.

Mr. EWING. Mr. Chairman: I offer an amendment in the nature of a substitute for the section.

The CLERK read:

"The mayor shall be the chief executive officer of the city. He shall nominate and, by and with the advice and consent of the select council, appoint and remove all city officers, whose election or appointment is not otherwise provided by law. He shall have a qualified veto on the acts and ordinances passed by councils, to be exercised in such a manner, and on such terms, as may be provided by law. He shall see that the duties of the several officers are faithfully performed. In cities containing a population of fifty thousand or upwards, he shall exercise no judicial functions, civil or criminal."

Mr. EWING. Mr. Chairman: I wish, first, to call the attention of the members of this Convention to one thing, which I think is a mistake on their part, namely, that this section only interests the delegates from the cities. This is a matter of interest to all the delegates that represent counties that have large cities in them, and to all others interested in good government. The provisions that we incorporate here are to cover whatever city may be incorporated hereafter. By a reference to the first section, which we have passed, it will be seen that any town or village, even if contains no more than five hundred inhabitants, may be incorporated under general laws. The gentleman from Washington (Mr. Hazzard) informs me that, within a few days, his village of two thousand five hundred inhabitants has been incorporated as a city.

Now, while I have never been a city officer, not even a member of the board of health, as my colleague, (Mr. Edwards,) nor a city attorney, as my colleague, (Mr. J. W. F. White,) nor a mayor as Mr. Guthrie, with whose views I agree in principle, I have probably as much interest in this matter as any of my colleagues. I reside in the city, and I expect to reside there. What property I have is, for the most part, there. My interests are all there. It was my fortune at one time, to live in a comparatively small city. I have during the fifteen years of my residence in Pittsburg, seen it grow up from a government that was almost that of a country village, until it has come to require a government of metropolitan character and proportions. Having witnessed this growth and development, I have seen what I think is the necessity for the difference in the kind of government in a large city and a small one, and I agree very fully with the gentleman from Philadelphia (Mr. Cuyler) that in these matters, in which the comforts and convenience of the citizens are under consideration, there must be a more concentrated power in large than in small cities, for the reason that there are matters of more general concern, more vital importance, and require a prompt and efficient administration.

Now, with regard to the appointment of officers, to which the first part of my substitute refers, and which is practically the same as the amendment that was suggested by the chairman of the committe (Mr. Walker.)

For one, I believe that the mayor will, ordinarily, be a much more safe depository of the appointing power for the heads of departments than the city councils. I think that he ought to be invested with the appointment, and with the power of removal, of many of these officers; yet I can see great difficulty in specifying here in the Constitution any particular officers which he shall appoint or remove, and I think we will have to leave that to be decided by the details of a general law passed by the Legislature. There are many officers that probably should be appointed by the heads of departments. I agree with my youthful colleague over the way, (Mr. MacConnell,) who wears the venerable beard, that the people are a much safer depository of the power for the selection of the most of their officers than either the mayor or city councils. Now, I disagree with my colleague from Allegheny county, (Mr. J. W. F. White,) who has had the honor of being elected city solicitor by the city councils at different times. He has a higher appreciation of the judicious selection of officers by such bodies than I have. I admit, in frequent cases, that they have made good selections, just as good and a little better than would have been made by any other authority, but I have seen them make the very worst possible selections. The history of this country, and I believe the history of every country that has had a legislative assembly, shows that, as a general rule, legislative bodies are the very worst depositories of an appointing power, or of the selection of officers, and our experience in this State, and I believe it is the experience of all the other States, is that wherever the appointing power of officers

has been lodged in the Legislature, it has been abused. It has become a source of corruption, and the power has been taken from them so far as possible, until now, in the Legislature of Pennsylvania, I believe there is no officer chosen by them except the office of United States Senator.

It is just the same in city councils, as far as I have observed. There is a system of log-rolling for certain city officers that is the counterpart of that which formerly existed in the election of State Treasurer. It enters into the election of city councilmen in their wards. Little cliques are formed, slates are made up, and members of the council are influenced in the selection of these petty officers by reasons that are anything but just and creditable. If I had the power I would remove the appointment of city officers from the city councils entirely. I would lodge it either with the people or with the mayor and heads of departments, allowing them to appoint with the consent and the approval of the select council. That, however, I think we will have to leave to the Legislature, and in the substitute which I have offered it is provided that the mayor shall, by and with the advice and consent of the select council, appoint all city officers whose appointment is not otherwise provided for by law, leaving the general regulation of it to the Legislature, as I think we will have to do. It will be unsafe to specify the particular officers, and I think it will be unsafe to lodge with the mayor the appointment of all city officers. It would be a patronage that would give him entirely too much power. I would give larger powers, without much patronage.

With regard to the next portion of the substitute, the qualified veto on all acts of the councils I think it is right as reported by the committee, with this addition, in order to place it beyond all question, that the veto should be exercised in a manner and upon the terms to be prescribed by the Legislature. Now, I do not think that we can substitute the precise mode in which the veto is exercised by the Governor for the veto in cities, for this reason, that the Legislature is a body which has a continued session of some months. The section which we have adopted, as well as the section of the old Constitution, provides for such a session of the Legislature. City councils have their sessions, say one day in a month, or one in every two weeks, or once a week, as I am told is the case in Philadelphia. It would be necessary to go into some detail to provide the manner in which that shall be exercised, and it should be left to the Legislature.

With regard to the last part of the substiute, I think the provision of the committee, that the mayor shall see that the city officers shall perform their duty faithfully, is a proper one. It gives him a general supervision of all the offices. The Legislature will provide details by which he can exercise that duty.

The provision forbidding the mayor from exercising judicial functions, civil or criminal, I think is a highly proper one, and I hope it will be adopted. In Pittsburg the mayor has no veto on the acts of the city councils. He does not sign them. In fact, he is nothing more nor less than the mere head of the police department and the office is sought for the fees connected with it as committing magistrate, and I think that it is a duty which is very greatly abused. It detracts from the character of the mayor. No man of a character and reputation which the mayor should possess will seek the office now, except for the mere money that it brings in. It is a source of great complaint, and I know that I represent the common feeling of Pittsburg upon this point. In a select committee, appointed by the two councils of the city, some three months ago, to determine what the duties of the mayor should be, that committee were of the unanimous opinion that his powers as a committing magistrate should be taken from him, and they only failed to report and to advise an amendment of the city charter to that effect because they believed that the Constitutional Convention would provide a remedy, and it was unnecessary and improper to make a change now.

A clause which I have put in the amendment upon that subject, can be stricken out or left in, as may be desired. Several gentleman, who are from comparatively small cities, say that the mayor in their cities should be a committing magistrate; and for a small city I do not see any objection to it. I would limit the exclusion of this power to cities of fifty thousand inhabitants and over, but I am not particular with regard to that. I hope that the general outlines of this section will be preserved. I do not think it is legislation. I think it is the laying down of general principles which shall govern the Legislature in framing details of the laws

which they will have to pass with regard to cities.

Mr. WALKER. Mr. Chairman: I am aware that the committee has given but little attention to the article now before us; it may be because it does not interest every part and portion of the Commonwealth.

In my judgment, and in the judgment of the committee that reported the article, the effort that is being made is to incorporate into the Constitution city charters. Your committee endeavored to avoid that as much as possible. It is possible that the committee have incorporated into the article more than should be properly in it, but it is circumscribed as much as it could be. The effort that has been made here, from the first to the last, is to put into the Constitution city charters. That I am opposed to. That, I trust, the committee will vote down. Now, allow me to say that I hope the committee will vote down the amendment that is proposed now by the gentleman from Allegheny (Mr. Ewing.

If that is done, then, with the concurrence of the committee, so far as I have talked with them, we propose to amend the article so that it will read in the way that has heretofore been suggested. I will state it over again: "The mayor shall have the same power to veto all acts and ordinances passed by councils that, by this Constitution, is vested in the Governor, as to bills passed by the Legislature." If it is important to have the veto power in, it is important and proper that the executive of a city shall have only the power, in this respect, that is vested in the Governor. It is, I believe, vested with the mayor in this city; I know it is in the little city where I reside, and I believe it is in most of the cities of the Commonwealth. In some it cannot be. I understand the gentleman from Allegheny (Mr. Ewing) to say that in the city of Pittsburg the power is not vested. It is proper that it should be, and it ought to be indicated, not by a general law, as the gentleman from Allegheny (Mr. S. A. Purviance) says, but it should be put in the Constitution, that our city charters may be one, may be alike, the same east of the mountains that they are west of them.

It is said by the gentleman from Allegheny (Mr. MacConnell) that the words, "shall exercise no judicial function, civil or criminal jurisdiction" ought not to be in the Constitution. Perhaps they ought not. He says they ought not, because their mayor exercises criminal jurisdiction. It is not so in the city of Philadelphia. I cannot speak for any other city than Erie, and I know it is not so there. We have a committing magistrate, a more proper officer to exercise criminal jurisdiction than the mayor. He exercises it there to the satisfaction of our people. I would then, in addition to the amendment that I have suggested, propose this, leaving the words, "he shall exercise no judicial function, civil or criminal," in and add, "except as a committing magistrate." That will satisfy the gentleman from Pittsburg. My own opinion would be to strike out those words entirely, and let that be supplied by legislation, but if this is voted down I will offer the amendment I have suggested.

Mr. EWING'S amendment was rejected.

Mr. WALKER. Mr. Chairman: I now propose to amend, by striking out the first and second lines, down to the word "shall," and insert: "The mayor shall have the same power to veto all acts and ordinances passed by councils, that by this Constitution is vested in the Governor, as to all laws passed by the Legislature," and after the word "criminal," add these words, "except as a committing magistrate," so that the section will read:

"The mayor shall have the same power to veto all acts and ordinances passed by councils, that by this constitution is vested in the Governor, as to bills passed by the Legislature, and he shall see that the duties of the several officers are faithfully performed. He shall exercise no judicial functions, civil or criminal, except as committing magistrate."

I do not see that this amendment improves the section as originally written in any particular. In one particular it is disadvantageous. I do not like the construction of a sentence which refers for all the force it has to another section. It ought to say in direct words what the power of a qualified veto means, and not refer to any other section, nor to the power of the Governor.

Mr. WALKER. Mr. Chairman: The section defining the veto of the Governor is a voluminous section.

Mr. MINOR. Mr. Chairman: I understand the chairman of the committee to design to embrace in this article the provisions of section sixteen of the article on the Executive. It will be observed that that section requires that the Governor shall have the right to veto; it says, "if

any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall be a law, unless he shall file the same, with his objections, in the office of the Secretary of the Commonwealth, and give notice thereof by public proclamation within thirty days after such adjournment."

I want to know if the mayor has got to file every bill that he does not veto in the office of the Secretary of the Commonwealth? If he does not, it becomes a law. It seems to me we are getting into a little confusion on this matter.

Mr. J. W. F. WHITE. I would suggest to the chairman of the committee a modification or substitute in the following words: "Every ordinance shall be presented to the mayor, for his approval, within three days after its final passage, and if he shall return it to the council at its next regular meeting, with his objection, no ordinance thus vetoed shall have any effect unless it shall be passed over his veto by a vote of two-thirds of said council."

I suggest it simply because it is explicit, and I apprehend that there will be some difficulty in making a parallel between the veto of the Governor and the veto of the mayor, and it seems to me that this will perhaps be more explicit.

Mr. HAZZARD. Mr. Chairman: This question has not interested me very much, as I do not live in a city. I do not know what you mean by a qualified veto; have not the least idea in the world. But when one should get it beyond the city limits nobody knows what it means. But this proposition of the gentleman from Allegheny (Mr. J. W. F. White) is very plain indeed. There is one ground upon which I do not like it, that the mayor shall not be a magistrate, civil or criminal, because if he is not such it will necessitate a salary. If we have a city with five thousand inhabitants we cannot afford to give very much salary to such an officer. It strikes me it will be better to leave that part out, and let the mayor live upon his fees. At any rate his substitute is a great deal plainer to me, and it gives a restraining power to the chief officer of the city that ought to be given to him. It is a conservative power that will work very well, I presume, in any case, and it seems to me that it ought to be incorporated into the section.

The question being on the amendment of Mr. Walker, it was agreed to.

Mr. BIDDLE. Mr. Chairman: I offer my amendment as a substitute.

The CLERK read:

"To strike out and insert as follows: "The mayor shall be elected by the qualified voters——

Mr. WALKER. Mr. Chairman: I rise to a point of order. That is substantially striking out what we have just voted in.

Mr. BIDDLE. That is a different matter.

Mr. WALKER. It is striking out what we have just voted in, which cannot be done.

The CHAIRMAN. The Chair sustains the point of order. You cannot strike out what has just been inserted. If the whole section is voted down, it will then be in order.

Mr. BIDDLE. I do not propose to strike out what has been put in. That is not striking out what has been put in. It varies from it in several important particulars. I understood the purpose of the amendment that was passed just now was to put in more formal shape what is called the qualified veto of the mayor. This does not affect that in any way.

The CHAIRMAN. The Chair will state that the adoption of the amendment proposed by the chairman of the committee (Mr. Walker) brings the question to the section as amended. Therefore, what has been put in here is part of the amended section, and it is not in order now to move to strike it out.

Mr. BIDDLE. Mr. Chairman: My motion is to strike out the whole section as amended; not the amendment to the whole section.

Mr. MACVEAGH. Mr. Chairman: He has the right to move that as a substitute for the amended section.

Mr. LAWRENCE. Mr. Chairman: I agree with the gentleman from Philadelphia. It is always in order to move to strike out what you have put in, provided you sirike out something else with it. He proposes to strike out the whole section, as I understand.

Mr. BUCKALEW. Certainly. I would call the attention of the Chair to the point, because if it is to be taken as a precedent we cannot get along very well in this Convention.

Mr. WALKER. Mr. Chairman: I withdraw the point of order.

Mr. BIDDLE. Mr. Chairman: I wish to say a very few words about this matter. I came here to-day indisposed to take any part in the discussion beyond listening, and voting after listening, to the propositions that have been brought forward. I feel constrained, however, to say a few words in regard to the amendment just offered. This section, offered by way of a substitute, makes the mayor an efficient officer. We look to him for the good order and good management of the city. This section gives him the power to bring it about. It does something more specific than the substitute offered by the gentleman from Allegheny (Mr. Ewing.) It places specifically under the appointment of the mayor all the offices, except the fiscal officers, who are properly made elective—the controller or auditor, which are the same officer, and the city treasurer. We have on this subject very valuable testimony. We have, in the first place, the testimony of the late mayor of the city of Philadelphia, (Mr. M'Michael,) and which was read by the gentleman from Philadelphia (Mr. Littleton.) We have, to the same effect, the testimony of a member now on this floor, who for several years was the chief executive of the city of Pittsburg, (Mr. Guthrie,) and I doubt if we would be acting wisely in disregarding such testimony. If you leave the section in the shape in which it stands reported from the committee, you practically do nothing. You hold responsible for the good government of the city him whose hands are tied, and who cannot interfere with any appointment of value. Now, what do we see every day on this subject? Within less than a month we have seen one of the most important offices in the city of Philadelphia, heretofore faithfully filled by a man of very large experience and great integrity, snatched away from him at the dictation of a party caucus, and transferred, in total disregard of the interests and wishes of the community, to a partisan. A man was appointed who certainly has not the knowledge or experience which entitle him to fill that office. I wish to avoid all this. I wish to do away with the appointment to office of persons whose sole titles to it are those of mere partisanship. I do not wish to place a man in the mayoralty whose functions have no practical value. I wish to make this office a useful one.

I wish that every man, woman and child, who has interests in the city, and whose interests are affected by the action of its chief executive officer, may have the right to go to him as to one, having authority, and to say to him that this grievance exists in this department and that grievance in that department, and we look to you for its redress. I do not desire that he should have it in his power to say: "Well, I have nothing to do with the officers at the head of the department. I do not appoint them; I cannot regulate their action. My hands are tied; you must look to the many-headed body—the councils—for the redress you wish."

This section proposed to do away with that difficulty; and while in many respects, perhaps, it is open to the criticism made by the very respectable chairman of the committee, Mr. Walker, that it legislates, still it is unavoidable. What are you to do in such a case as this? Here is one great community in the western portion of the State, the county of Allegheny, composed of different boroughs and municipalities, a proposition for the consolidation of which, into one large city, is now on foot. They contain, together, a larger population than some of the States of the Union. Then you have another great municipality in the east, numbering three-quarters of a million of people. We must meet the evils which exist here. We must take the bull by the horns, and even at the risk of being told that we are legislating. We must do something for the protection of the interests of the citizens dwelling in these large communities. I hope, therefore, that the section now offered, which is a modification of that offered an hour ago——

Mr. J. W. F. WHITE. Mr. Chairman: Is not this the same proposition as the proposition of the gentleman from Allegheny, (Mr. Guthrie,) voted down a few moments ago?

Mr. BIDDLE. No.

Mr. JOHN PRICE WETHERILL. Mr. Chairman: I will state the difference between the proposition of the question of the gentleman from Allegheny (Mr. Guthrie) and the gentleman from Philadelphia (Mr. Biddle) is this: The gentleman from Philadelphia (Mr. Biddle) uses the word "law" instead of "ordinance," making it read: "The mayor shall be elected by the qualified voters of the city, for the term of three years, and the select and common councils for such term or terms as may be provided by *ordinance*." The gentleman from Philadelphia (Mr. Biddle) makes the last word read "*laws*" instead of "*ordinance*." The

only other difference is that he strikes out the words, "city solicitor and city engineer," making that part of the section read: "The mayor shall exercise no judicial functions, civil or criminal. He shall nominate, by and with the consent of the select council, all city officers except city controller and city treasurer," striking out "city solicitor and engineer." Upon that I would like to say a few words.

The gentleman (Mr. Biddle) may be perfectly right in saying that the councils of a great city should not hold this great appointing power, and that the mayor should. But I would call the attention of the committee to this fact, that the people elect some of these officers which the gentleman from Philadelphia (Mr. Biddle) desires to take out of the hands of the people and put in the hands of the mayor, and I ask whether any gentleman on this floor would vote for what I conceive to be so dangerous a principle as that. We have heard, sir, for days past, about the inherent power of the people, and that the people are sovereign, and yet the gentleman from Philadelphia (Mr. Biddle) would say that the people cannot govern themselves—that the people should be deprived of these rights, and that the mayor of the city shall exercise them. I ask gentlemen whether it is right—whether that is sound in principle—because if it is sound in principle, then republican governments are a failure.

Mr. BIDDLE. Does my friend ask that question intending that I should answer it, or is it a mere figure of rhetoric? If he wants me to answer it, I will.

Mr. JOHN PRICE WETHERILL. Just as you please about that, sir.

Mr. BIDDLE. Then I will answer it. The people do now elect a city solicitor, and some other officers of that kind, but I think it is a mistake. I think, in regard to all officers who are supposed to possess what are termed scientific or technical qualifications, it is much better to let a responsible man like the mayor of the city appoint them, than to leave their selection or election to a large popular body. I do not hesitate to say this, and the gentleman may make what he pleases out of it.

Mr. LITTLETON. Mr. Chairman: I desire that the committee may not be misled by the eloquence of the gentleman from Philadelphia, (Mr. J. Price Wetherill,) but may be governed a little by his practice—by his experience. He was once a member of one of the councils, but left that body, I think, in some disgust. He was also a member of some other bodies which he resigned, and whilst you listen to his eloquence to-day in asking you to leave in such a body the entire control of the municipal affairs, I hope you will bear the fact in mind. I have listened to this discussion here upon various amendments proposed, and whilst I regret the inevitable tendency of the opinions of the committee, still my own opinion is unaltered, that to have a positive, direct, and efficient government—a government which will give us something for what we expend, we should have full authority vested in some central power to whom everybody can look, and whom everybody can hold responsible. There is is an objection to this provision upon the ground that it is legislative, but still if we attain any reasonable amount of good I do not think we should be deterred by any such consideration. There will be many provisions in this Constitution which will partake of the nature of legislation, but should we refuse to place them there simply from that fact? We never will be able to reach the legislation needed on this subject if we leave it as it has been heretofore—in the hands of the Legislature altogether. I trust, therefore, that if it is the opinion of this Convention that we should establish by these means, some real and certain good, we will not hesitate to do it simply because of the criticism that it is "legislative."

Mr. J. W. F. WHITE. Mr. Chairman: I have just a few more words to say. I am not advocating that every appointment shall be left in the councils, as has just been intimated by the gentleman from Philadelphia (Mr. Littleton.) I am not struggling at all for the council nor for any power in their behalf. I merely say that we should not, by the Constitution, place the appointments irrevocably there. Let the Legislature provide for the appointment of the officers in such way as they deem fit, and as the people may want, whether that be in the mayor, or by an election, or by the mayor and councils combined. Let the people regulate that as they think best. Therefore I am opposed to all these unbending restrictions in the Constitution—making a Procrustian bed here for things that are purely matters of legislation, and ought to be left to the people.

The question being upon the amendment of Mr. Biddle, it was agreed to.

Mr. J. W. F. WHITE. Mr. Chairman: I rise to a point of order. There is not a quorum of the committee voting,

The CHAIRMAN. The Chair has no knowledge of that.

Mr. J. W. F. WHITE. Thirty-six and twenty-five do not make a majority of the House. I move that a call of the House be made.

The roll was then called, when seventy-four members were found to be present.

The CHAIRMAN. The question recurring on the section as amended, it will be read.

The CLERK read:

"The mayor shall be elected by the qualified voters of the city for the term of three years, and the select and common councils for such term or terms as shall be provided by law. He shall nominate and, by and with the consent of the select council, appoint and remove all city officers, &c."

Mr. STANTON. Mr. Chairman: I only desire to say in this connection that if this section is passed, I understand that the mayor will have the appointment of every officer, and that he will really have more power than he would have if the first amendment had been adopted. I trust therefore, the whole thing will be voted down.

Mr. BUCKALEW. I voted for the amendment, not intending that the veto power should be omitted. I did not understand that that was the intention of the gentleman from Philadelphia (Mr. Biddle.) I desire, however, to make one general observation. We are now discussing a question that has been presented, over and over again, all through the United States —concerning the organization of government; from that of the general Union down to the organization of a borough in a State. It is a question pertaining to the division of the three great departments of power—the legislative, the executive and the judicial. The Constitution of the United States is consistent with the amendments which have been proposed to us: That is, that this power of appointment and removal shall be considered an executive power, and shall be exercised by the principal executive officer of the government.

Now, sir, I believe no better arrangement than that has been devised, (taking into consideration all the propositions and experiments that have either been proposed or been enforced in our country,) and I am prepared, for one, to say that the appointing power, as it is organized and lodged in the Constitution of the United States, is the model upon which I would organize the government of our State, and of the cities and other divisions within the State, subject, however, to this consideration, that certain officers may be elected. Now in the State government we have determined that the financial officers—the State Treasurer and the Auditor General—shall be elected by the people, while the Attorney General, the Secretary of the Commonwealth and the Superintendent of Public Instruction shall be appointed by the Governor. In the organization of this city I take it for granted that the same reasoning will apply: That the mayor of the city should appoint the principal officers who are to serve in the administration of the city government, saving the financial officers of the city—the controller or the auditor, and the treasurer—who are excepted in this amendment. There is one clause, however, in the Constitution of the United States, in connection with this subject, which the amendment entirely overlooks. It is that clause which provides that such subordinate appointments as Congress may choose to except out of the general provisions shall be vested in the heads of departments, or in the President alone.

Now, if you organize the government of the city of Philadelphia into several departments—as the department of highways and the fire department, &c.—I would leave a discretion to the legislative power to vest appointments in the heads of those respective departments. That plan would correspond with the arrangements of the Constitution of the United States, and with that modification I am prepared to say that the organization proposed by this amendment of the gentleman from Philadelphia is sound, and one that ought to apply not only to the cities of Philadelphia and Pittsburg, which are our most important municipal organizations, but to every other city in the Commonwealth.

The subject of legislation with reference to cities, and particularly with reference to the manner of the appointment and removal of their officers, is in utter confusion, and it will continue so, unless the Convention, or some other authority, shall provide that legislation upon the subject of city governments shall be uniform throughout the State. There is another element that enters into the consideration of this question. The corruption of the

elections in our great cities, of which complaint has been made, proceeds mainly, (in elections where federal interests are not concerned) from the fact that there are so many of these local officers made elective. Now, sir, if the mayors of our cities had the power of appointment and selection of these officers, the question of selecting them would not be a direct issue in our elections. The elections would then be relieved from those issues and considerations that now affect them in the most injurious manner. I submit that in the large experience of the government of the United States, no one has ever yet proposed that this power of appointment in the hands of the President, should be lodged otherwise than where it was placed by our fathers, when our fundamental law was made, and I think we should accept that experience as most persuasive upon the question before us.

In short, I voted for this amendment of the gentleman from Philadelphia (Mr. Biddle) because I believe it approached the proper standard, and all I desire to add to it is a clause which shall relieve the mayors of our cities from passing upon the appointment of all the subordinate officers in the departments.

Mr. BIDDLE. I will now state to the gentleman from Columbia (Mr. Buckalew) that if he will modify the amendment in his own appropriate language, such a qualification I will cheerfully accept.

Mr. BUCKALEW. The gentleman will find in the Constitution that Congress may vest such subordinate appointments in the President alone, in the heads of departments, or in the courts. I cannot, of course, recite the precise language of the provision from memory.

Mr. J. PRICE WETHERILL. Mr. Chairman: I admit the fairness of the argument used by the gentleman from Columbia, (Mr. Buckalew,) that if we could adopt a universal symmetry throughout the State and country, it would certainly be a very beautiful system. If we could manage our department of highways and our department of lighting and the other various departments in the city, as they manage the national affairs at Washington, it would perhaps be very appropriate, but that cannot be done. Now, in all these departments committees are formed from the select and common councils, whose duty it is to supervise these various departments. There is the committee on highways and the committee on the water department, so that, virtually, they in a measure perform executive duty; and in a large city like this, the executive duty must be performed in this manner. Now, inasmuch as these committees do have the charge of these various departments committed to their care, and inasmuch as under this section they will have no power whatever in the appointment of these officers of these departments, the conflict that will arise becomes obvious. The mayor will place over the heads of councils an officer entirely beyond their reach, and as I said before, in large cities of this kind, if the people, through their representatives, are not fit to govern themselves, I doubt very much whether a higher power or authority, controlled by the State of Pennsylvania or by an instrument as powerful as the Constitution of the United States, would be of any effect.

Mr. BIDDLE. Mr. Chairman: I desire to offer an amendment, to come in at the end of the section.

Mr. J. P. WETHERILL. Mr. Chairman: The section as amended is before the committee. I would like to have that amendment read, not as altered, but as originally offered by the gentleman from Philadelphia (Mr. Biddle.)

Mr. WALKER. Mr. Chairman: As it was offered and passed, not as it was amended after it was passed.

Mr. STANTON. Mr. Chairman: You see exactly the difficulty we are getting into. Gentlemen offer amendments, that are voted upon; they offer them again, and this committee itself does not know what they want. How are we to expect the people outside to translate our blunders? I trust the committee will vote the whole of it down.

Mr. CRAIG. Mr. Chairman: I rise to inquire what is the demand now made of the Chair.

Mr. J. P. WETHERILL. Mr. Chairman: I desire to know whether the amendment, as offered by the gentleman from Philadelphia, (Mr. Biddle,) has passed this committee. It was altered, and is now, as altered, on the desk as the amendment passed.

Mr. CRAIG. Mr. Chairman: I submit that the matter inquired of cannot be reached by this summary process. Another course will have to be pursued.

Mr. LITTLETON. Mr. Chairman: I ask for the reading of the amendment.

The CLERK. The amendment as it originally came into my hands reads as follows:

"The mayor shall be elected by the qualified voters of the city for the term of three years, and the select and common council for such term as may be provided by law; the mayor shall exercise no judicial function, civil or criminal; he shall nominate and, by and with the advice and consent of the select council, appoint and remove all city officers, except the city controller or auditor and city treasurer, who shall be elected by the qualified voters of the city, each for the term of three years; in case of a vacancy occurring by death, resignation or otherwise in the office of city controller or auditor, city treasurer, city solicitor or city engineer, the mayor shall nominate and, by and with the consent of the select council, appoint a successor, who shall discharge the duties of the office until the next succeeding annual election; the mayor shall have a qualified veto of all the acts and ordinances passed by councils."

Mr. J. PRICE WETHERILL. Mr. Chairman: I want to call the attention of the committee to the point, that the amendment as offered by the gentleman from Philadelphia, (Mr. Biddle,) and passed, read city officers, and I ask the Clerk now to read it as it is on his desk.

The CLERK. It was "city officers;" now it is "municipal officers."

The CHAIRMAN. The Chair thinks that no alteration of that kind can be made, unless by unanimous consent.

Mr. BIDDLE. Mr. Chairman: It is not meant to be offered until I offer as an amendment, that having been passed on, the section as the Clerk will now read it. It is merely formal in my judgment.

Mr. BIDDLE. Mr. Chairman: I merely want to say a word, in justice to the committee. I do not care about myself at all. Mr. Rogers has read the amendment exactly as it was passed. There were one or two formal corrections. That is to say, the original amendment struck out so much of the amendment as was offered by the gentleman from Allegheny, (Mr. J. W. F. White,) as including city solicitor and city engineer. It was necessary to make it harmonize and strike them out, and that was done. As the committee had adopted instead of the language qualified veto, the more accurate language that was proposed by the chairman of the committee, and afterwards passed as an amendment, that was put in. It was merely formal. The word "city" was also changed to "municipal," because it was supposed to be more accurate. The Clerk did nothing of his own motion at all, and read it as it ought to have been read, and no censure should, by implication, be attached to him. I now offer as an amendment the section, in which I would like to have it with these formal changes made.

Mr. J. PRICE WETHERILL. Mr. Chairman: I desire to say a word. I want this matter clearly understood by the members of this committee. The difference between a city officer and a municipal officer is not a mere formal difference. A city officer may be a commissioner, and, perhaps, is a commissioner. A commissioner of the park, or a commissioner of South street bridge, or any other commissioner, is a city officer, and the mayor would have the right, under the original amendment, to appoint all these commissioners. A municipal officer is not a commissioner, as the mover of the amendment would so consider it, and therefore the alteration will allow all the commissioners in the city of Philadelphia to remain under the appointing power of the court, and the other city officers to be under the appointing power of the mayor. Now, I contend that if the mayor of the city of Philadelphia is qualified to appoint one set of officers, why not all? And if we have confidence in the appointing power of the mayor to fill all the city officers, be it so. But do not divide it, and give him a partial appointing power. Let the entire matter remain under the control of one power.

Mr. CUYLER. Mr Chairman: I ought to say a word, I suppose; I voted for the amendment as proposed by my colleague, (Mr. Biddle,) and I voted for it with the understanding that the words "city officers" did not include the commissioners. I spoke to one or two of my legal friends, sitting near me, who entertain considerable doubt upon the question; and I suggested that the word "municipal" more clearly conveyed what I supposed to be the intent of the committee, and at my suggestion the word "municipal" was inserted. I perceive no wrong, and no ground for any of the objections made by my colleague (Mr. J. Price Wetherill.) I think, instead of being a change, it simply expresses more clearly what was the original purpose of the committee.

Mr. LITTLETON. Mr. Chairman: I would ask whether, in the gentleman's opinion, there is no difference between the words "municipal" and "city" in the sense in which they are used in this connection.

Mr. CUYLER. Mr. Chairman: As respects the purpose of this committee when the amendment was passed, there is no difference whatever. The word "municipal" only expressed a little more clearly the apparent intention of the committee.

Mr. JOHN R. READ. Mr. Chairman: I simply wish to ask the gentleman who offered this amendment whether he understands that a member of the park commission or any commission is a municipal officer in the proper meaning of the term?

Mr. BIDDLE. I do not think he is.

The amendment of Mr. Biddle was agreed to, there being, on a division, thirty-seven in the affirmative, and nineteen in the negaative.

Mr. CUYLER. Mr. Chairman: I want to suggest one more amendment to my friend from Philadelphia (Mr. Biddle.) He provides that "the mayor shall exercise no judicial functions, civil or criminal." I would ask whether he has any objection to inserting, "except the powers of a committing magistrate." That authority has always been exercised by the mayor, and I think it is a very wise power to deposit with him. I move to amend, by inserting those words.

Mr. H. G. SMITH. Mr. Chairman: I hope that amendment will be adopted. In the smaller cities of the Commonwealth that power is exercised by the mayor with little expense at all, and in a proper manner; and I do not think that this Convention should provide immediately for so fundamental a change. If it be shown to work evil in the future it will be remedied by legislation.

Mr. BIDDLE. After hearing the remarks of the gentleman from Lancaster, (Mr. H. G. Smith,) I feel entirely satisfied that it will be well to adopt that amendment.

Mr. H. W. SMITH. Mr. Chairman: The amendment, if I understand it correctly, which is now pending before the committee, proposes that the mayors of our cities shall exercise judicial functions or judicial powers only so far as they may be exercised by committing magistrates. This question has been considered in committee of the whole almost entirely with reference to the city of Philadelphia, but I desire to say that there are other large cities in the State of Pennsylvania besides Philadelphia. There is the city of Reading, and the mayor of the city of Reading has been exercising judicial functions beyond those of a committing magistrate; and I can say with truth that by the exercise of judicial powers bestowed upon him by law directly, and others implied, thousands of dollars have been saved to the county, because aldermen and justices of the peace, with the assistance of the district attorney, have only been too anxious to bind over men to appear at the criminal courts for the purpose of making costs that would eventually have to be paid by the county. The mayor of the city of Reading in these cases sits every morning in a judicial capacity and there decides upon simple cases. He sometimes locks men up for twenty-four and forty-eight hours, and fines them. When the offense is repeated he sometimes commits them for thirty days, and the citizens of the city entirely acquiesce in his decision. I desire, however, to amend one portion of this section as follows: Instead of saying that he shall exercise no judicial functions, except those of committing magistrates, I propose to strike out all that portion of the section and insert as follows: "He shall exercise such judicial functions as may be prescribed by law." Now, it is necessary that an article of this kind should be uniform throughout the State. If it is deemed improper to vest in the mayor of a city containing a population of more than one hundred thousand, the Legislature can by law say that in cities not exceeding such a population the mayor shall exercise certain judicial functions; it would be a general law, and not special in its character. The administration of an oath is a judicial act, the registering of that oath is a ministerial act; the taking of a recognizance is a judicial act, while the registering of it is a ministerial act. Wherever a proceeding like this occurs it is done by the clerk of the court, in the presence of the court; it is contemplation of law done by the court, and it is only by special authority given by the Legislature, by act of Assembly, that certain officers not holding a jucicial position can exercise and discharge duties of this kind. I therefore hope that this amendment will be adopted. It will do no harm, and it will leave such cities as Reading to be governed in the same manner they are now.

Mr. BIDDLE. I desire to offer no objection to the suggestion at all, and I am willing to accept it as a modification. I would like, however, to ask the gentleman from Philadelphia (Mr. Cuyler) to withdraw his amendment.

Mr. CUYLER. I would like to ask the gentleman from Berks county (Mr. H. W. Smith) whether he is in favor of giving the Legislature the power of erecting the mayor into the position of presiding over a civil court and hearing civil issues. Is there any power that the mayors of large cities should exercise in criminal cases excepting the power of a committing magistrate? There are cities where criminal jurisdiction is lodged in recorders, but I do not know of any instance where a mayor of a city exercises any judicial powers beyond those of a committing magistrate.

Mr. GUTHRIE. I hope the amendment of the gentleman from Berks (Mr. H. W. Smith) will not prevail. The section, if that amendment is adopted, might as well be stricken out. I am perfectly willing to accept the amendment offered by the gentleman from Philadelphia (Mr. Cuyler.)

Mr. H. G. SMITH. Mr. Chairman: I hope the amendment of the gentleman from Berks (Mr. H. W. Smith) will pass, for the reason that in the smaller cities of this Commonwealth the mayors are entrusted with certain judicial powers in simple cases respecting fines, &c. These cases are promptly determined, with very little expense, and fully to the satisfaction of the people as they can be by any other manner or any other tribunal. In the city of Lancaster we have never had occasion to find any cause of complaint, and I hope the amendment will be adopted. The provisions of the amendment need not apply to the city of Philadelphia and the city of Pittsburg, unless it is desired, and the system which now prevails in the smaller cities will be permitted to remain.

Mr. BUCKALEW. Mr. Chairman: I opposed the amendment of the gentleman from Berks (Mr. H. W. Smith) because I thought he left the matter too indefinite. I have no objection to the clause which reads, "the mayor shall exercise no judicial power except as a committing magistrate," and would add also the words, "in cases of summary conviction." I move, therefore, to add those words after the word, "magistrates."

Mr. CUYLER. I would simply remark to the gentleman from Columbia (Mr. Buckalew) that the Judiciary Committee, I hope, will take into consideration the amendment which he has suggested.

Mr. S. A. PURVIANCE. I would like to ask the gentleman whether he will consent to insert the following words in his amendment: "And hear and determine petty cases."

Mr. WALKER. Mr. Chairman: If we are to stop and listen, in the consideration of this section, to the suggestion of everybody that lives in a city in this Commonwealth, we will have a very voluminous article on cities and city charters. I think the committee were mainly right when they reported a section covering the skeleton of city organization. The moment we attempt in this Convention to fill up that skeleton every gentleman has views to suggest; every locality has its ideas, and if they are all considered the article upon this subject alone will be as voluminous as the Constitution itself. Now, Mr. Chairman, allow me to say that the article as amended by the gentleman from Philadelphia (Mr. Cuyler) meets my approbation nearer than anything that has yet been suggested, with the exception that probably the names of some of the officers that are mentioned do not exist in certain cities throughout the Commonwealth. I think if the amendment is adopted it will be better than the mere skeleton of the subject that the committee intended to report. I trust, therefore, that the amendment which has just been suggested will be voted down, and that we shall confine this section to what the gentleman from the city has indicated at the present time, and on second reading, when it is printed and on our files, if we see that it is wrong it can then be amended.

Mr. BUCKALEW. I withdraw the amendment I offered.

Mr. H. G. SMITH. I move to amend the section, by striking out the words, "except in cities of less than fifty thousand population." That will leave the mayors of small cities with as much jurisdiction as they now possess.

Mr. WALKER. Mr. Chairman: I would ask if the gentleman does not want the mayor to have the power of a committing magistrate.

Mr. H. G. SMITH. Mr. Chairman: I think that power ought to be retained in the large cities.

Mr. CUYLER. The gentleman could effect his purpose by adding the words, "*Provided*, That this shall not apply to cities of fifty thousand inhabitants," if then the Convention would pass my amendment.

Mr. H. G. SMITH. Mr. Chairman: I withdraw my amendment for the present.

The question being on the amendment of Mr. Cuyler, it was agreed to.

Mr. H. G. SMITH. I now desire to add after the word "magistrate:" "*Provided*, That this shall not apply to cities of less than one hundred thousand inhabitants."

Mr. D. N. WHITE. Mr. Chairman: After listening to this debate this whole morning, I have come to the conclusion that the whole thing ought to be voted down. It is nothing but legislation. It ought not to be in a Constitution. It is very plain you are binding yourself up so that after a while you cannot do anything at all. Leave these things to be decided by the Legislature They can arrange for cities and city charters by a general law, and if you have your Constitution so fixed as to apply only to cities of a certain size, the cities may shortly outgrow that size, and then their entire charter arrangements become disarranged. Do not let us embarrass our people by putting legislation like this in the Constitution. We are here for great fundamental purposes. Let us establish principles and leave the Legislature to work out what belongs to them.

Mr. ELLIS. Mr. Chairman: I would ask whether we could not meet the case by putting a proviso at the end of the article reading thus: "*Provided*, That this article shall not apply to any city in Pennsylvania." [Laughter.]

Mr. MACVEAGH. I trust the committee will understand, as I do not doubt they do understand, the scope of this proposition. It will take out of the hands of the people of every city the right to elect their officers, with the exception of financial and accounting officers.

Mr. J. PRICE WETHERILL. Do you consider the receiver of taxes a financial officer?

Mr. MACVEAGH. No; it may even include some financial officers. I do not remember the exact phraseology, but if it means anything, it means that the mayor shall have the right to appoint all officers, and takes away that right from the people. That simply means, in my judgment, to create as many sinks of corruption, of insufferable iniquity and fraud as there are cities in the State.

Mr. S. A. PURVIANCE. Mr. Chairman: I would ask the gentleman from Dauphin a question, whether he did not vote against the proposition which I introduced, "that the mayor shall have power to perform such duties as shall be prescribed by law."

Mr. MACVEAGH. Mr. Chairman: I think I did not vote against it. I am entirely in accord with that proposition. It is not a matter with me of mere words. What injury has come from allowing the people to have some control over the officers of their cities? Where is the example that any mayor of a great city has set of being such a mirror of purity, and integrity, and honor, that we ought to put into his hands all the money, and all the patronage, and all the power of that city? Why, any mayor of the grade of intelligence above a fool, invested with such power, will elect himself in the city of Philadelphia over and over again.

Mr. CUYLER. Mr. Chairman: I desire simply to say to the gentleman, that in the city of Philadelphia the amendment we have adopted, although the section itself has not yet been adopted, does not take away from the people a single officer which they have heretofore elected.

Mr. WETHERILL. City solicitor and receiver of taxes.

Mr. MACVEAGH. Yes; it takes away both of these, and, moreover, the people have imagined when they voted that they had substantially the election of these officers under their control, because they elected an electoral body. The gentleman might just as well say, that if he takes away from me the right to vote for President he does not take that right away in reality, because I never voted for President, but voted only for men who were to vote for President. The case is parallel. The people of this city have been voting for councilmen, understanding that they were at the same time substantially voting for their officers. I am myself always willing to pursue doctrines to their logical conclusions. Indeed, sometimes I am considered to be only a little too willing in that direction, as some gentlemen might have thought yesterday. I am not sure but that I shall vote for the proposition to abolish the appointing power of the councils, but I will never vote for the proposition to vest that power in the mayor. Why, if you place that power in the hands of one man, you will have in Pennsylvania as many Mr. Tweeds as you have cities in the State.

Mr. BUCKALEW. Tweed was not a mayor.

Mr. MACVEAGH. No; but some Mr. Tweed would have been mayor if this law had existed in New York; and some Mr.

Tweed will be mayor in Philadelphia if this law is allowed to exist.

Mr. BUCKALEW. Tweed ran the departments.

Mr. MACVEAGH. Yes. Tweed didn't want to be mayor. He had all the funds of the city at his control without it. But with this provision his ambition would be the mayoralty.

Think what it means. Cannot this power be trusted to the people? It has heretofore been trusted to them. In every instance of great consequence the people have taken it directly into their own hands. They may take it all; but I will not agree to put it all into the hands of one man, elected for three years, and take all means of control from the hands of the people. How it can be supposed that such an idea is in the interest of anything but the most corrupt government, I am at a loss to discover. What is the injustice of allowing the people to elect these officers? I am willing to yield to the municipal reformers in many things, and I am willing to yield to the gentlemen from this city in many things. I am willing even to separate the government of the city from the government of the State in some respects, though I think it is an evil doctrine, and may lead to injurious results. I am, however, willing to do it; but I am not willing to vest this absolute control over every department of the city government in the hands of one man for the term of three years, and I trust, earnestly, that it will not be adopted in that form.

Mr. LITTLETON. Mr. Chairman: Is an amendment in order at this time?

The CHAIRMAN. No, sir. There is an amendment to the amendment pending.

Mr. LITTLETON. Mr. Chairman: I desire to offer an amendment at the right time, obviating every objection raised by the gentleman from Dauphin (Mr. MacVeagh.) That is to give the appointing power to the mayor of all the chief officers of the elective departments not elective by the people. Then it leaves it in the control of the Legislature to prescribe what officers shall be elected by the people. If it is shown that this works badly, they can make all the officers elective by the people.

Mr. CUYLER. Mr. Chairman: That simply emasculates the whole thing. That is a power that I am not willing to give to the Legislature.

Mr. MACVEAGH. Do I understand the gentleman from Philadelphia (Mr. Cuyler) to say that he is not willing to allow the Legislature to allow the people to elect their own officers?

Mr. CUYLER. Mr. Chairman: I mean just that.

Mr. MACVEAGH. That certainly is what it means.

The question being upon the amendment of Mr. H. G. Smith, it was not agreed to.

Mr. LITTLETON. Mr. Chairman: I now submit my proposition, to strike out the city officers, and to insert: "The mayor shall appoint all the chief officers of the executive departments not elective by the people," and strike out the other clause: "Provided," &c.

Mr. Chairman, the objection I entertain to the amendment adopted by the committee is that it is entirely too specific in its character, and partakes too much of the nature of special legislation, while the amendment which has been offered by me establishes the general principle that the cheif magistrate of a city shall appoint the heads of municipal departments where they are not by law made elective by the people. In the event of the adoption of this amendment, the mayor of the city will be held strictly responsible for the abuse of the exercise of this power, and the remedy for such an abuse can be administered by the people without the necessity of calling another Constitutional Convention. The Legislature can make those offices elective by the people, and I, for one, am willing to leave that power in the hands of the people to that extent, for it must be borne in mind that any change must be made by a general law, because under the provisions of the amendment adopted to the article on legislation there will probably be no special legislation as to particular localities so that all our cities will be amply protected.

The question being taken, a division was called, which resulted as follows: Ayes, thirty-two; noes, twenty-two.

So the amendment to the amendment was agreed to.

Mr. T. H. B. PATTERSON. Mr. Chairman: I would like to inquire whether the vote just taken is a majority of a quorum.

The CHAIRMAN. No, sir; it is a majority of those voting.

Mr. CUYLER. Mr. Chairman: I do not desire to say a word in oppposition to the passage of the section as now amended, but I am constrained to remark that according to my views the whole purpose that was intended to be served is entirely

removed from the section. I refer to that portion which contemplated leaving a large appointing power in the hands of the mayor and holding him to a direct responsibility. We know what kind of selections will be made at the polls. We know the influence that will be brought to bear upon the Legislature to make commissioners of highways, commissioners of city property and commissioners of police, directly elective by the people. We know what sort of men will be elected, and just what sort of results will come to pass. The ills that we have suffered will only be aggravated, and when we go to the mayor for redress the only reply that he can make will be, "that he has no power to correct the evil."

Mr. BUCKALEW. In order to make the section complete I move to insert the following words at the end of the section: "But the Legislature may by law vest the appointment of such inferior officers of the several departments of the city government in the mayor alone or in the heads of such departments."

The question being taken, a division was called, which resulted as follows: Ayes, twenty-nine; noes, twenty-two.

So the amendment was agreed to.

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

Mr. DALLAS. Mr. Chairman: Please have the section read.

The CLERK read as follows:

"The mayor shall be selected by the qualified voters of the city for the term of three years, and the select and common councilmen for such term or terms as may be provided by law. The mayor shall exercise no judicial functions, civil or criminal, except as a committing magistrate. He shall nominate and, by and with the consent of the select council, appoint and remove all municipal officers, except city controller or auditor and city treasurer, who shall be elected by the qualified voters of the city, each for the term of three years. In case of a vacancy occurring by death, resignation or otherwise, in the office of city controller or auditor and city treasurer, the mayor shall nominate and, by and with the consent of the select council, appoint a successor, who shall discharge the duties of the office until the next succeeding annual election. The mayor shall have the same power to veto all acts and ordinances passed by councils that, by this Constitution, is vested in the Governor as to bills passed by the Legislature. But the Legislature may, by law, vest the appointment of such inferior officers of the several departments of city government in the mayor alone, or in the heads of such departments."

On the question of agreeing to the section as amended, a division was called, which resulted, twenty-five in the affirmative, and thirty-two in the negative. So the section, as amended, was rejected.

Mr. J. W. F. WHITE. Mr. Chairman: I move that the committee rise, report progress and ask leave to sit again.

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

IN CONVENTION.

Mr. DARLINGTON, chairman of the committee of the whole, reported that the committee had again considered the article submitted by the Committee on Cities and City Charters, and had instructed him to report progress and request leave to sit again.

On the question, shall the committee of the whole have leave to sit again?

It was determined in the affirmative.

On the question, when shall the committee of the whole have leave to sit again?

Monday next was named and agreed upon.

LEAVE OF ABSENCE.

Mr. LAWRENCE. Mr. President. I ask leave of absence for Mr. Landis for a few days from yesterday.

Leave was granted.

THE STATE PRINTER.

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

The Committee on Accounts and Expenditures of the Convention, to which was referred a resolution concerning the payment of the Printer of the Convention, with instructions to report a resolution for the payment of such amount as shall be found due the Printer on his contract with the Convention, respectfully reports:

That it is not possible for the committee to report what exact amount is now due the Printer on his contract with the Convention, not having yet been able to procure such specific estimates, statements and information as it would be necessary to have, in order to make such report; but believing it to be right and proper that the Printer should be, at least, partially paid as the work progresses, and that up to the present time the value of

the work done by him, under his contract with the Convention, and under its authority, and the value of the books furnished by him for its use, does not exceed the sum mentioned in the resolution appended to this report; the committee reports the following resolution:

Resolved, That a warrant be drawn in favor of Benjamin Singerly, Printer for the Convention, for the sum of five thousand dollars, on account of printing done and books furnished for the Convention, to be accounted for in the settlement of his accounts.

The resolution was read twice and agreed to.

Mr. HARRY WHITE. Mr. Chairman: I want to ask, for information, whether a general resolution has been passed authorizing the printing of the reports that have gone through the committee of the whole with the amendments.

The PRESIDENT. The gentleman from Indiana will find the information by referring to the Journal.

Mr. SIMPSON. Mr. President: I move the Convention do now adjourn.

The motion was agreed to, and at two o'clock and thirty-six minutes P. M. the Convention adjourned until ten o'clock on Monday morning.

SEVENTY-FOURTH DAY.

MONDAY, *March* 24, 1873.

The Convention met at ten A. M., the President, Hon. Wm. M. Meredith, in the chair.

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

The Journal of Saturday was read and agreed to.

THE SOVEREIGNTY OF GOD.

The PRESIDENT laid before the Convention a memorial, praying the Convention to insert in the Constitution a clause recognizing the sovereignty of God.

Mr. RUSSELL presented a similar petition, signed by one hundred and twenty citizens of Somerset county.

Mr. MACCONNELL presented a similar petition, signed by twenty-seven citizens of Huntingdon county.

These were severally referred to the Committee on the Bill of Rights.

THE AMERICAN STEAMSHIP COMPANY.

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

Resolved, That when the Convention adjourn to-day, it be to meet on Wednesday next, at ten A. M., in order to avail ourselves of the invitation of Hon. E. C. Knight, president of the American steamship company, to attend the launch of the steamship Indiana.

Mr. PATTON offered the following resolution, which was referred to the Committee on Revenue and Taxation, viz:

Resolved, That the Committee on Revenue, Taxation and Finance be instructed to inquire into the expediency of incorporating the following article in the amended Constitution, viz:

All taxes of this Commonwealth for revenue or public purposes shall only be assessed upon the net valuation of property, after deducting the indebtedness of its owner from its just valuation; a statement of such indebtedness shall be given to the assessor, under oath or affirmation, unless the person assessed shall waive his or her right to such deduction; and all moneys at interest, notes, bonds, judgments and other evidences of indebtedness shall be taxed to the owner thereof as personal property.

THE OFFICIAL DEBATES.

Mr. LILLY. Mr. President: I offer the following resolution:

Resolved, That the Official Reporter of this Convention shall in no case withhold copy of Debates from the printer for revision for more than two days after the debate is had.

The resolution was read a second time.

Mr. LILLY. Mr. President: The reason why I offer that resolution is this: I have understood, from conversations with members upon this floor, that the Printer alleges that he has not received all of the copy of the Debates as promptly as he should have received it. I also understand that he has been delayed with his printing, because the copy of the Debates has not been furnished promptly. This has probably been no fault of the reporters, but it has been because the manuscript, which has been furnished to members for revision, has been retained by them for several days. I do not want this Convention to get into the same slough into which the Constitutional Convention of 1837 and 1838 fell, where the official report of the Debates was not furnished until several months after the final adjournment of the Convetion, and where the Debates were not printed, bound and circulated until at least one year after the Convention had finished its operations.

Mr. NEWLIN. Mr. Chairman: It is perhaps fair to the reporters to say that this is a matter which has only happened once or twice, and it has been no fault of theirs. It has been the fault of the members of the Convention, who, receiving copy from the reporters for revision, have not returned it until after several days have elapsed. Of course, this put the reporters in a delicate position. They do not feel like importuning the members too much. I make this statement for the benefit of the reporters, because I think it is proper, and it also seems to me that

the resolution ought to pass, so that in future the reporters will act under the orders of the Convention, and thus all difficulty will be avoided. The members of the Convention will see the necessity of complying with the orders of the House.

I move to amend the resolution, by striking out the words, "two days," and insert "one day."

Mr. COCHRAN. Mr. Chairman: I have been under the impression all along that under the contract between this Convention and the official Reporter, these Debates cannot be delayed even one day. There was a provision, I think, in the contract, at least I so understood it, that the copy was to be furnished to the Printer on the same day that the discussion took place, and that we were to have the reports printed and laid upon our tables the next day. If it is necessary to pass this resolution now, it is all well enough, but certainly the Convention always contemplated just such an arrangement as I understood, and as I have described, that the Debates in no case were to be held back, but were to be furnished to the Printer on the same evening, and on the next day were to be laid upon our tables.

Mr. DARLINGTON. Mr. Chairman: I propose to amend the amendment, by providing that if manuscript shall not be returned within one day, it shall be omitted entirely from the debates.

Mr. NEWLIN. Mr. Chairman: I accept the amendment.

Mr. MINOR. Mr. Chairman: It strikes me that we will fall into difficulty. I do not know, if this amendment be adopted, what we will do with the Debates that occurred last Saturday. They will all be ruled out necessarily.

Mr. TEMPLE. Mr. Chairman: I suggest to the gentleman from Crawford that Sunday is always excepted.

Mr. HAZZARD. Mr. Chairman: I desire to ask, in case the manuscripts are left out of the printed Debates, how the accounts with the reporters will be ascertained? They ought to be paid for work done, and who is to pay them?

On the question of agreeing to the amendment, a division was called, which resulted in thirty-one in the affirmative. Not being a majority of a quorum voting, the amendment was rejected.

The PRESIDENT. The question is upon the resolution.

Mr. NEWLIN. Mr. President: I call for the reading of the resolution.

The CLERK read as follows:

Resolved, That the official Reporter of this Convention shall, in no case, withhold the copy of Debates from the printer for revision for more than two days after the debate is held.

The resolution was agreed to.

IN COMMITTEE OF THE WHOLE.

Mr. NEWLIN. Mr. President: I move that the Convention now go into committee of the whole, upon the article on cities and city charters.

This was agreed to, and the Convention resolved itself into committee of the whole, Mr. Darlington in the chair.

CITIES AND CITY CHARTERS.

The CHAIRMAN. The committee of the whole, at its last session, disposed of the amendments to section three, and finally voted down the section itself. The question now before the committee is section four, which will be read.

The CLERK read as follows:

SECTION 4. The Legislature shall pass no special law creating any municipality, or regulating its form of government, or the management of its internal affairs, or altering the charter of any city now existing, or creating a public commission for any purpose, unless such law is specially asked for by a majority of each council for a definite object, nor shall such special law have any force or effect, unless accepted by a majority of the legal voters voting at the next municipal election after the acceptance by the councils. Every municipality shall have power to pass laws for its own regulation, not repugnant to the Constitution of the United States or the Constitution of this Commonwealth.

Mr. NEWLIN. Mr. Chairman: I move to amend as follows: To strike out from the word "purpose," down to and including the word "councils," and insert:

"All public commissions now in existence may be altered, remodelled or abolished by the councils."

Mr. STANTON. Mr. Chairman: How will the section read as amended?

The CLERK read as follows:

"The Legislature shall pass no special law creating any municipality, or regulating its form of government, or the management of its internal affairs, or altering the charter of any city now existing, or creating a public commission for any purpose. All public commissions now in existence may be altered, remodelled or abolished by the councils. Every municipality shall have power to pass laws for

its own regulation, not repugnant to the Constitution of the United States, or the Constitution of this Commonwealth."

Mr. D. N. WHITE. Mr. Chairman: It appears to me that this section is in direct opposition to the section we adopted ed in committee of the whole on the article on legislation. This says that no special law shall be passed in relation to cities. In the article on legislation we passed a provision that all laws regarding cities shall be general, so that we cannot pass any special laws. I think we had better vote this section down.

Mr. NEWLIN. Mr. Chairman: The object of the amendment which I have suggested is to meet the exact difficulty stated by the gentleman from Allegheny (Mr. D. N. White.)

It will be seen that the section, as reported by the Committee on Cities and City Charters, would authorize the Legislature under certain circumstances, there detailed, to create commissions. Now, I am opposed to giving the Legislature the power to create commissions under any circumstances whatever, and I am opposed to all commissions on principle. Now, when this matter was up before us, a few days ago, the existing commissions in this city were alluded to, and it was stated that the gentlemen upon these commissioners were reputable citizens, and that, therefore, the commissions ought not to be abolished. Now, I cheerfully agree with the friends of the of the existing commissions in everything which they have said as to the *personnel* of the commissions. I think that the present commissioners are very reputable gentlemen. They are good citizens, and I have no doubt that they desire to carry out the objects of the bodies to which they belong, with a proper regard to the public interest and, therefore, what I say has no reference whatever to the gentlemen composing these commissions. I desire to be explicit on this point, that my objection is a general one, and goes to the root of the difficulty, and that I am opposed to all commissions in themselves, because they are both irresponsible and unrepublican. We have lately, in the city of New York, had an evidence of what commissions can do when they get into improper hands, and although I admit, as I have already said, that the present commissioners are men of character, the time may come when persons of a very different calibre will fill these places, and then all the difficulties that have occurred in the city of New York, I take it, would occur here. But, sir, even if these commissions were continued to be conducted properly, they are, in their nature, irresponsible, and they are anomalies in our political constitution, because the people have no voice whatever in their selection or control over their actions.

The commissions have the power to bind the municipality, and though the appropriations to meet the contracts made by these commissioners have, I believe, always been made by the councils, the councils have not been willing agents for the people in so doing, but they have been obliged to make the appropriations to avoid heavier expense to the citizens, because the contracts were already completed and had to be complied with by the city authorities. Notwithstanding that the commissioners now in office have unquestionably been actuated by proper motives in the discharge of their duties, it is an undeniable fact that through these commissioners a very great and enormous increase of the city indebtedness has been made, and that the taxes of the city have, of course, increased correspondingly and to a most alarming degree. The present city rate is $2 15 on the $100 of assessed value, and when gentlemen bear in mind that the assessed value of real estate in this city is its full market value, they will see that this rate of taxation is enormous. It used to be, and I presume still is the case in many counties, that the assessed is nothing like the real or market value of the property. In many cases one-fourth, or one-third, or one-half of the market value, but in Philadelphia now, as a rule, the assessment is of the full market value of the real estate. So that the tax of $2 15 upon the $100 of full market value of the property is what is now imposed upon the tax-payers of this city. It has got to be a very serious consideration with very large manufacturing establishments in this city whether they can stand, along with other expenses, the great increase of tax, and we had recently an instance of a very large establishment being compelled, partly on account of the increared taxation, and also for other reasons, to remove their works, not only out of this county, but out of this State, and to go to the neighboring State of Delaware, and they are now about erecting works at New Castle. I am told that other establishments contemplate similar action. Owing to that fact—the great in-

crease of taxation—and the low rate of interest in this city, capital has been leaving us, to a great extent, and the neighboring States have been profiting at our expense.

In the State of New Jersey there are numerous manufactories of every description, which, on account of the taxes being lower, are carried on by Pennsylvania capital. The taxes now, on some properties, are nearly as great as the whole rental which was a few years ago received by the owners, and if the tax rate continues to increase at its present rate, in a few years the city will become the great landlord, and the owners of properties will becomes its tenants, with the right to sublet to other people. That is what it will practically amount to.

Now, the amendment proposed does not of itself and immediately do away with all these commissions. It follows out the general idea already adopted by this Convention; first, of taking from the Legislature the power to create commissions, and of placing the city affairs within the control of the municipality. If this amendment is adopted it will take this shape, that the city councils may either alter the present commissions or they may remodel them or they may abolish them, as they think best for the interests of the public.

Gentlemen may say that we have already prohibited the Legislature from creating these commissions in the future, but we want to get rid of those now existing. The necessary and inevitable consequence of their continued existence is to heap up public debt and taxes, without the consent of tax-payers, and if we cannot get rid of the incubus which is now upon the city, the relief will only be partial. If the principle that has been adopted by this Convention is correct, that these commissions cannot be created in the future, I can see no logical reason why those now established by law should not be abolished. This is a matter of very grave consideration to the city of Philadelphia, and I hope the gentleman from the interior will agree with me, that these commissions should be done away with.

Mr. HANNA. Mr. Chairman: I would like to have the amendment read.

The CLERK read:

Strike out all after the word "purposes," in the fourth line, to and including the word "councils," in the eighth line, and insert as follows: "All public commissions now in existence may be altered, remodeled or abolished by council," so that the section will read: "The Legislature shall pass no special law creating any municipality, or regulating its form of government, or the management of its interternal affairs, or altering the charter of any city now existing, or creating public commissions for any purpose. All public commissions now in existence may be altered, remodelled or abolished by council. Every municipality shall have power to pass laws for its own regulation, not repugnant to the Constitution of the United States"

Mr. HANNA. Mr. Chairman: I submit that if we adopt the amendment offered by my colleague (Mr. Newlin) we will be going entirely too far, and further than this Convention proposes at present to go. It seems to me, sir, that the committee, in considering the report of the Committee on Legislation, has covered the ground entirely. I do not think we need the section as reported by the Committee on Cities and City Charters. I do not see any necessity for it, because we have prohibited the Legislature from passing any special law regulating the affairs of cities, counties, boroughs, &c.; and in addition to that we have also passed a section which will cover this very subject. That is with regard to the creation of commissions. If the committee will turn to the report of the Committee on Legislation——

Mr. NEWLIN. Will the gentleman allow me to interrupt him?

Mr. HANNA. Certainly.

Mr. NEWLIN. I ask if it refers to the commissions that are now in existence.

Mr. HANNA. It does not, and that was the very question that the committee of the whole declined to act upon when they considered the report of the Committee on Legislation, that is to abolish existing commissions; but they did pass section twenty-four in the report of the Committee on Legislation, which prohibits the creation of commissions in the future. It reads: "The Legislature shall not delegate to any commission, corporation or association any power to make, supervise or enforce any municipal improvement, property, money or office whatever, to levy taxes or to reform any municipal functions." Now, I submit that while the object to be obtained by my colleague (Mr. Newlin) may be good in itself, yet the committee of the whole have refused to act upon that, and have said that we are not now prepared to abolish existing commissions. I there-

fore think that his amendment should not be adopted, and that the whole section should be voted down, because what we have already adopted, as the sense of this committtee, covers the ground entirely.

Mr. J. PRICE WETHERILL. Mr. Chairman: I hope the section, as presented by the Committee on Cities and City Charters, will be adopted without an amendment. In reply to my colleague from Philadelphia, (Mr. Newlin,) I would state that the proviso which he desires stricken out does not apply solely to the creation of commissions, as he will see by reading it carefully, although the committee desires that the Legislature shall pass no special law creating any municipality, or regulating its form of government, or the management of its internal affairs, or altering its charter. Yet there may be certain contingencies arise which will require some special legislation that may be imperative. If this Constitution is adopted, it will, probably, remain in force for many years, and in large cities changes may occur, and emergencies arise, by which special legislation of some sort or other, at present unforeseen, may be needed. In times of rebellion or invasion, or other cases, unlooked for and unforeseen, circumstances may demand special legislation, and therefore the committee thought that though, as a rule, we had better be entirely free from the Legislature. We had better be left alone in the control of our own affairs. Yet, to avoid any unforseen contingency, this proviso should be inserted, with this modification, that: "Unless such law is specially asked for by a majority of each council, for a definite object, it shall not be passed, and such special law shall not have any force unless accepted by a majority of the legal voters."

Mr. MACVEAGH. Mr. Chairman: I submit to the gentleman whether it is not clearly better that if this amendment is to be added to the section, as it now stands in the report of the Committee on Legislation, it should not be done on second reading, and not that we should have a contradictory section adopted in this report. The very object of the gentleman himself, it seems to me, would be reached by simply adding to this amendment, on second reading, to the report of the Committee on Legislation. I therefore shall vote against this section at present.

Mr. NEWLIN. Mr. Chairman: The objection stated by the gentleman from Philadelphia (Mr. J. Price Wetherill) can be obviated, and I propose now, to a certain extent, to obviate it by moving that the amendments which I offered come in at the end of the section instead of my motion to strike out and insert, because, it goes further, I see, than was intended.

Mr. TEMPLE. I move to further amend, by striking out all after the word "councils," in the eighth line of the section, and inserting the amendment offered by the gentleman from Philadelphia (Mr. Newlin.)

The question being taken, the amendment to the amendment was not agreed to.

The CHAIRMAN. The question recurs upon the amendment.

Mr. MACVEAGH. Mr. Chairman: I trust that this amendment will not be adopted. It is legislating upon matters in regard to which this Convention has certainly no information whatever. I am not familiar with any of these commissions. I know nothing of their *personnel* or the motives which led to their creation, and to ask me now to wipe them out of existence by an act of legislative authority, is asking what, I trust, the members of this Convention have no idea of acceding to. I hope gentlemen will consider well before they vote upon the question.

Mr. BARDSLEY. Mr. Chairman: The amendment now pending, if I understand it correctly, contemplates giving to the councils of the city power to alter the city commissions, or abolish them altogether. If I understand the amendment to convey this meaning, I am in favor of it. I believe the new Constitution of the State will not be complete unless we give to city councils full and absolute control and power over all the departments contained within the limits of our municipalities. We must not go half way. The Committee on Legislation has prepared a report, and this committee has adopted the section, giving to cities absolute control over their own affairs. This amendment simply carries out that same proposition already adopted. I have no objection whatever to the *personnel* of the various commissions existing in the city of Philadelphia, but we know not how soon they may be composed of irresponsible men, and I consider it a reflection upon the ability of municipal councils to say that they cannot manage and administer their own internal affairs. If the councils are not capable of carrying on all the affairs of the city, why should they be entrusted with

administering a portion of the municipal government.

We have a commission in this city for the erection of a bridge over the Schuylkill river, at the foot of South street—a commission composed of men who are constantly changing by the various vicissitudes of life, and to-day they control the expenditure of over one million dollars. The city councils are required by an act of Assembly to raise that money, and they have no control whatever over its expenditure. Now, sir, the city at the same time is constructing bridges of a greater magnitude than the one whose construction is controlled by this commission, and no one will gainsay the fact that the municipal authorities are fully competent to undertake and successfully carry to completion the work, and in the wisdom of the city councils it has long since been decided that the erection of a bridge at South street was entirely unnecessary, and was not demanded by the interests of the city at that time. I simply refer to these facts to show the manner in which these commissions originated. The city councils, as I have said, deemed the erection of the bridge at South street as entirely unnecessary, but the act of the Legislature, creating this commission, was passed against the representations that were made, directly in the interest of some of our passenger railway companies, whose agents were sent to Harrisburg for that purpose. The city councils almost unanimously refused to construct the bridge, and by reason of their refusal these companies and private corporations procured the necessary legislation at Harrisburg.

The amendment which has been offered affords, in my opinion, a remeny for this kind of legislation, for I understand under its provisions these commissions may be either modified or abolished at the discretion of the city councils, and if the city councils shall err in their action they would be held directly responsible by the people. These commissions, as they are now constituted, are not responsible to anybody, neither to the courts, councils nor the Legislature, but by mandamus upon the city treasurer they can compel the payment of all indebtedness they may incur. I trust, for these reasons, this amendment will prevail, in order that city councils shall have full and entire control over their own internal affairs.

Mr. MACVEAGH. I would like to inquire upon what basis the gentleman bases his conviction that it would be more difficult to pass a corrupt measure through city councils than through the Legislature.

Mr. BARDSLEY. That is very easily answered. The councils of the city are composed of gentlemen elected directly by the people in their own immediate vicinity, and they are changed every two years and three years; and if a measure of vast importance should be passed, or be refused to be passed, the people have a remedy in their own hands at the next ensuing election, and can prevent the re-election of men who shall prove direlect in their duty. The Legislature is organized in an entirely different manner, and the member from Tioga cares nothing whatever about the interests of the city of Philadelphia.

Mr. MACVEAGH. Does not the gentleman know that all questions affecting the interests of the city of Philadelphia are remitted absolutely to the members from this city, and that they arrange the passage or defeat of the bill?

Mr. BARDSLEY. I am not discussing the qualifications or the honesty of the members of the Legislature, representing the city of Philadelphia. I do not think it necessary, and I do not desire to enlarge upon this subject at this time, because it cannot amount to any good. I think the members of this committee know well the reason the members of the Legislature from the city of Philadelphia pass acts that are entirely opposed to the interests and wishes of the people of this city, and there is no person knows it better than the gentleman from Dauphin (Mr. MacVeagh.) The people of this city have risen en-masse and protested, through their councils, against the Legislature passing certain acts, and yet the Legislature, for reasons best known to that body, have passed those acts, and all that is desired to be accomplished by the amendment now pending is to prevent any persons, except those directly interested, from passing any law connected with the municipal affairs of our city government.

Mr. TEMPLE. Mr. Chairman: In reply to the inquiry of the gentleman from Dauphin, (Mr. MacVeagh,) I think another reason can be added to the one suggested by my colleague from Philadelphia, (Mr. Bardsley,) why the city councils of Philadelphia can be trusted with the administration of its own internal affairs, rather than the Legislature. In the city of Philadelphia our councils meet weekly dur-

ing the whole year, with the exception, probably, of a short interval in the summer season, and its members are constantly brought in contact with our citizens. For this reason, and others, it scarcely ever happens that a matter of any great public importance is adopted by councils without receiving a full and fair discussion in the public press.

The opinions of the members are frequently changed, or so modified as to conform to public sentiment; and it rarely ever occurs that the councils so far forget their duty as to enact laws of a public character, which are objectionable to our people; and if a mistake should be made by which the rights or privileges of the citizens are impaired, they are often anxious to repair the injury by repealing the obnoxious laws. But, Mr. Chairman, there are other grave reasons, I think, why the pending amendment should not be voted down, as some gentlemen desire. In my humble judgment the section, without the amendment, is not sufficient; it is less than the people expect. I admit that this question of abolishing all these commissions, as they now exist, is one of the greatest importance to the people. I claim that it is a great grievance to the people of Philadelphia and other large cities, to have foisted upon them a class of men constituting a commission, with unlimited and unrestrained powers, who are responsible to no person nor any authority for anything they may see proper to do. They control the entire situation; unlike other trustees, they have but to satisfy themselves, and no power can call them to account.

I beg gentlemen to consider, for one moment, this question seriously; are we not to profit by the past; shall we not put it beyond the power of future Legislatures to grant such immense powers to bodies of this kind? Now, let us look for one moment at the manner in which these commissions, or some of them at least, are created.

A certain class of persons who desire to become more potent in the community, and without any special regard for the interest of the people, secure the passage of an act of the Legislature creating a public commission, designating the objects for which the same is required—holding out the idea that some great public improvement is to be the result. The act which creates the commission also names the persons who are to execute the trust—generally constituting those who ask for the commission trustees, with power to fill vacancies, and to perpetuate their body so long, and in such manner, as they, in their judgment, (always having in view the good of the dear people,) shall deem expedient. Thus it will be seen that this body—the offspring of legislative enactment—without the sanction of the people, and responsible to no person and amenable to no law, control all our public improvements, expend the public money at pleasure, levy and collect taxes to further their projects and compel the people to foot the bills. Now, I submit that this is a great wrong—it is placing in the hands of a few men too much power. The public good does not require it. The people have never been allowed to express their opinion upon it. The thousands of merchants, mechanics, laborers and others who are constantly replenishing a depleted treasury never asked for these close corporations, and yet they find themselves subservient to their unwise and despotic measures without the authority to obtain relief, or even an opportunity to express their preference for a different system. If any one of these commissioners should die, or a vacancy be made in any way, no matter how, those remaining go through the solemn farce of holding an election for the purpose of perpetuating their own existence. This is particularly so in the case of the building commission, a body which was originally created without a single demand upon the part of the people, or without their consent or approval, having no kind of affinity to the interest of the citizens, being, as it was, a miniature photograph of the infamous commissions of New York, which almost made that great metropolis a bankrupt. Why, sir, some persons who were named as commissioners absolutely refused to act in that capacity; others, after serving a short time, seceded, and repudiated the law and the workings of the commissioners.

But those who sought preferment and power, which never would have been placed in their hands by the people, availed themselves of this law and determined to serve the public. Why should they refuse? Was this a trust, without the necessary funds to support it? Was it likely to be without influence? It just so happened that the immense growth and population of this great city made the erection of public buildings a necessity. Millions of dollars were to be expended; thousands of contractors, mechanics and

laborers were to be employed; years were to be consumed in this great enterprise. And this was not all; it was not yet determined where these public improvements were to be erected. A fierce contest was then going on among our citizens as to whether it should be Washington square or Penn square, and here, again, the influence of these commissioners was likely to be felt. Is it any wonder, then, I ask, that commissions, such as these, should not go begging? Is it any wonder that commissions should be created and find plenty of willing trustees?

Now, sir, I think that the members of this committee should know the exact condition of things, so that they can apply the remedy. I claim, that if commissions such as we have are an evil, they should be abolished; and it is clear to my mind that this can only be done by a constitutional provision. We have no hope in the Legislature. Will gentlemen wait until all the evil consequences of these commissions are demonstrated; are we to be told that public improvements would fail without them? Will it be argued, that because the Legislature has committed this folly, we should permit it to exist? Why, sir, I predict, that if these things are allowed to continue, the day is not far distant when they will be used against the people; they will be a nucleus around which will concentrate political powers of a fearful magnitude, which will determine all questions pertaining to the rights and liberties of the people.

Look, if you please, at the power and authority of "Tammany Hall," while the infamous commissions of that city were allowed to exist. When the people discovered the gigantic frauds perpetrated by their commissioners under the pretense of "*public improvements*," there was but one voice, and that was in condemnation of both commissions and commissioners.

There may not be at present any reasonable or just cause of alarm; but who can say that a Tweed or a Connelly will not, at a day not far distant, be among those who would be styled the great conservators of the public good. Who will say that it is not only possible, but probable, that this Quaker city of ours will not produce men who would betray their trusts, to the extent of millions. Will we adopt the theory of closing the door after the horse is stolen, or will we shut up all avenues and forever prevent such high-handed robbery as has made a sister city the laughing stock of the whole nation?

Mr. MACVEAGH. Mr. Chairman: My proposition is not that these commissions shall exist, or shall not exist, but as it is purely and exclusively a legislative question; that I hope we shall not assume to act as a legislative body, without information in regard to this subject. This has been provided for in the twenty-fourth section of the report of the Committee on Legislation.

Mr. TEMPLE. Mr. Chairman: I have looked at this twenty-fourth section of the report of the Committee on Legislation, and it reads thus:

SECTION 24. The Legislature shall not delegate to any commission of private persons, corporation or association any power to make, supervise or interfere with any public improvement or to levy taxes, or perform any municipal function whatever.

What I contend for is, that it does not go to the root of the evil. Suppose, if you please, that the Legislature had thought proper to enact a law legalizing a certain gambling house, and an amendment was offered to prevent gambling in the future, would that be a reason why the establishment already in existence should continue; or if any law should be in force at the time of the adoption of this Constitution, which was an apparent and positive evil, would it not be wise to cut up by the roots the existing evil, and prevent like abuse of the legislative authority in the future?

Now, sir, by the laws creating some of our commissions, the commissioners are appointed by the courts. Although the purpose for which these commissions are created is commendable, I believe it is a matter over which our councils should have jurisdiction. I do not believe that it was ever intended that courts of justice should possess such powers as these. It is inconsistent with the dignity of the judiciary, and it will, in time, beget a want of confidence, on the part of the people, in the courts, which is absolutely necessary to their usefulness. Experience has shown that these appointments have been made with a view of the political importance and influence of the person appointed. It is a fact that the lodging of such powers in the hands of the judges has shaken the confidence and respect of the people in that branch of our government. The commissioners of "*Fairmount Park*," appointed, as they are, by our judges, are selected either because of their personal relations to the judge, or because of

their political status. In some instances the contrary may be true, but it is the exception, and not the rule. These commissioners have the exclusive control in ordering and directing the immense improvements to the park, and in all the regulations and improvements their "*ipsi dixit*" is law. The whole police arrangement is under their control. They rule with undisputed authority within their dominion, independent of the regular police department of the city. They direct the expenditure of millions of dollars annually, and draw upon the city treasury for the payment of the bills. They have the employment of thousands of workmen during the greater portion of the year. They control a power which is greater than that exercised by any other branch of the government; vaster amounts of money have been expended under their direction than by any other department of our municipal government; and, sir, who knows what immense interests have centered in and around that park? Who have been most interested in those developments which have given to us one of the grandest parks in the world? Is it the tax-payers of this city, or is it those who have profited by exchanging their unprofitable and unyielding acres for the pleasures and benefits of this grand "public garden?"

Have we not a right to expect from the gentlemen who manage this gigantic public enterprise something more than general and final results? Who beside their own body audits their own account? Should not our city councils have authority to demand from these gentlemen a proper and detailed statement of all money disbursed by them? But as it is now, they are above and beyond that body. They are the creatures of the court, whom they delight to honor, and from whom they, in turn, expect protection.

But, sir, are these commissioners better qualified to perform this high and important trust than our regularly constituted authorities? Have they better police regulations than the remainder of the city? I think not. Are the privileges of the citizen any greater than in the highways of the city? Why, sir, the commissioners have assumed, as I stated a moment ago, to exercise exclusive control over the police regulations of the park; they have adopted regulations to suit themselves. One bill adopted by this commission absolutely prohibits a person from enjoying the privileges of the park unless he can afford to ride in a certain kind of vehicle. It is a rule that a man cannot drive therein, even for the health and pleasure of his family, if he happens to use the same carriage with which he conveys his produce to market. In the estimation of these public spirited gentlemen such a vehicle, in such a place, is against the peace and dignity of the aristocracy, and contrary to the true intent and meaning of the act of Assembly authorizing the commission.

Mr. CUYLER. Mr. Chairman: If the gentleman from Philadelphia will pardon the interruption, I have to say, as a member of the park commission, that no such order was ever made.

Mr. TEMPLE. Mr. Chairman: If such an order was not made, the whole press of Philadelphia have greatly belied the commission, for it was a matter of public notoriety.

Mr. CUYLER. Mr. Chairman: It could not have been a matter of public notoriety, for no such order was made—never.

Mr. TEMPLE. Mr. Chairman: I insist that it was a matter of public notoriety, and beg leave to inform the gentleman from Philadelphia (Mr. Cuyler) that it was understood at the time, that a citizen who could not afford to ride in a carriage other than the one used by him to convey his produce to market, could not enter the *sacred portals* of that park, which was designed as a place of recreation for the benefit of all alike. I cannot think that my colleague (Mr. Cuyler) will deny this.

Mr. CUYLER. I do expressly deny it.

Mr. TEMPLE. Well, Mr. Chairman, this being a disagreement between doctors, I will leave that branch of the argument to be considered by my friend (Mr. Cuyler.) [Laughter.] In these remarks I mean nothing personal to him. I know, as every citizen in this city knows, that he is a gentleman of strict integrity, large experience, and of enlarged and liberal ideas.

Mr. MACVEAGH. Does the gentleman seriously insist that it is the duty of the Convention to decide whether a park commission is wisely or unwisely conducted?

Mr. TEMPLE. Mr. Chairman: What I mean to say, is this, that there ought to be placed in the Constitution a clause prohibiting the creation of these or similar commissions, and I have spoken thus of the commissions now in existence, and their workings, to show that they are conducted in the interest of a few, without responsibility, and that they will eventually be a source of greater evil to the State, than any of which we have com-

plained. Some of these commissions are controlled by a class of men who would never have been selected by the people, and men in whom the people have no confidence.

Mr. LILLY. Who are they?

Mr. TEMPLE. I will answer that in another place; I have but a few words more. I desire to remind those who do not consider this a part of our duty, that these evils are making rapid strides; they are assuming to control legislation to suit their own purposes; they defy the will of the people and over-ride our local government, and will continue so to do so long as these vast powers are to be obtained by legislative enactments. They are now attempting an inroad upon another branch of the city government: I refer to the board of *health*. They dare not rely upon our city councils for such grants of power; hence they resort to the Legislature. It cannot be argued that our public improvements depend upon such agencies, for there is an abundance of proof that councils have always done their duty in this respect. In my judgment, unless there are constitutional prohibitions against these meaures, unless the evils which now exist are done away, all our liberties will be at the mercy of irresponsible, close corporations, who love but to serve themselves. The judiciary will be degraded, and our judges become the merest machines of political trickery and the abomination of honest men everywhere.

Mr. WALKER. It strikes me that the gentleman from the city (Mr. Temple) seems to understand that we are making an article for the city of Philadelphia, and it alone; that the remaining cities of the State have no part, nor lot, nor interest in the article now before this Convention. Mr. Chairman, the gentleman not only seems to understand that we are here making a Constitution for the city of Philadelphia, but that it is to be directed to a certain park in this city. We are to determine whether Conestoga wagons should run through it or not, or whether a vehicle of some ridiculous character shall be used by the gentlemen and the ladies who frequent the park. Now, Mr. Chairman, this committee of the whole does not care one cent about such talk. It is out of place. It does not belong to this dignified body. It does not belong to the Convention nor to any committee of the Convention. We are trying to frame an organic law. The Committee on Cities and City Charters have reported an article that it thought was judicious and proper. I think yet that it was judicious and proper. Gentlemen say that the provisions in this article are provided for in a certain section of the article on legislation. Well, I am not going to say but what it is. I am not going to say, Mr. Chairman, that when we come to consider the question, expressly, whether it may not be better to omit a portion, if not all, the article that we are now considering, but in justice to the Committe on Cities and City Charters, allow me to say that the article now under consideration was reported by that committee before the article on legislation had been submitted to this Convention. How were we to know when we framed this article, and brought it into the Convention for consideration, what the Committee on Legislation would do. We thought it a proper article suited to—not Philadelphia, not the park of Philadelphia—but suited to the great Commonwealth of Pennsylvania and all her cities. The gentleman seems to understand that we are here fooling our time away about commissions for a park in the city of Philadelphia, as if that was a matter of constitutional action.

Now, Mr. Chairman, I think that the article we are considering is just right, and that it will be destroyed by the amendment which is proposed.

How does this section read?

SECTION 4. The Legislature shall pass no law creating any municipality, or regulating its form of government or the management of its internal affairs, or altering the charter of any city now existing, or creating a public commission for any purpose, unless such law is specially asked for by a majority of each council for a definite object; nor shall such special law have any force or effect, unless accepted by a majority of the legal voters voting at the next municipal election after the acceptance by the councils.

Unless the law is specially asked for by the councils it is not to be enacted. Will gentlemen say that the councils of Philadelphia asked for a change in this commission that they are growling so terribly about? That the Legislature when asked by councils to make a change in the municipal organic law will not answer their prayer?

Mr. NEWLIN. Mr. Chairman: If the gentleman from Erie will allow me the suggestion, I will remind him that the city of Philadelphia by its councils have passed resolutions unanimously, but they

have been treated with no respect whatever in the Legislature.

Mr. WALKER. Mr. Chairman: The city of Philadelphia by its councils may have done so. I do not know but what that is quite correct; but we cannot help that. We cannot say what the Legislature will do. I know that we have heard here that they are a dishonest set of rogues. They did not use to be so, and I do not believe they are so now, and I think they will respond to every honest prayer that is sent up from the city of Philadelphia, and that these commissions will be changed whenever the citizens of Philadelphia ask it. If the Legislature will not do so, why repeat the prayer, again and again, and in due and proper time they will respond.

Now, Mr. Chairman, I want this article passed. I think it ought to be passed in exactly the shape that it came from the committee. When it is on second reading, as we have passed a resolution that all articles reported shall be passed in committee before we go to second reading, let us pass the article here, now, and when we come to a second reading of the article on legislation, and it is framed with due application to cities and commissions and parks and Conestoga wagons, [laughter,] why then I will have no objections, certainly, to remodeling this, or even to striking it out. But this is as well drawn and as well considered as the article on legislation. The Committee on City and City Charters called before them gentlemen from this city, and they all agreed, one and all of them, that this article was a proper one. The reformed committee of the city of Philadelphia, greatly approved of the article that we are now considering.

We cannot, Mr. Chairman, allow every gentleman from the city of Philadelphia, to introduce into this Constitution his own peculiar ideas. We saw the result on Saturday, every one of these gentlemen coming forward and pushing their individual notions upon the consideration of the committee of the whole. The third section of this article was amended and amended, until, with its own weight, it fell, although the section which was slaughtered was a proper and judicious one; and now the gentleman from Philadelphia (Mr. Temple) is trying to drive his Conestoga team in the same direction, with regard to this section. He wants to load it down again and again and again, until it will fall of its own weight. The committee of the whole, in self-defense, will be compelled to do so, if his and other amendments are adopted, in the consideration of this section. I insist that this article shall be favorably considered and passed, just in the shape that it came from the Committee on Cities and City Charters.

Mr. TEMPLE. Mr. Chairman: With the permission of the gentleman from Erie, I will ask him a question, whether he does not believe or think that under this section, that, although the city councils might have, in the future, full power to legislate for all things pertaining to the city of Philadelphia, that the obnoxious Legislature which now exists, or which may be in existence at the time this Constitution goes into effect, would be likely to exist in future?

Mr. WALKER. Not by any means. It applies to all acts of Assembly, as well those now in force as those which may be in force in the future. This section recites that the councils may petition the Legislature for an alteration of their law, and I believe if they do so the Legislature will answer their prayer. It may be, too, that heretofore some improper petition went up from the councils of Philadelphia to the Legislature and was not responded to, and I would not blame the Legislature for not answering all the prayers that come up from Philadelphia, because they are multifarious. They are in every direction, and the Legislature could not answer them all.

Mr. CUYLER. Mr. Chairman: I am not willing to forecast the future from the past, in considering what the probable character of future Legislatures may be. The existence of this Constitutional Convention, and the action that I believe this Convention will take, is a fact that I do not propose to ignore in considering what may happen to us in the future. Heretofore, when the same corrupt party machinery, at the same election, has chosen both members of the Legislature and of city councils, the antagonism which for some years past has existed between the two bodies might have been anticipated. It was the natural fruit of the method and the time of the election. We have changed that already, so far as the time of the election is concerned, by providing for the municipal election at a different season from the general election of the Commonwealth; and we shall still further change it, or else our labors will be all in vain; if we do not so purify the ma-

chinery of elections that pure men and good men will both have the chance of nomination and the chance of election, both to the Legislature and to city councils, so that while it has been true in the past, that the reasonable requests of the councils of this city have been utterly and shamefully ignored by the Legislature, I hope that condition of things will not exist in the future.

I have a word or two to say in regard to the commissions, not entirely agreeing with the venerable gentleman from Erie, (Mr. Walker,) that it is not competent to discuss this question before this committee of the whole, but thinking, on the contrary, that we are forced into that discussion by the very language of the section itself. Personally I have had a very large experience, both in the councils of the city of Philadelphia and in several of its commissions, owing to the kind partiality, sometimes of the Legislature, sometimes of the courts, and sometimes of the councils of the city. I am able, therefore, from my own personal experience, to say something with regard to the workings of these commissions, and to give the reasons why some of them have not worked prosperously for the city, while others have.

The park commission, to which allusion has been made, was asked for from the Legislature of the State by the unanimous action of the councils of the city of Philadelphia. Some of the best citizens of Philadelphia, best in every point of view, so esteemed and felt to be by everybody, without regard to political party, met together in this city, feeling that a necessity existed for a great public park for reasons that I will presently mention. They did not ignore the councils of the city, but after they had devised their plans they invited a conference with the councils, and an informal meeting of both branches was held and attended by these citizens. The scheme was there presented and thoroughly discussed. A sketch of the park was shown, and its dimensions were enlarged by the action of that meeting, and then the councils of the city, by their own unanimous action, asked the Legislature to create the park commission, and it was done at their request.

This Commission does not possess the power of filling vacancies in its own body. The members of that commission are either city officials, who belong to it by virtue of their office, or they are appointed by either the district court or the court of common pleas. The district court appoints five and the common pleas five. The mayor of the city, the chief engineer of the city, the chief of the water department and the chief of the department of highways are *ex-officio* members of the body. I hazzard nothing when I say that the gentlemen composing this commission have ever been actuated by pure motives and that by the common consent of our citizens, and that no organization displaying larger fidelity to duty, and a higher standard of personal virtue than this park commission has ever existed in the city of Philadelphia.

Gentlemen will observe that the park commission possesses no power to fill vacancies in its own body, and it has no power to impose taxation, and has exercised none in the city of Philadelphia. It never raised a dollar of money, or resolved upon any improvement, without the previous sanction of the councils of the city. All appropriations of money, whether for the original purchase of the grounds or for any improvements made upon them, have been asked for by the commission, and conceded by the councils of this city.

I say, Mr. Chairman, that the creation of this park commission in this city, for the purposes for which it was intended, was one of indispensable necessity. The city of Philadelphia, unlike any other city in the world, takes its drinking water from a river that runs right through the heart of the city. Of course, as population increased, it encroached more closely upon the banks of the river. Large manufactories grew up. A teeming population was accumulating about it, and its water would soon have become utterly incapable of being used for drinking purposes. Therefore it was that the city of Philadelphia was brought face to face with these propositions: Either, we must build new water works, which nobody estimated at a less cost than fifty millions of dollars, and others at one hundred millions of dollars, to conduct the water from the Delaware water gap, the only available place, or we must forever secure the purity of the water as we were accustomed to drink it, and the only method of doing that, as population was beginning to encroach upon this land, was to buy it, and thus at once secure the purity of the water forever, and at the same time, and by the same act, without further cost, except for its advancement, secure a grand park for the

health and enjoyment of all the people forever.

Now, this park, as it now exists, comprises two thousand seven hundred and sixty-two acres, and it was held by hundreds of individual owners. Gentlemen will readily understand that the purchase from these hundreds of owners of this great mass of property, only a small part of which was previously owned by the city, was a thing impracticable to be exercised by the agency of city councils, or by the agency of any other department of the city government, or in any way on earth except by the selection of a limited body of citizens, who could command the personal confidence and respect of every citizen for their integrity and their fitness for the duty. The practical result of it all, Mr. Chairman, has been that this land, which now composes this park of two thousand seven hundred and sixty-two acres, has been bought at a cost of less than six millions of dollars, and I hazard nothing when I say that five and twenty millions of dollars would not have bought it on any other system. It has been by the ability, by the intelligence and by the fidelity of the gentlemen who compose that commission that this result has been accomplished, and I speak thus freely because I have never acted as a member of the committee of the commission which effected the purchase of the land. Therefore, sir, I can endorse every one who was. They are among the very best men in this city, possessing the confidence of both political parties and of all good citizens, enjoying also the confidence of the courts, and through them and by them has this city received this great boon, which has been conferred upon it by the acquisition of this property.

Now, Mr. Chairman, to take away, by a constitutional provision, from the city the power to have done this thing would have been practically forever to prevent its accomplishment. And if a constitutional provision had prevented in the past the creation of such a commission, all that would have remained of it would have been no park and polluted water, or these new water works at an expense of not less than fifty millions of dollars, and possibly one hundred millions of dollars.

Now, I say this in vindication of that commission. A single word in answer to the gentleman from Philadelphia, (Mr. Temple,) who alluded, under circumstances that I think were very justly criticized by the gentleman from Erie, to the exclusion of certain kinds of vehicles from the park. I repeat again what I have said before, that no ordinance of the park commission has ever existed, nor with the present commision ever could exist, that would deprive any citizen of Philadelphia of the privilege of riding in that park in any vehicle he might use, no matter how humble that vehicle could be. On the contrary, the great purpose of that commission has been, not so much to provide for those who rode in lordly style in their carriages, as for the humble citizen who kept his single horse and took his family out to ride in the very carriage, or cart, or wagon in which he carried his produce from the country.

There are certain functions often discharged in connection with the administration of the city government that are not purely municipal in their character. They do not properly belong to the police of the city, or to its government, and yet, incidentally, may have much to do with the welfare and comfort of the people. Water works and gas works, great parks and public buildings are of this character. These may well be constructed under public authority, by commissions of judiciously selected citizens. I, for one, would never vote for the transfer of a particle of legitimate legislative power of the councils of the city to any private commission, but I consider these things, and others kindred to them, legitimate exceptions, and have no objection to confide them to commissions.

But I would limit those commissions in the manner in which the park commission is limited. I would not have them select their own successors. The park commissioners do not do that. I would not give any of these commissions the power of taxation. The park commission has no power of taxation. I will have them go to the councils and say, for the purpose of meeting the expenses of this work with which we have been entrusted by our fellow-citizens, the commission needs so much money. I, myself, resigned from the building commission because I thought there was no propriety in the unlimited power of taxation, or its right to select its successors from time to time. I therefore think that the form in which the committee has reported this section is wise. I do not understand this section to be retroactive, but prospective. I do not understand it to destroy existing commissions, but I understand it to relate to the fu-

ture; and I do understand that no commission can exist anywhere in this Commonwealth unless the people, acting through their councils have asked that such commissions shall be created.

Mr. TEMPLE. Mr. Chairman: I would like to ask the gentleman whether he does not think that the park commission could have existed, as it now exists, for the benefit and good of the city, if it had been created by the city councils, and under the supervision of the city councils?

Mr. CUYLER. I answer the gentleman, by saying that the park commission was created in exact accordance with the requirements of this section; that is to say, it was asked for from the Legislature, not merely by the citizens, but by the unanimous request of both branches of the city councils. I am not in favor of any commission that exists on any other basis.

Mr. HARRY WHITE. Mr. Chairman: I have just one observation to make in reference to this. The discussion elicited by this section, by the representatives of large cities, is instructive, but it occurs to me that it is not prudent for a Convention framing a Constitution for the people of the Commonwealth at large to be involved in the local quarrels, not to say fights which exist on commissions or other municipal questions in the city of Philadelphia. While the remarks of the gentlemen residing in this locality are very entertaining, yet I, for one, am controlled in my action, and others, by broad views. I desire, in this Constitution, that only general principles be enunciated, and those in as direct and comprehensive a form as possible, and that all mere local legislation shall be avoided, and that it shall be left to the Legislature, elected under a reformed Constitution, to make all the improvements necessary and requisite.

I find, by looking at the report of the Committee on Legislation, in section eleven, this clause: "No special laws shall be passed regulating the affairs of cities, townships, wards, boroughs or school districts." Now, this is exceedingly comprehensive. I observe in clause sixteen: "No local or special laws shall be passed, incorporating cities, towns or villages, or changing their charters," and, in clause twenty-four, "the Legislature shall not delegate to any commission of private persons, corporation or association any particular power."

Now, the committee will remember the discussion which arose when these different clauses were before the committee. I do not know that they are better than the clause recommended by the Committee on Cities and City Charters, further than they are more comprehensive, and leave all legislation of this kind to general laws. I do not like this clause of the section: "Nor shall any especial law have any force or effect, unless accepted by a majority of each council, and by a majority of the legal voters voting at the next municipal election after its acceptance by the councils." I think that is dangerous, and will tend to create great confusion in municipal affairs. I think it unwise to insert in the Constitution legislation of this kind. Furthermore, I observe, "every municipality shall have the power to pass laws for its own regulation, not repugnant to the Constitution of the United States, or of this Commonwealth." It seems to me that that is creating a legislative power, apart from that exercise by the body which represents the masses of the people of the Commonwealth. Such would be a dangerous precedent, and I think that this committee will not be willing to incorporate so broad and comprehensive a clause in a section of this kind.

Mr. DALLAS. Mr. Chairman: I am very loath to detain the committee for a single moment upon this subject, but if I can be honored with its attention for a very brief period I will endeavor to utter not a single word which, at least in my humble judgment, does not bear directly upon the question now before the committee. I acknowledge, sir, that this is an appeal made by the city of Philadelphia to this Convention, for, so far as I know, commissions, such as we have here, exist nowhere else in the State of Pennsylvania.

Mr. EWING. Pittsburg has them, and their fruit is evil, and only evil.

Mr. DALLAS. It seems, then, that we have testimony not only from the city of Philadelphia, but also from the great city west of the mountains as well. This Convention has been as thoroughly instructed a body as, I imagine, ever met. We first received at Harrisburg an inundation of books and documents, instructing us upon all points, and scarcely a morning passes that we do not still find in our letter boxes numberless communications, telling us of something which should be done, or be left undone. One of those which came to us at first, and in an official form —sent to us under the direction of law— is the Convention Manual, laid before us by the Secretary of the Commonwealth,

upon our first assembling. Amongst the matters which have been thought properly worthy of insertion in the volume I refer to, is a letter from a citizen of this city, of great reputation and enlarged experience, Mr. Eli K. Price. That letter was addressed to the reformers of the city of Philadelphia—an association composed of very many members, and deservedly having the respect of a very large portion of the citizens of this city. In that letter the second proposition that he suggests is similar to that which now comes to us from the Committee on Cities and City Charters. It is:

"No public commission shall be created for any city, with power to fill vacancies, to raise money by loan, to levy taxes, or to execute police or municipal functions, nor shall any municipal officer be appointed, or his term of office be extended by the Governor, except a park commission may have a police force to preserve order therein."

The writer of this letter is an honored and respected member of the park commission, like the delegate who sits to my right, (Mr. Cuyler,) and it is natural that, having associated with gentlemen like the delegate to whom I refer, he should have the greatest possible faith in the *personnel* of that commission, and in its efficiency as a body. But the reply to the exception which he makes in favor of the park commission, and those made by the delegate on my right (Mr. Cuyler) is, that "good cases make bad precedents." If all is true that has been said of the park commission, and I doubt not one word of it, it is all the more dangerous, for if its good conduct can be made a successful argument for the continuance of so vicious a system as that which imposes upon this city officers appointed by the Legislature at Harrisburg, instead of leaving local governments wholly in the hands of those selected by, and responsible to, the poeple immediately to be affected.

We have not only the letter to which I have referred, calling our attention to this very important matter, but the Committee on Legislation have, also, unanimously reported in favor of a clause prohibiting the Legislature from ever putting upon us any public commission; and now we have before us the report on cities and city charters, in which the same proposition is reiterated.

Now, Mr. Chairman, I ask this committee to consider this subject for one moment. If you adopt the principle of these two reports, and if it be true, as has been repeatedly said here, and by the distinguished gentleman from whose letter I have read, that the Constitution should put an end to the creation of these commissions for the future, then why, let me ask, should we desire to save the existence of the commissions now existing in direct conflict with that principle? Why should any commission, however good, be saved from the operation of that which two committees and this committee of the whole have already decided to be the correct abstract view of the subject.

We have in the city of Philadelphia, as all the municipalities of the State have, a municipal council. That council, we have already provided, shall be the repository of the legislative power of the city. We have a mayor, who is the chief executive. In these we have a complete municipal organization.

As has been stated by a gentleman from Philadelphia, (Mr. Bardsley,) of long and honored experience in the councils of this city, its members are responsible every two or every three years, depending upon the chamber in which they sit, directly to the people. For every cent of public money they expend, for the character of every work of public improvement which they erect, they must give frequent and strict account to their constituents, and their continuation in office depends upon the satisfaction which that report gives. Not so these commissions. They are appointed from Harrisburg, without the request and often against the protest of the people interested. The park commission was but organized, in the manner mentioned by the gentleman from Philadelphia, (Mr. Cuyler,) for the purpose of creating a park, and it continues now for the management of that improvement and the control of its police, without the possibility of being abolished by Philadelphia, should all its citizens unite in desiring it. Another of these commissions is one which has been created to construct a bridge, which the councils of the city of Philadelphia had said ought not to be built; but at Harrisburg a commission was created for that purpose, and our city councils, who are the representatives of the people, and who should say when we are to be taxed to pay for a bridge or for any other improvement, have not been listened to on the subject.

I warmly hope that the Committee on Judiciary will report that our judges

shall possess none other than judicial functions, but we are told that the courts appoint the members of the park commission and supply vacancies therein. Men are but mortal—"all that live must die." The Hon. Eli K. Price, and the delegate from Philadelphia (Mr. Cuyler) cannot live forever. The latter gentleman has himself informed the Convention, that he resigned from the commission on public buildings, because he did not approve of its organization in some particulars, and he may (unfortunately) also resign from the park commission. When vacancies occur in the park commission, by reason of resignation or otherwise, new appointments have to be made, and the duty devolves upon our courts. I have no doubt these appointments have generally proved to be satisfactory to our citizens, but constitutions are made to prevent the possibility of wrong in the future, and not to testify satisfation with the acts of our officers in the past. No extra judicial power should be vested in the courts, and this is one of the reasons which should make us desirous that our Constitution shall start fair in this matter. It should not be possible, after the Constitution is adopted, that any commission shall continue to exist in opposition to the principle of one of its provisions. But it is said that abolishing existing commissions would be legislating. Why, sir, constitutional provisions have, time out of mind, repealed statutes, and all that is proposed now is that where existing statutes are not in harmony with the provisions we shall adopt, that they shall be repealed.

It requires no oracle of the law to tell us that the primary purpose of constitutional provision is the determination of the principles and the organization of the government; but, as I have before taken occasion to say, this State already possesses a Constitution as nearly perfect in its general declaration of principles as this Convention could hope to make it. But we are expected to devise guarantees (which experience has shown to be requisite) for the preservation and purification of our system, and if it be true, as I believe it is, that in some portions of this State the people are now deprived of local self-government, then I think this Convention should do precisely what is necessary, not only to provide for the future, but to correct the evils which exist.

Now, the gentleman from Philadelphia who represents the first district is one of those who, upon more than one occasion, has spoken of legislation by this Convention as an evil, and yet, when he desired the adoption of the section prohibiting the investment of trust funds in corporation stocks or bonds, he perceived no inconsistency, not only in legislating, but in so legislating that the law on the subject then in view should be repealed by us.

Now, sir, it will not do to insist upon any principle without assenting to a general application of it. It is a bad rule that is to be applied only to some particular propositions and not to others. But, sir, I think that upon *every* subject this Convention *should* legislate just so far as is requisite to effect the purposes for which we have been called here, and no further.

Mr. NEWLIN. Mr. Chairman: As several gentlemen, who are prepared to vote in favor of the general proposition embodied in my amendment, are of the opinion that this is not the proper time to discuss it, I withdraw the amendment.

Mr. TEMPLE. I renew the amendment.

The question being taken, the amendment was not agreed to.

Mr. STRUTHERS. I move to amend the section, by inserting after the word "Constitution" the words, "or laws."

The question being taken, a division was called, which resulted as follows: Ayes, thirty-three; noes, twenty-two.

So the amendment was agreed to.

Mr. WALKER. Mr. Chairman: I would like to inquire whether there is a majority of a quorum voting?

The CHAIRMAN. The Chair decides that a majority of the committee has voted in favor of the insertion of the words suggested in the amendment.

Mr. WALKER. Is the Chair certain that a majority of a quorum has voted?

The CHAIRMAN. It is impossible to ascertain that fact without a call of the roll.

Mr. LILLY. Mr. Chairman: I would like to inquire if a minority of a quorum can pass a section?

The CHAIRMAN. The Chair will answer that, in committee of the whole, a delegate has the right to ask for a call of the roll in order to ascertain whether a quorum is present. Until this is done it is, of course, impossible to determine whether a quorum is present.

Mr. LILLY. Mr. Chairman: The point that I desire to make is, that a majority of a quorum has not voted, and consequently the section has not passed.

The CHAIRMAN. The Chair will decide that a majority of those voting have voted

in favor of the amendment, and it therefore has been agreed to.

Mr. ARMSTRONG. Mr. Chairman: It is laid down in Barclay's Constitutional Manual and Digest, which embodies Jefferson's Manual, that a quorum in committee of the whole, is the same as the quorum of the House; that it is competent for the committee to ascertain whether a quorum be present or not by a call of the roll at any time when the chairman may have a doubt upon that question is clear, and when there is a reasonable number of the committee who may demand that count, it would certainly be conceded. It has been a uniform rule, and has been so held, I believe, by every chairman who has occupied the chair in committee of the whole, that it required a majority of a quorum to decide any question in committee of the whole. I believe thirty-four would be the requisite number. As it has been so uniformiy held by this Convention, I cannot but regard this question now presented as one of great importance. If the Chair adheres to the decision which he has just made, it will reverse the uniform practice of the Convention, and should not be done without due deliberation. To the end that the question may be properly decided for the future governernment of this committee, I will appeal from the decision of the Chair, and move that the committee do now rise for the purpose of considering the appeal in Convention.

The CHAIRMAN. The Chair will state that if there is any misapprehension with regard to the vote just taken he has no objection, and thinks it is his duty to put the question again, in order that the committee may vote understandingly.

Mr. ARMSTRONG. Mr. Chairman: That is not the question which is now before the committee. It is as to the correct ruling of the Chair, and what the committee desires to know is, whether or not a majority vote, less than a majority of a quorum, can decide a question in committee of the whole, and whether it is or is not necessary to the adoption by the committee of any pending measure that a vote in the affirmative shall embrace a majority of a quorum. I understand the Chair to decide that a majority of a quorum is not necessary. If that be the decision of the Chair I renew my motion that the committee do now rise for the purpose of considering the appeal from this decision.

The CHAIRMAN. The Chair will state again that, sitting as chairman of the committee of the whole, his business is not to decide whether there is or is not a quorum present until some gentleman moves a call of the roll.

Mr. MEREDITH. Mr. Chairman: I will just here observe that it appears scarcely necessary to raise this question now, because I understand the chairman to have withdrawn his decision. If the question should arise again it can then be considered.

Mr. ARMSTRONG. With that understanding I withdraw my appeal and the motion that the committee do now rise.

The CHAIRMAN. In order to avoid any misunderstanding the chair will take the question again.

Mr. J. P. WETHERILL. Mr. Chairman: I desire to ask the Chair if a city should pass a law vacating a street contrary to a law passed by the Legislature providing that that street should not be vacated, would that law bind the city?

The CHAIRMAN: That is not the question before the committee.

Mr. MACVEAGH. Mr. Chairman: I think this is undoubtedly an amendment which ought to be adopted.

Mr. STRUTHERS. Mr. Chairman: This matter appeared so plain to me that I presumed nobody would object to it. There are to be general laws for the regulation of municipalities; and in subservience to them, and in accordance with them, each municipality is to enact laws in reference to its own special matters, and the management of its own affairs. What I desire is that they shall not be allowed to pass any laws repugnant to the general laws of the State, any more than they would be allowed to pass laws repugnant to the Constitution of the State. I can see no reason why they should not be allowed to make laws contrary to and repugnant to the Constitution, if they are left the privilege of making laws which are repugnant to the general laws of the State. I think the words "or laws" ought to be placed where I suggest.

Mr. WALKER. Mr. Chairman: If the amendment of the delegate from Warren (Mr. Struthers) is adopted, the entire life of this section is taken from it. We have endeavored to provide that the Legislature shall not interfere with municipal regulations by special laws. The gentleman now wishes to introduce the words, "or laws." Does he mean general laws? If he will insert the word "general" before "laws," then the section is not entirely killed. In my opinion, however, it

is not necessary, for if the article in that part means anything at all, it means that every municipality shall have power to pass laws for its own regulation, not repugnant to the Constitution of the United States, or the Constitution of this Commonwealth. Now, if it is repugnant to the Constitution of the United States, or to the laws of this State, is it not against the Constitution of either the United States or of this State? I think the amendment is superfluous.

Mr. MACVEAGH. Mr. Chairman: The Legislature is now restrained from passing any special laws in reference to any municipality. This provision, without the insertion of the words proposed by the gentleman from Warren, (Mr. Struthers,) might be construed to restrain the Legislature from passing *general* laws for the regulation of municipalities.

Mr. WALKER. Let him insert before the word "law" the word "general," and the objection will be removed.

Mr. STRUTHERS. I will accept that as a modification. I will ask also that the letter "s" be added to the word "constitution," so that it will read "the constitutions of the United States or of this State."

Mr. J. PRICE WETHERILL. Mr. Chairman: I wish to say just two or three words before this is adopted. I entirely agree with the views of the chairman of the committee (Mr. Walker) on this subject. It appears to me that we have restricted the Legislature from passing special laws, yet this would be considered, I suppose, to apply to a general law which should, for instance, provide that all cities of over two hundred and fifty thousand inhabitants should be compelled to do thus and so. That might be a *general* law, but would apply to the city of Philadelphia. Let us be careful not to emasculate this section entirely of its power. I do hope that the amendment offered by the gentleman from Warren (Mr. Struthers) will be voted down.

Mr. EWING. Mr. Chairman: I hope that the amendment will pass. I had hoped it would be accepted by the chairman of the committee. I cannot interpret this section as it reads here, as it is interpreted by the learned chairman of the Committee on Cities. To my mind it is a very broad grant of a very dangerous power. We have spent considerable time in debating and adopting restrictions upon the legislative power of this State. We have restricted the Legislature as to the manner in which it shall pass laws, and as to the matters upon which these laws shall be passed; and, among other things, we have provided that the Legislature shall pass no special laws in regard to cities. Now, I am to-day more willing to trust the Legislature of Pennsylvania with unrestricted powers of legislation in regard to a city, than I am to trust the city councils of any city in this State with unrestricted legislative power. There is just as much danger of abuse in the one case as in the other. There are just as wise, safe and honest men in the Legislature of Pennsylvania as are to be found in the city councils of any city in the State.

Mr. GUTHRIE. Mr. Chairman: Let me ask the gentleman one question. Is he not mistaken when he says that this gives "unrestricted" powers to the city councils?

Mr. EWING. I think it comes very near it.

Mr. GUTHRIE. I do not think it does.

Mr. EWING. What do you understand by it?

Mr. GUTHRIE. I understand that the people have to act after the council has acted, and a proposition requires the assent of a majority of the votes before it can be a law.

Mr. EWING. Oh, no. The people have nothing to do with it, under this section.

Mr. GUTHRIE. Mr. Chairman. I think they have, for it says, "unless accepted by a majority of each council, *and by a majority of the legal voters* voting at the next municipal election after the acceptance by councils."

Mr. EWING. That refers to commissions and special laws. The portion I object to begins with the word "every," on the eighth line; it says: "Every municipality shall have power to pass laws for its own regulation not repugnant to the Constitution of the United States or of this Commonwealth."

I say *that is* the most unlimited grant of power I have ever seen placed in any Constitution, or anywhere else. As I understand it, the restrictions which we have placed on the Legislature of Pennsylvania, as to the manner of passing laws, are not in any way to apply to the power of the city councils, so as to place the least restraint upon them in passing laws in regard to municipal affairs. I do not know whether or not, under this section, they could create a special court, and place on trial and *hang* the learned chairman of this committee, or myself, if we were to

violate some special ordinance. I am not prepared to go so far as to say that they could; but they certainly would have enormous power.

Mr. J. PRICE WETHERILL. Mr. Chairman: Let me interrupt the gentleman one moment. The section reads in effect:

First. That the Legislature shall pass no special law creating any municipality or regulating its form of government.

Second. Regulating the management of its internal affairs.

Third. Altering the charter of any city.

Fourth. Creating a public commission for any purpose, &c.

I ask the gentleman from Allegheny (Mr. Ewing) whether, under these provisions, it has any authority by which it could hang the gentleman from Erie (Mr. Walker) or himself, for violation of a city ordinance?

Mr. EWING. Mr. Chairman: I do not suppose the Legislature has. I am not talking of legislative restrictions. I say the Legislature *is* restricted; but the difficulty is that this section, in another part, gives unlimited power to the *city councils*, as, for instance, to the councils of the city of Philadelphia, to pass any law they see proper, that was not specifically provided against in this Constitution. I take it to be a grant of a sea of unrestricted legislative power, whose depth and length and breadth is almost immeasurable.

We have judicial decisions holding that the Legislature of Pennsylvania have all general power of legislation that is not prohibited, or that is not specially and exclusively granted to the United States Government. That is a power that has never yet been measured, and I am afraid of this section on account of the similar manner in which it applies to cities. I would not grant unrestricted power to any body of men on the face of the earth, for I believe it would be abused by the very best of men. I do not know but that it might be safe if the amendment is adopted that is offered by the gentleman from Warren, (Mr. Struthers,) making it subject to the laws of the State. I suppose that in that case we may trust the Legislature in their grant of power to the city governments, to restrict those governments in somewhat the same manner that we undertake to restrict the Legislature; but I do think that in the manner in which it is placed in the section at present it would be a very dangerous power, a power liable to great abuse; indeed, as certain to be abused as it would be to be exercised.

Mr. JNO. R. READ. Mr. Chairman: I agree with the gentleman from Allegheny, (Mr. Ewing,) that this is a very broad grant of power. I think a great deal of the section is entirely unnecessary. I do not think that any lawyer on the floor of this Convention thinks for a moment that the city councils of the city of Philadelphia, or of any other city in this Commonwealth, could pass any ordinance that would be repugnant to the Constitution of the United States. I therefore move to amend the amendment of the gentleman from Warren, (Mr. Struthers,) by striking out of this section, in the tenth line, the words, "of the United States or," and to insert the words, "to the general laws," so that the section would then read: "Not repugnant to the Constitution and the general laws of this Commonwealth." That will accomplish the removal of the difficulty suggested by the gentleman from Philadelphia, (Mr. J. R. Read,) if he is in earnest in that.

Mr. J. R. READ. I certainly am.

Mr. MACCONNELL. Mr. Chairman: This section is divided into two parts. The first part, ending with the word "councils," in the eighth line, applies to what the Legislature may do in regard to city affairs, and what it may not do. The second part, commencing with the word "every," in the eighth line, refers exclusively to what the city authorities may do. It defines what the city councils may do. This latter part declares that "every municipality shall have power to pass laws for its own regulation—that is a power given to municipalities. Then follows the restriction on that power—"not repugnant to the Constitution of the United States, or of this Commonwealth."

Now, the difficulty, in my mind, is this: That the city councils might pass laws or ordinances that might not be repugnant to the Constitution of the United States, but might, nevertheless, be repugnant to some laws passed by the State for the regulation of cities, and this section, as it stands, would impliedly give the councils authority to pass ordinances that would be repugnant to such laws. I do not think it was the intention of the Committee on Cities and City Charters to give city councils that authority, and, in order to put the matter beyond doubt, I think it would be the safest plan to adopt the amendment proposed, so as to make it literally impossible for city councils to

pass any ordinance that would be repugnant to the laws of the State.

Mr. BIDDLE. Mr. Chairman: I am in favor of this amendment. I think that as the section stands at present, its terms are too broad. I am quite mindful of what has been said bp the gentleman from Philadelphia, (Mr. J. Price Wetherill,) and the gentleman from Erie, (Mr. Walker,) that the power of municipalities is limited to passing laws merely for the regulation of the municipality; but even then it is too broad, because each municipality might undertake to pass laws totally at variance with the spirit of the general laws of the Commonwealth. I do not say that they would, but we must be careful that, in endeavoring to avoid one evil, we do not fall upon another, namely, that of setting up small legislative bodies in our cities, with power, if so disposed, to interfere with the legislation of the State. I think, therefore, that the insertion of the word "general" is advisable; and I suppose, also, the striking out of the word "United States," because the municipalities cannot pass any ordinance repugnant to the Constitution of the United States without being repugnant to the Constitution of this State.

Mr. WALKER. Mr. Chairman: The Committee on Cities and City Charters make no objection to the adoption of the amendment proposed by the gentleman from Warren, (Mr. Struthers,) if amended so as to apply to general laws. It might be that if the councils were composed of foolish men, they might pass a law, for instance, to punish a man who should be out on the streets after eight or nine o'clock in the evening; they might even go so far as to hang a man for that offense, but it does not seem at all probable that they would do so. I, for one, have no objection to the adoption of the amendment of the gentleman from (Warren, (Mr. Struthers,) with the modification that I suggested, of placing the word "general" before the word "laws," though I do not think that the amendment is at all necessary.

Mr. BUCKALEW. Mr. Chairman: In a section of this kind we should provide that these laws or ordinances passed by municipalities shall be consistent with their charters. These charters are all special, and in providing that cities shall not pass any ordinances or laws repugnant to the *general* laws or the Constitution of the Commonwealth we might permit them to enact regulations repugnant to their own charters. I am afraid that in this section we are only throwing matters into confusion that would otherwise be very simple. We have provided in the first section of this article for the passage, by the Legislature, of general laws for the regulation of cities. Now, if you desire a provision to the effect that no special act shall be passed for any city you ought to incorporate this provision in the legislative article along with the other numerous provisions of the same class. The subject does not belong at all to this place any more than the other legislative sections belong all over the Constitution, wherever anybody proposes to place them. I would suggest that the best thing we can do with this section will be to disagree to it.

I hope that the next section will be disagreed to also, because it belongs to another part of the Constitution, and because two other committees of this body have charge of the same subject. I mean the subject of public indebtedness. The question of the indebtedness of cities does not differ at all from the question of the indebtedness of counties or other local divisions of the Commonwealth, and ought to be treated in a general article or division of an article, and not in various parts of the Constitution. Besides, in the general report on this subject, we will have a much better and ampler provision than we can have here.

One additional word, while I am up, and then I shall have done, because I do not intend to meddle much with this debate. The remaining sections after the sixth, commencing with the seventh and running to the end, are, it seems to me, unobjectionable. But I desire to appeal to the committee to vote upon this section now under consideration and the subsequent sections without protracted debate upon them. I hope that these first sections will be promptly voted down. The remaining ones are not of a character to offend or to elicit debate.

I do hope that the committee will finish this article this morning. If we cannot, in two, three or four days, dispose of an article like this, we cannot expect to get through our work before next fall, and I am very anxious that we shall finish it at least by the first of June, so that the people may see it in all its bearings, and be able to examine it fully before they are called upon to vote upon it.

Mr. J. PRICE WETHERILL. Mr. Chairman: I would say, in reply to the remarks

of the gentleman from Columbia, (Mr. Buckalew,) that the Committee on Revision and Adjustment, to whom these matters will all be referred at the proper time, will place these provisions in the right place, if they are not already there. The gentleman (Mr. Buckalew) says that this section should be under the head of "legislation." Then, if section four should be under the head of legislation, why should not section nine be there also? The gentleman thinks that section nine is already in the proper place, and is unobjectionable. That section says: "The Legislature shall not exempt any property, real or personal, within any city, from municipal taxation, except such as is exempted throughout the State by general law." Section four says: "The Legislature shall pass no special law, creating any municipality or regulating its form of government," &c.

I cannot see the logic of objecting to one of these sections, on the ground that it should come under the head of legislation, and not objecting to the other. I hope the section will be voted on immediately, and adopted. If not in the right place, it can be put there hereafter.

Mr. HOWARD. Mr. Chairman: If I understand this section, I find in it a system of government for cities provided for, which is absolute, except so far as city governments are limited by the two constitutions. It seems to provide that city governments are no longer subject to the laws of the State in any respect whatever; and we might safely strike out the first eight lines down to, and including, the word "councils."

The limitation, instead of being placed as it is here, upon the Legislature, ought to be placed upon the city councils. It seems to me to be utterly ridiculous to place these restrictions upon the Legislature while providing that every municipality shall have power to pass laws for its own regulation, not repugnant to the Constitution of the United States or of this Commonwealth. That gives *all* power to cities, except in so far as they are controlled by Constitutions of the State, and of the United States. The section ought to read that the *city councils* shall not do the things which are in the section prohibited to the Legislature. We give the city councils general power, and if we want to limit that power we should place that limitation upon the councils themselves, and not upon the Legislature.

Unless the amendment offered by the delegate from Warren (Mr. Struthers) is accepted by the Convention, it seems to me that we should follow the proposition of the delegate from Columbia (Mr. Buckalew) and vote this section down. We have been struggling here for a long time. It has been the labor of this Convention to devise means and language to put limitations upon the power of the Legislature, yet we propose by this section to give city councils absolute power, without any restrictions whatever, except the restrictions imposed by the Constitutions of this State and of the United States. If the amendment of the delegate from Warren (Mr. Struthers) cannot be accepted, I hope the section will be rejected.

The question being upon the amendment to the amendment, of Mr. John R. Read, a division was called for, and resulted: In the affirmative, forty-two; in the negative, eight.

So the amendment to the amendment was agreed to.

Mr. LITTLETON. Mr. Chairman: I offer a substitute for the latter part of the section, commencing after the word "councils," in the eighth line, and reading as follows:

"Every municipality shall have the power, subject to the Constitution and the general laws of this Commonwealth to regulate its municipal affairs and to make assessments, general or special, for the cost of making and maintaining such improvements as it may from time to time direct to be made or renewed."

This amendment provides substantially for what has just been done by the committee, and in addition to that, gives the added power to the municipality to charge the owners of property for special improvements, even in a case where those improvements may simply be *renewals* of former improvements. In other words, it is to get beyond and behind the decision of the Supreme Court in the Nicholson pavement case, and give the municipalities the right to charge for such renewed improvements.

Now, I think that those who have had experience in the management of affairs of cities will see that this is very important, especially in a city where a great many improvements have been made practically useless by the introduction of passenger railways, which have taken up the best part of the streets formerly paved, and in at least tolerable good order, and

now rendered almost useless by the monopolizing of the best parts of the streets by such companies. Therefore, those of us who are interested in cities desire to make no improvement until we should have the power to charge the expenses upon the local property especially benefitted by it in each particular case. I trust the amendment will be adopted.

Mr. MINOR. Mr. Chairman: I am now prepared to vote against the section; having inserted the word "general," we now leave it in such shape that the city councils may pass laws themselves, which shall be contrary to special laws that the Legislature may pass. Now, sir, the Legislature cannot pass any special laws applicable to the city, except under this very section, because the general article on legislation forbids it. Then where are we? The first part of the section says that the Legislature may pass special laws under certain circumstances, when asked for by the councils, conditional that the law shall be accepted by the voters at a subsequent election. Then in the last part of the section we give the councils power to pass laws contrary to the special laws of the Legislature. Now, where does that land us? Why, the councils of the city ask for a special law, applicable to themselves. The Legislature passes it, and then, by virtue of this very same section, you leave it so that councils themselves can repeal that very law by passing one contrary to it. That is where we are now. Are we going to leave things in that shape for every city and borough all over the State? It means that, or it means nothing.

Mr. HOWARD. Mr. Chairman: I think, since the committee of the whole have voted in the term, "general laws," the friends of the section should vote it down altogether. The amendment offered by the gentleman from Philadelphia, if I understand it, means that if a property owner has once paid for the improving of streets along the line of his property, and a passenger railway or any other improvement of that sort, in the hands of private individuals, in the progress of their improvement, tear up the pavement and regrade, the property owner shall be made to pay over again. If that is the meaning of the amendment, I am opposed to it, and I have no doubt that the Convention will be opposed to it.

The amendment was rejected.

The CHAIRMAN. The question recurs on the section.

Mr. JNO. R. READ. Mr. Chairman: I call for a division of the section, at the commencement of the last sentence.

The CHAIRMAN. The first division will be read.

The CLERK read as follows:

The Legislatnre shall pass no special law creating any municipality, or regulating its form of government, or the management of its internal affairs, or altering the charter of any city now existing, or creating a public commission for any purpose, unless such law is specially asked for by a majority of each council, for a definite object, nor shall such special law have any force or effect unless accepted by a majority of each council, and by a majority of the legal voters voting at the next municipal election, after the acceptance by the councils.

On the question of agreeing to this division, a division was called, which resulted, thirty-one in the affirmative. Not being a majority of a quorum voting, the first division was rejected.

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

The CLERK read as follows:

Every municipality shall have power to pass laws for its own regulation, not repugnant to the Constitution and general laws of this Commonwealth.

Mr. BUCKALEW. Mr. Chairman: I move to amend, by adding at the end of the section the words, "or the charters of their cities." This seems to me to become necessary, after the use of the word "general" in reference to laws. As I explained in my remarks before, certainly you do not want to arm these councils with power to pass laws in violation of their charter.

Mr. STANTON. Mr. Chairman: Will you have the amendment read by the Clerk?

Mr. BUCKALEW. Mr. Chairman: I will modify the amendment, by making it read, to insert after the word "repugnant," the words, "to their own charter nor."

Mr. J. PRICE WETHERILL. Mr. Chairman: I want to say just one word here. As I understand it, the section is defeated. By voting down the first part of it, we have voted against the section.

The CHAIRMAN. The Chair does not so understand it. Any part of a section may be adopted without the adoption of the preceding part.

Mr. J. PRICE WETHERILL. Mr. Chairman: Then how will the latter part of the section read, as amended?

The CLERK read as follows:

"Every municipality shall have power to pass laws for its own regulation, not repugnant to their own charter, nor to the Constitution and general laws of this Commonwealth."

Mr. HUNSICKER. Mr. Chairman: I would like to know the exact condition of the question. Do we vote upon the whole section again?

The CHAIRMAN. The first part of the section has been rejected down to, and including the words, "by the councils."

Mr. HUNSICKER. Then the amendment only applies to the last division of the section?

The CHAIRMAN. That is all.

On the question of agreeing to the amendment, a division was called, which resulted thirty-one in the affirmative. Not a majority of a quorum voting, the amendment was rejected.

The CHAIRMAN. The question is on the second division of the section.

The second division was rejected.

Mr. W. H. SMITH. Mr. Chairman: I move to re-consider the first section.

Mr. J. PRICE WETHERILL. I object.

Mr. W. H. SMITH. Mr. Chairman: I wish to move this re-consideration in order to add this clause. The first section is the only place in the article that I can find to introduce it, and I have the approval of the chairman of the Committee on Cities and City Charters to this addition made here. The first section reads:

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

Now I wish to add:

"And no territory shall be annexed to or consolidated with any city or borough, except at the request, expressed by a vote at a regular election, of the qualified electors residing in such territory."

The CHAIRMAN. The Chair will state that in his judgment the time for re-considering this section is past, but it may be done by unanimous consent.

Mr. W. H. SMITH. Then I ask unanimous consent.

Mr. BOWMAN. Mr. Chairman: I object. Let us get through with this article, and take up the sections in order until we do.

Mr. LILLY. Mr. Chairman: Does it take unanimous consent to re-consider this section? Such a proceeding has been done before by a vote of the committee.

The CHAIRMAN. Under the rules a motion to re-consider must be made within six days. The first section was acted upon longer than six days ago.

Mr. W. H. SMITH. Mr. Chairman: Then I offer this as a new section.

Mr. CHURCH. Mr. Chairman: What is the status of the fourth section? Has it been voted down or voted up?

The CHAIRMAN. It has been voted down.

Mr. WALKER. Mr. Chairman: If the gentlemen of the committee would attend to what is going on it would not have been voted down. It was not lost because it did not represent the sentiment of the committee.

The CHAIRMAN. It has been so decided by the committee.

Mr. GUTHRIE. Mr. Chairman: I move to re-consider the vote.

The CHAIRMAN. How did the gentleman from Allegheny vote?

Mr. GUTHRIE. In the affirmative.

The CHAIRMAN. Is the motion to re-consider seconded?

Mr. BIDDLE. I second it.

The CHAIRMAN. Did the gentleman vote in the affirmative?

Mr. BIDDLE. I did.

Mr. NEWLIN. Mr. Chairman: I rise to a point of order. It is not competent for these gentlemen to move a re-consideration. They did not vote with the majority. They voted in the affirmative, and the section was negatived.

Mr. GUTHRIE. Mr. Chairman: I voted with the majority on the last clause.

The CHAIRMAN. That would entitle the gentleman to move for a re-consideration of the last clause.

Mr. MACVEAGH. Mr. Chairman: I do not understand these gentlemen to say that they voted against the section.

The CHAIRMAN. Does the gentleman from Allegheny move to re-consider the last clause?

Mr. GUTHRIE. If that will bring up the whole section, I will.

Mr. MACVEAGH. That is not in order.

Mr. J. M. WETHERILL. Mr. Chairman: I voted in the negative, and I second the motion.

The CHAIRMAN. It has been moved and seconded to re-consider the last clause of the section.

Mr. J. PRICE WETHERILL. The whole section, as I understand it.

The CHAIRMAN. The motion only applies to the last clause. If the gentleman from Allegheny voted in the majority, on the first division, his motion can apply to the whole section.

Mr. GUTHRIE. Mr. Chairman: I voted in the negative on the first clause, and in the affirmative on the second clause. [Laughter.]

Mr. NEWLIN. Mr. Chairman: The question was decided lost in the first case, because a majority of a quorum did not vote. There was no negative vote taken. [Laughter.]

Mr. T. H. B. PATTERSON. Mr. Chairman: I rise to a question of order.

The CHAIRMAN. The Chair will beg to state that if any gentleman who voted in the majority wishes to move a re-consideration of the vote upon the first clause of the section, and it is seconded by another gentleman who voted in the same way, it can be done.

Mr. T. H. B. PATTERSON. Mr. Chairman: I arise to a question of order. Section four has been disposed of by a vote of the committee of the whole, and a new section has been moved. We are now considering the new section proposed by the gentleman from Allegheny, (Mr. W. H. Smith,) and we cannot re-consider another section while one is pending.

The CHAIRMAN. The Chair will state that the motion of the gentleman from Allegheny (Mr. W. H. Smith) has not yet received the sanction of the committee.

Mr. HUNSICKER. Mr. Chairman: I voted with the majority against the first division of section four.

Mr. LILLY. Then the gentleman did not vote at all. There was not a majority of a quorum voting in the affirmative.

Mr. MACVEAGH. There was no vote taken upon it.

The CHAIRMAN. There is nothing before the committee. Section five will be read.

Mr. J. PRICE WETHERILL. Mr. Chairman: I insist upon asking a question. Can we by any parliamentary means reconsider that section?

The CHAIRMAN. Yes, sir. The Chair will state that any two gentlemen voting in the majority upon the question can move to re-consider.

Mr. W. H. SMITH. Mr. Chairman: I rise to a point of order. I offered a new section, and I wish to know if it cannot be received.

The CHAIRMAN. The Chair would state to the gentleman from Allegheny, (Mr. W. H. Smith,) that if he proposes to offer a new section it is in order at this time. He has not yet forwarded it to the Chair.

Mr. LILLY. Mr. Chairman: The gentleman from Philadelphia (Mr. J. Price Wetherill) moves to re-consider, I understand.

Mr. J. PRICE WETHERILL. I understand the chairman of the committee to say that those who voted in the affirmative have a right to move to re-consider. I voted in the affirmative, and I move that the fourth section be re-considered.

Mr. MACVEAGH. The gentleman is not in earnest. Let us proceed with the work.

The CHAIRMAN. A new section has been proposed by the gentleman from Allegheny, (Mr. W. H. Smith,) which the Clerk will read.

The CLERK read:

No territories shall be annexed to, or consolidated with, any city or borough except at the request, expressed by a vote at a regular election, by a majority of the qualified electors residing in the said territory.

Mr. W. H. SMITH. Mr. Chairman: I think this is a matter of great importance. We have felt the necessity for such a law in the State of Pennsylvania, and it was the law here thirty years ago, that no section should be added to a city without the vote of the people in the particular place proposed to be annexed. That was repealed, and people are packed into cities against their will. I think this section is fair and proper, and I wish to have the vote of the committee upon it.

Mr. J. PRICE WETHERILL. Mr. Chairman: I would like to say a word before the vote is taken. It seems to me that after voting against section four, and thus taking out of the article what life there is in it, it will make very little difference whether we vote for or against any amendment which may be offered in the committee.

This matter, although it may not interest many of the gentlemen from the country, and although the majority of the members of this Convention may not feel an interest in the passage or the non-passage of this article, yet I would say to the delegates coming from this city, who feel a deep and abiding interest in the passage of this article, that if section four is not re-considered, and if life is not put into the article, and if we in large cities have to suffer, as we have suffered for

years; if we have to look upon the one side, as tax-payers, to the city councils, and on the other side, to the Legislature at Harrisburg, composed of men having no interest whatever in our legislation, and pass acts and laws for us, about which they knew but little, I do say, in all seriousness, to the delegates on this floor, that this Constitution, with a section of that sort, so utterly ignoring the wishes and views of the city of Philadelphia, and the people of our other large cities, will create so violent an opposition to it, that the entire Constitution itself may be endangered. I speak earnestly with regard to this matter.

The CHAIRMAN. The Chair must remind the gentleman that the question before the committee is a new section.

Mr. J. PRICE WETHERILL. I would remind the chairman of this committee that when the Convention meets in committee of the whole, there is a certain degree of license which is entirely parliamentary; and I make this appeal to my colleagues with regard to this matter. It is a matter in which we feel a deep interest. It is a matter in which the people of Philadelphia feel a deep interest; and if we are to be governed—if we are to be controlled by a Legislature, instead of by the councils of Philadelphia—it will be a very sorry day for us. This section which we have voted down is the section which prevents any such legislation; and I do hope before this article is gone through with, that a motion to re-consider it will be made.

The section offered by Mr. W. H. Smith was agreed to, there being, on a division, affirmative, forty-six; negative, twenty.

Mr. NILES. Mr. Chairman: Having voted with the majority, I move that the vote by which section four was rejected, be reconsidered.

Mr. KAINE. I second the motion.

The CHAIRMAN. Did the gentleman vote with the majority?

Mr. KAINE. I did, sir.

The motion was agreed to.

Mr. JOHN R. READ. Now, Mr. Chairman, I ask for the same division I did before.

Mr. BUCKALEW. Mr. Chairman: I am seeking information. I want to understand how we can re-consider three different votes by one vote. I am not particular about it. I only want to know how it can be done.

Mr. JOHN R. READ. Mr. Chairman: I desire to be distinctly understood. I have asked for a division of this section, and I intend to press it. The reason I do so is this: I am unqualifiedly in favor of the first portion of this section, and if need be, sir, I would vote to make it stronger, if necessary; but I am against the latter portion of the section.

Mr. J. PRICE WETHERILL. Then, in order that this matter may be distinctly understood, that when the division is taken, if we vote no, we lose the section; and if we vote aye, we secure it.

Mr. JOHN R. READ. We secure the first part, certainly. I would vote aye for it.

Mr. ALBRICKS. Mr. Chairman: This is one of the most important matters that has come before us; whether we will govern ourselves, or let rings control the great affairs of this Commonwealth; whether the Legislature shall pass laws altering the charters of cities, or appointing commissions. Now, I apprehend the appointment of commissions by the Legislature has been one of the sins of the day. I know nothing at all about the corruptions of the city of Philadelphia; but I have this to say, that if rings are to govern this Commonwealth, then vote down the first division of this section, because it puts it out of the power of the ring to put the management of your cities in whose hands they please.

This has been done in other places than in Philadelphia. In a little town of about five hundred inhabitants in our county a commission was appointed, which has control of the streets and the town. The commission was appointed, and, I believe, they performed that duty to the great surprise of the people of the place. I have nothing to say to the committee of the whole further than that I apprehend that they do not understand the question. I have just entered the Hall, and understand the section intended to restrain legislation. We have argued throughout our entire session that we will not allow the Legislature to pass special laws. We have been restraining legislative functions, and now, when we come to the very time when we should say positively whether they should have power to appoint commissions, we hesitate. Gentlemen, if we say they are to have that power, we have undone, in my humble opinion, all that we have done. I hope therefore the first division of the section will be adopted.

Mr. MACVEAGH. Mr. Chairman: As I understand the provisions of the section adopted by the Committee on Legislation,

to prevent special legislation, no special law can be passed for the government of cities, or interfering with city charters. This provision seems to provide that such special laws may be passed, when asked for "by a majority of each council, and a majority of the legal voters voting at the next municipal election." This, therefore, provides for the passage of a special law for a municipality. It enlarges the powers of the Legislature.

The construction of this sentence is such as to give them the power to pass any special law whatever for any city in this State, that a majority of the councils, in the first place, and a majority of voters, in the second place, will accept. If it is the desire of gentlemen that we shall again have special legislation for cities, after a vote by the councils, and a vote by the people, I have no very particular objection to it; but it does not, as my friend from Dauphin (Mr. Alricks) supposes, put any restriction upon the power of the Legislature over cities. It enlarges their jurisdiction.

Mr. ALRICKS. Mr. Chairman: Will the gentleman (Mr. MacVeagh) look at the section? It says: "The Legislature shall pass no special law creating any municipality, or regulating its form of government, or the management of its internal affairs, or altering the charter of any city, now existing, or creating a public commission for any purpose, unless such law is specially asked for by a majority of each council, for a definite object."

Mr. MACVEAGH. But as it stands now they cannot pass it at all, whether it is asked for or not.

The CHAIRMAN. The Chair will state the two aspects of the question. A division of the question, upon the section, was asked for. The question upon the last part of it was taken last. The Chair is now of the opinion that the vote to re-consider must first be upon the portion of the section that was last adopted. If the gentlemen who moved this re-consideration were those who voted with the majority, on the vote taken upon the last part of the section, the re-consideration is in order; if not, it is not in order, unless by common consent you wish to throw the whole thing over. I would ask the gentleman from Tioga (Mr. Niles) and from Fayette (Mr. Kaine) whether they voted with the majority on the last portion of the section.

Mr. KAINE. Both portions of the section were voted down. I voted against both portions; therefore I voted with the majority.

The CHAIRMAN. Then the re-consideration of the question comes first, of course, on the last part of the section first.

The question being upon the re-consideration, it was agreed to.

Mr. J. PRICE WETHERILL. Mr. Chairman: I move the committee do now rise, report progress, and ask leave to sit again.

Not agreed to.

Mr. LAWRENCE. Mr. Chairman: I desire to know where this divisiion of the question takes place, in what part of the section?

The CHAIRMAN. The second division of the section commences with the word "councils" on the eighth line.

The question now recurs on the last division of the section. Will the committee agree to it?

Mr. KAINE. Mr. Chairman: I want to know whether the vote has been taken on the re-consideration of the first division?

The CHAIRMAN. No, sir; we have not arrived at that stage yet.

The CLERK will read the last division of the section.

The CLERK read:

"Every municipality shall have power to pass laws for its own regulation, not repugnant to the Constitution of the United States, or of this Commonwealth."

Mr. EWING. Mr. Chairman: I move to amend, by inserting after the words, "repugnant to," the words, "its charter." I hope the members of the Convention will consider that matter carefully. I think that if they had looked into it, and considered the suggestions made by the gentleman from Columbia, (Mr. Buckalew,) it would have been so plain to every member that his was the proper amendment, that no one could have objected to it. As the section stands now, I cannot see how any court could consider it otherwise, than that the councils of the city might pass municipal laws and regulations, which would be utterly inconsistent with the charter of the city as it now exists. No one of us, I suppose, wants such a provision there, and so far as the interests of the people of the great cities wanting to be protected, here, as referred to by some gentlemen from Philadelphia, while I agree that they want to be protected from improper interference by the Legislature, the whole people of the State, and the delegates here from all sections of the

Commonwealth, owe it to the people of the great cities to protect them from the unlimited, uncontrolled and unqualified power of city councils.

Mr. HUNSICKER. Mr. Chairman: I would ask how there can be any division of this question when we have re-considered only the last clause of the section. I would prefer to consider the whole question together.

The CHAIRMAN. That point has been decided already. The last division of the section is the first to be re-considered.

Mr. HUNSICKER. Mr. Chairman: I certainly did vote against that section, whether I voted by rising or remaining in my seat, and I would like to move to reconsider the whole thing.

The CHAIRMAN. It has already been decided to re-consider the last part first.

Mr. HOWARD. Mr. Chairman: I am opposed to the latter part of this section as it now stands—the words "general laws" having been put into it. It seems to me that if you put in these words, "general laws;" it fairly implies that they might legislate by special laws. If gentlemen wish this part of the section adopted, why not strike out the word "general," and merely use the expression, "subject to the laws," then we can vote for it. We have already provided that the Legislature shall not, by special law, legislate for cities, or prescribe the powers and duties of officers in municipalities. In the article on legislation we have prohibited legislation by special law, and yet gentlemen insist upon putting in here an amendment that fairly implies that all this work is to be upset, and while municipalities cannot have things done by a general law, they may effect them by special law. Why is it necessary to insist upon this word "general" being incorporated here? It will throw the whole matter into serious doubt, and certainly open it to the construction that I refer to.

Mr. J. W. F. WHITE. Mr. Chairman: I have not participated to-day in the discussion of this section. I have listened to it, however, with much attention, and it has only confirmed the impression I had on Saturday. It has only satisfied me, more than ever, of the necessity of doing something else than passing the sections reported by the Committee on Cities and City Charters. I call the attention of the committee of the whole to this fact, that this report was made before the report of the Committee on Legislation, and before the Committee on Cities and City Charters knew what that report would be. This section that we are now at I should vote for if we had no sections on the subject in the article on legislation. So with several other sections in this report. The seventh and ninth sections of this report are supplied by the report of the Committee on Legislation. I do not blame this committee. They made a report, which, as things stood at the time, was right enough; and in this very section they were trying to avoid many of the evils that have been experienced in Philadelphia and elsewhere from special legislation, and hence they provided that no special legislation shall be had for a city unless it be applied for by the city councils. They did not suppose that the Committee on Legislation would cut up by the roots all special legislation. The report of that committee did so, however, and it has passed the committee of the whole and has gone to second reading. That very fact supersedes all in this section down to the eighth line, and it makes every single word in this section, from the beginning of it to the eighth line, absolutely contradictory of what we adopted in the report of the Committee on Legislation, absolutely inconsistent and contradictory with it, because we there declare that there shall be no special legislation in reference to cities. By this section, now, we declare, as the gentleman from Dauphin (Mr. MacVeagh) has said, that the Legislature may pass any special law for any city in the State when a majority of the councils ask for it, it to be then ratified by the people of the city afterwards. That is directly in antagonism with what we have done in the article on legislation, and it will make our Constitution absolutely ridiculous. We ought either to strike out this section or strike out all corresponding clauses in the article on legislation. So, also, the subsequent parts of this article were framed before we knew what would be the article on legislation. I think, therefore, that this whole report ought to be modified. I am satisfied we will not make much progress in the way in which we are now proceeding. I think we had better get on some plan by which this whole subject can be remodeled and brought up in a better shape than we now have it.

In order that I may not be misunderstood, I will say that I am not reflecting at all on the Committee on Cities and City Charters. I say that their report was well enough at the time, but the subsequent

action of the Committee on Legislation has superseded nearly the whole of it, and there ought to be some modification of it somehow. The manner in which we are now proceeding, and the amendments that are being offered, confirm me in my former opinion, and I feel like voting the whole thing down, in order that something may be gotten up in its stead, on which we can harmonize. I think that the members of this Convention, who are interested in the matter of city charters, and I refer more particularly to the gentlemen from Philadelphia, and from Pittsburg, and other cities, ought to have some understanding so as to secure harmony and unity of action, because a large majority of the members of the Convention are not directly interested in this question, and if we could get some way by which we could harmonize our views and agree upon something, I believe it would save days, perhaps weeks, of work. I shall, therefore, in order to get at something of that sort, vote against this section.

Mr. DALLAS. Mr. Chairman: As has been said by the gentleman from Allegheny, (Mr. White,) the committee of the whole is in some apparent confusion upon the section now being considered. This section and some others have been, to some extent at least, anticipated by the report of the Committee on Legislation. There has been a very natural confusion growing out of this fact, but in addition to this consideration, I think it is evident that we have disposed, in detail, of several valuable propositions, in such a manner as to produce a result contrary to our own wishes. We have just wholly voted down, and without providing any substitute therefor, the section intended to secure local self-government. I think it extremely important that the suggestion of the gentleman from Allegheny (Mr. White) should be carried into effect. He has well said that many delegates who come from cities feel a deep and special interest in this subject, and should have opportunity to consider it together, and, if possible, harmonize their views before acting upon their report.

If it is in order I, therefore, move that the committee rise and request to be discharged from the further consideration of this article, with the view that the article may be passed to second reading, and its further consideration be postponed until it shall be reached in Convention.

The CHAIRMAN. The committee can rise if the motion prevails, but the Convention alone can determine whether the committee shall be discharged from the further consideration of the article.

The question being taken, a division was called, which resulted as follows: Ayes, forty; noes, thirty.

So the motion was agreed to.

IN CONVENTION.

The committee then rose, and the President resumed the chair.

The CHAIRMAN. Mr. President: The committee of the whole having had the article reported by the Committee on City Charters under consideration, have instructed their chairman to report progress, and to ask leave to sit again.

The PRESIDENT. Shall the committee have leave?

["No." "No." "No."]

Mr. CARTER. I move that the committee have leave to sit again.

The motion was not agreed to.

Mr. NEWLIN. If it is in order, I move to re-commit the article on cities and city charters to the committee reporting the same.

Mr. WALKER. Mr. Chairman: I trust that motion will not prevail. The Committee on City Charters tried to do their duty, and they now find that they have been unable to meet the views of the Convention. I think it will be far better if this article should be referred to some other committee, in order to ascertain whether such a committee cannot work more in accord with the sentiments of the gentlemen representing the city of Philadelphia.

Mr. J. PRICE WETHERILL. Mr. Chairman: I entirely concur with the remarks of the gentleman from Erie (Mr. Walker) in regard to this matter. The committee was in session almost daily for nearly four weeks. We invited to meet with us in our deliberations the largest tax-payers in the city of Philadelphia. Many of these gentlemen met us almost daily, and in my opinion the report which the committee has presented to the Convention is the best work that they can produce, and if the Convention deem it proper to refer the report to a committee at all I hope it will be a special committeee and not the Committee on Cities and City Charters.

Mr. WALKER. Mr. Chairman: This report may be referred back to the Committee on Cities and City Charters, but I

distinctly state here that any other action than that committee has already taken need not be expected, for the members of the committee labored zealously in behalf of the report, and they can present no other result that would be better acceptable to the members of this Convention.

Mr. ARMSTRONG. Mr. Chairman: I think unnecessary misapprehension exists in regard to this question. If I am correct in my veiw of the position the question has assumed it is simply this: The committee of the whole having risen and reported to the Convention, and the Convention having refused to allow the committee to sit again, all amendments which have been made in committee necessarily fall, and the report of the committee comes up upon second reading before the Convention without amendment, and this I understand to be the purpose which the committee desired to attain. It was evident that some confusion had arisen in the minds of the committee in reference to the position of the bill as it stood in committee of the whole, and for the purpose of extricating the report from confusion the committee rose and reported progress. The Convention having refused permission to the committee to sit again, the article will come up on second reading without amendment. Certainly so far as my vote that the committee rise is concerned, I utterly disclaim any intention of disrespect to the committee of the whole. I felt it would be better and more in accord with the wishes of the committee if the article should come directly before the Convention upon the report of the standing committee as reported by them. This was my understanding, and it was with this view of the question I voted as I did.

Mr. WALKER. Mr. Chairman: I desire to add to the remarks of the gentleman, that the action of the Convention entirely accords with the views of the committee which reported this article It is precisely what I desire, and I trust what every other gentleman of the committee desires.

The PRESIDENT. The committee of the whole having been refused leave to sit again, the article is on its second reading. There are no amendments to the article as reported, and a motion has been made to refer it back to the committee from which it originated.

Mr. MACVEAGH. Mr. Chairman: Upon the motion to re-commit the article, I desire to say that I did not understand the committee of the whole to have been actuated by the motives ascribed to it by the gentleman from Lycoming (Mr. Armstrong.) I do not think the committee of the whole was satisfied with the article as it was reported by the Committee on Cities and City Charters, because by repeated votes the opposite of that conclusion was asserted. It was desired that the committee should rise, not in order that leave might be given to sit again, but for the purpose of making the motion which has been made.

It seems to me the judgment of the committee of the whole was that, in framing the article, the committee had too exclusively regarded the city of Philadelphia, and too little regarded the innumerable other cities scattered throughout the Commonwealth, and that upon consultation with other gentlemen, representing other sections of the Commonwealth, it was thought, perhaps, some wise amendments would be suggested to the minds of the committee. I do not think the committee intended at all to accept the article as now ready for second reading, but simply desired to get rid of any possible amendments that may have been made to it. There are very important sections contained in the report that have never been read in committee of the whole, and to order it now re-printed, as if it had entirely passed through the committee of the whole, and to be placed on our files for consideration on second reading, is, I think, what the Convention does not desire to do. I think the committee rather desires the reconstruction of the article by the committee, in the light of the debate that has taken place in regard to it.

Mr. DALLAS. Mr. President: I only desire to say, that in moving as I did, that the commitee of the whole should rise upon the article reported by the Committee on City Charters, it certainly was with no intention of disrespect to the able committee and the chairman who reported this article. I can hardly say it was not because that article, in its main features, satisfied me. I desired to save it from debate and from defeat in detail. This was the reason, which I stated at the time, which influenced me in making that motion, and I think now that the views of the members of the committee agreed that the article ought to pass, but that there were some differences of opinion respecting its minutæ, which will proba-

bly be reconciled when the article reaches a later stage of its proceedings. I desire to add that, as far as I am concerned, I do not desire the re-committal of the article.

The question being taken, the motion to re-commit the article reported by the Committee on Cities and City Charters was not agreed to.

REPORT OF THE HOUSE COMMITTEE.

Mr. ADDICKS. Mr. Chairman: The House Committee have had under consideration the resolution adopted by the Convention, respecting other arrangements for the ventilation of the Hall, and now desire to submit the following report:

That they conferred with Mr. John A. M'Arthur, architect, who advises the ventilation of the Hall through the floor and ceiling, and estimates the cost of the same not to exceed five hundred dollars. The committee are not willing to have the work done without further instructions from the Convention.

Mr. PORTER. Mr. President: I move that the Convention now adjourn.

The motion was not agreed to.

The PRESIDENT. The next business in order is the second reading of the article reported by the Committee on the Executive Department.

Mr. MACVEAGH. I move that the Convention resolve itself into committee of the whole and proceed to the consideration of that article.

Mr. ARMSTRONG. Mr. President: I move that the Convention do now adjourn, and upon that motion I desire, with the consent of the Convention, to make a very brief statement. A resolution was recently passed requesting the several committees to report before the adjournment upon the twenty-eighth instant. The committees doubtless construe that resolution into an order, although it is not so in form. The Judiciary Committee certainly regards itself as bound to report, if it is at all possible. The report of that committee is almost complete, and if the Convention now adjourns the committee will meet at once, and we hope to be able to complete the report so as to place it in the hands of the printer in time to be reported to the Convention before the adjournment, as directed by the resolution heretofore passed. I understand other committees are in the same condition, and my impression is, it would facilitate and advance our business if the Convention would now adjourn.

The question being taken, the motion to adjourn was agreed to. So the Convention thereupon, at one o'clock and thirty minutes P. M., adjourned until ten A. M. on Wednesday.

SEVENTY-FIFTH DAY.

WEDNESDAY, *March* 26, 1873.

The Convention met at ten o'clock A. M.

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

JOURNAL.

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

Mr. LEWIS Z. MITCHELL, delegate at large, chosen to fill the vacancy occasioned by the death of the Hon. Wm. Hopkins, was sworn.

GOD IN THE CONSTITUTION.

The PRESIDENT presented a petition from citizens of Philadelphia, praying for an amendment recognizing Almighty God in the Constitution, which was laid on the table.

Mr. MINOR presented a petition from citizens of Crawford county, upon the same subject, which was laid on the table.

PROHIBITION.

Mr. MACCONNELL presented a petition from one hundred and fifty citizens of Allegheny county, relative to the manufacture and sale of intoxicating liquors, which was laid on the table.

Mr. HORTON presented a petition from citizens of Susquehanna county, asking for a prohibitory clause in the Constitution against the manufacture and sale of intoxicating liquors, which was laid on the table.

Mr. DARLINGTON presented a petition from one hundred and twenty-two citizens of Kennett Square, Chester county, on the same subject, which was laid on the table.

Mr. PURMAN presented a petition from citizens of Greene county, upon the same subject, which was laid on the table.

GOD IN THE CONSTITUTION.

Mr. J. PRICE WETHERILL presented a petition from citizens of Philadelphia, praying for an amendment recognizing Almighty God in the organic law, which was laid on the table.

APPOINTING DAY TO RE-ASSEMBLE.

Mr. CLARK presented the following resolution, which was read:

Resolved, That when this Convention adjourns on the twenty-eighth instant, the time for the re-assembling of the Convention shall be extended to Wednesday, the sixteenth day of April next, at twelve o'clock M.

The question being, shall the Convention proceed to the second reading and consideration of the resolution, the yeas and nays were required by Mr. Mann and Mr. Mantor, and were as follow, viz:

YEAS.

Messrs. Addicks, Alricks, Armstrong, Baker, Bardsley, Black, Charles A., Bowman, Boyd, Clark, Cronmiller, Curry, Curtin, Davis, De France, Elliott, Fulton, Funck, Gibson, Gilpin, Guthrie, Hall, Hanna, Harvey, Hay, Hazzard, Hemphill, Howard, Hunsicker, Kaine, Lamberton, Lawrence, Littleton, Long, MacConnell, M'Murray, Minor, Mitchell, Mott, Newlin, Palmer, H. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, Jno. N., Purviance, Samuel A., Read, Jno. R., Reed, Andrew, Ross, Russell, Simpson, Stanton, Struthers, Temple, Van Reed, Wetherill, J. M., Wetherill, Jno. Price, Woodward, Worrell, Wright and Meredith, *President*—60.

NAYS.

Messrs. Baily, (Perry,) Beebe, Brodhead, Broomall, Carter, Cochran, Corbett, Craig, Darlington, Dodd, Edwards, Ellis, Ewing, Horton, Lilly, M'Culloch, Mann, Mantor, Niles Patterson, D. W., Rooke, Smith, Henry W., Smith, William H., Turrell, Walker, White, David N. and White, J. W. F.—27.

So the resolution was again read.

ABSENT OR NOT VOTING.—Messrs. Achenbach, Ainey, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bartholomew, Biddle, Black, J. S., Brown, Buckalew, Campbell, Carey, Cassidy, Church, Collins, Corson, Cuyler, Dallas, Dunning, Fell, Finney, Gowen, Green, Heverin, Knight, Landis, Lear, M'Allister, M'Camant, M'Clean, MacVeagh, Metzger, Palmer, G. W., Parsons, Pughe, Reynolds, Jas. L., Reynolds, S. H., Runk,

Sharpe, Smith, H. G., Stewart, Wherry and White, Harry.—46.

Mr. CORBETT. Mr. President: I move to amend so as to make the date of re-assembling the first Monday in May, which will be the fifth.

Mr. LILLY. Mr. President: I hope this amendment and the original resolution will be voted down. I warn members that if we adjourn over to the sixteenth of April it will then take us at least two weeks before we get into good working order again, so that we lose a month of our time.

Mr. BOYD. Mr. Chairman: I rise to a point of order. We have a resolution in full force, as I understand it, allowing no debate on motions of adjournment.

Mr. LILLY. Mr. President: That resolution was repealed. If we adjourn over to the sixteenth we shall certainly lose, as I say, a month of our time, and that will carry our labors here into the first of July. I was originally opposed altogether to a recess, but the motion to adjourn on the twenty-eighth, and meet on the eighth of April, was at last agreed upon as a compromise. If we have any idea of getting through with our business this year, we had better stick to it.

Mr. BRODHEAD. Mr. Chairman: I move to amend, by making the day for re-assembling Tuesday, fifteenth of April.

Mr. DARLINGTON. Mr. President: I suppose we understand very well the object of this section. Some gentlemen find it more convenient to be away a few days longer on account of professional engagements which they cannot very well forego. I would be very glad to accommodate any of these gentlemen with leave of absence for the purpose of attending their courts, but if they postpone the time of re-assembling they will, necessarily, while accommodating themselves, disregard the wishes of divers others. Lancaster courts and Chester courts, and other courts, come on about the first of May.

Now, there is no way for us to get along at all, except by a continued session. The Convention has agreed to adjourn over the first of April, because that is the time large numbers of our members find it necessary to return to their homes for the purpose of attending to their private business; but it will not do for the Convention to adjourn for the purpose of allowing some of our members an opportunity of attending the courts. I certainly shall not ask the Convention to adjourn on that account, and I do not think the gentleman from Delaware (Mr. Broomall) or the gentleman from Lancaster (Mr. Carter) will ask the Convention to adjourn for that purpose, and yet they may find it necessary to be absent in attending to their duties in this particular.

Mr. CORBETT. Mr. President: I think any adjourument of this Convention, for even one day, is altogether a mistake. I have steadily voted against any adjournment, but members have certainly decided by a large vote that there shall be an adjournment. Now, if there is to be an adjournment it will be of no benefit whatever to a large portion of the delegates of this Convention, unless it is for a longer time than the period named in the resolution. I shall vote against any adjournment to the sixteenth of April; but it appears to me that this question of adjournment is settled and determined upon. If it is so, I am in favor of adjourning to the first of May, although the necessary consequence of any adjournment is to continue the sessions of the Convention through the warm seasons of the year. So far as I am personally concerned, I ask no favors of the Convention.

I have uniformly voted against adjournment, and I shall do so now, but, if there is to be an adjournment, I think it should be extended for the benefit of some of our western members. For my own part, professional engagements will require my absence during the last week of April and the greater part of the first week of May. I ask nothing, however, from the Convention, because my engagements are such that can be readily attended to; but I think if there is to be an adjournment at all, equal accommodation should be extended to all our members.

The question being taken, the yeas and nays were required by Mr. Corbett and Mr. Knight, and were as follow, vis:

YEAS.

Messrs. Achenbach, Addicks, Armstrong, Baker, Black, Charles A., Boyd, Brodhead, Brown, Cassidy, Church, Clark, Cronmiller, Curtin, Dallas, Davis, De France, Dunning, Elliott, Ellis, Ewing, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Hall, Hanna, Hay, Hazzard, Hemphill, Horton, Howard, Hunsicker, Kaine, Lamberton, Lawrence, Littleton, Long, MacConnell, M'Culloch, M'Murray, Minor, Mitchell, Mott, Niles, Patton, Porter, Purman, Purviance, John

N., Purviance, Samuel A., Read, John R., Reed, Andrew, Ross, Russell, Stanton, Struthers, Temple, Van Reed, Wetherill, J. M., Wetherill, Jno. Price, White, David N., Woodward, Worrell and Meredith, *President*—67.

NAYS.

Messrs. Alricks, Baily, (Perry,) Bardsley, Beebe, Bowman, Broomall, Campbell, Carter, Cochran, Corbett, Craig, Curry, Darlington, Dodd, Edwards, Knight, Lilly, Mann, Mantor, Newlin, Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Rooke, Simpson, Smith, Henry W., Smith, Wm. H., Turrell, Walker, White, J. W. F. and Wright—31.

So the amendment to the amendment was agreed to.

ABSENT OR NOT VOTING.—Messrs. Ainey, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bartholomew, Biddle, Black, J. S., Buckalew, Carey, Collins, Corson, Cuyler, Fell, Finney, Gowen, Harvey, Heverin, Landis, Lear, M'Allister, M'Camant, M'Clean, MacVeagh, Metzger, Palmer, G. W., Parsons, Pughe, Reynolds, James L., Reynolds, S. H., Runk, Sharpe, Smith, H. G., Stewart, Wherry and White, Harry—35.

The PRESIDENT. The queston is on the amendment as amended, that is striking out "Wednesday, the 16th," in the resolution, and inserting "Tuesday, the 15th."

Mr. LILLY. Mr. President: Was it not just dceided to put in "the 15th" instead of "the 16th?"

The PRESIDENT. It was decided to strike out "the second Monday of May."

Mr. LILLY. Mr. President: I thought this was an amendment to the second Monday in May.

The PRESIDENT. The gentleman has probably not been attending properly to the business before the House. The amendment was to adjourn to the first Monday of May. The amendment to the amendment was to insert the 15th of April, and that amendment has been carried. The question is on the amendment, which is to strike out the 16th of May and insert the 15th.

Mr. CLARK. Mr. President: If it is in order, I will accept the amendment.

The PRESIDENT. It is not in order at present.

Mr. MANN. Mr. President: I move to amend the amendment, by striking out all after the words, "28th instant," and inserting, "that the Convention will meet on the 10th of April, at the city of Harrisburg."

Mr. CORBETT. I second that.

The PRESIDENT. That is not an amendment to the amendment pending.

Mr. MANN. Mr. President: I understand I am in order to move to strike out and insert.

The PRESIDENT. There is an amendment pending, to which the gentleman's propositition is not pertinent; therefore it is not in order at present. The question is on the amendment to strike out Wednesday, the 16th, and insert Tuesday, the 15th.

The amendment was agreed to.

The PRESIDENT The question is now on the resolution as amended. The gentlemen from Potter is in order now.

ADJOURNING TO HARRISBURG.

Mr. MANN. Mr. President: I move to strike out all after the words, "28th instant," and insert, "that the Convention will meet in the city of Harrisburg, on the 10th day of April."

Mr. NILES. Mr. President: I would like to ask the gentleman from Potter if he knows that the Legislature will be through at that time. No day is yet fixed for their adjournment, as I understand it.

Mr. MANN. Mr. President: I understand that the Legislature has agreed to adjourn on the tenth of April, and I have no doubt that they will do so. I have made this motion not out of any hostility to Philadelphia, nor because we are not well entertained here. I do it because we are too well entertained to attend as faithfully to the duties of the Convention as we would if we were not under this outside attraction. I may be mistaken, but that is my view.

Mr. KAINE. Mr. President: I would like to know whether the gentleman was on the boat "Twilight" yesterday. [Laughter.]

Mr. MANN. I was, and I found a quorum of this body there. [Renewed laughter.] I found more delegates on the steamboat "Twilight" than are present in this Hall this morning, or any morning during the last two weeks. In fact I thought it was the largest collection of delegates I had seen for a long time.

Mr. KAINE. Mr. President: I take it that the gentleman was entirely mistaken. His vision must have been affected in some way or other that made him see double. [Laughter.]

Mr. MANN. Mr. President: These remarks always fall harmless. I have dis-

covered that when a man sees double himself he thinks everybody else does. [Laughter.]

But, sir, I am in earnest in this proposition. If we adjourn here it should be not to again meet in this city. When we adjourn let us meet in Harrisburg. I do not see the necessity for the adjournment, and would be willing to remain until the work of this Convention is done. I have been anxious to finish our labors, and had no thought of making any proposition to adjourn, but if we are to adjourn and go home and divert our attention from our work, I prefer that we re-assemble in a city which does not have so many attractions outside of the business of the Convention; and in order to accommodate some of the delegates from the interior, who think it exceedingly necessary to adjourn until the fifteenth of next month, I have brought in my motion to meet at Harrisburg on that day. Until that time the majority of the delegates here present seem determined to adjourn, and I earnestly hope that if we do adjourn it will be to meet again at a place where there will be no outside attractions, but where we will be able to keep our minds on our work until we get through.

I feel very confident that if we re-assemble in Philadelphia on the fifteenth of April that the hot weather will be upon us so soon that we will be compelled to adjourn again before our work is done. If we meet in Harrisburg we are in a somewhat cooler climate, and can prosecute our labors there until our work is completed. If we re-assemble here, it is as certain as that we meet, that we shall have to adjourn again, and our work will be prolonged into the winter. Then there will be great danger that the same fate will follow the work of this Convention that followed that of the Convention of the city of New York, and for the same reason. The Convention which assembled in the State of New York presented to the people of that State the very best constitution that has been framed for years, and yet the people rejected it for the sole reason that the delegates had prolonged their labors to so long a time that the people became disgusted with it.

That is the danger in this adjournment to the fifteenth of April, and then re-assembling in Philadelphia. It would compel another adjournment during the hot months, and will continue our session into the winter. I hope the motion will prevail.

Mr. LILLY. Mr. President: I desire to set myself right on this subject. Certain gentlemen have told me that I was one of those who always voted against adjournments, and then absented myself on Saturdays, when it is difficult to obtain a quorum. I have missed but three days since the Convention has been in session, and if you will look at the Journal on those days, you will see that there was nothing done. I think that if we were to adjourn over every Saturday we would get along faster than we have done. I have deemed it necessary to say this much in reference to myself, my record of attendance here being complete with the exception of three days.

Mr. CORBETT. I have not lost one.

Mr. DE FRANCE. Mr. President: About three weeks since I presented a resolution for an adjournment of two weeks on the first of April. From this resolution all the action had upon this subject has resulted. It was the desire of a majority of the Convention that such a resolution should be introduced, and to-day unquestionably a majority of the Convention is in favor of this adjournment. But it was not then contemplated, nor do I now desire to see this adjournment made to take our sessions away from Philadelphia. I do not want to adjourn to meet in Harrisburg. We are better situated here than we can possibly be there, have access to larger libraries, and this hall in which our sessions are held is one in which the health of the members of the Convention will be better preserved than it can be in the hall of the House of Representatives at Harrisburg; especially will this be the fact in warm weather.

This question should, therefore, be considered as a question of adjournment simply. That I favor. It is necessary for the accommodation of nearly all of our members, and of all of those from the interior. The city members can go to their offices at any time and attend to their business. The lawyers from Chester and Montgomery and the adjacent counties, and the gentlemen whose business calls them to Harrisburg and Washington, can readily reach those places and return in a day or two. But the members from a distance cannot reach their homes with this facility, and many of them have not been absent from this Convention since its first session here. To them this adjournment of two weeks at the first of April is necessary, and the Convention ought to

adjourn for that period, but ought not to connect with this question of recess any outside issue.

Then if we assemble in this city on the fifteenth of April, we will be in a condition to proceed systematically with our work. We have already directed that the standing committees that have not reported shall do so before the adjournment, and these reports can be carefully considered during the recess, so that when we re-assemble we will be prepared to give business due and proper diligence. I think it possible that, if we work hard, we will finish our labors by the middle of June.

One word more, sir. I do not anticipate any such result as has been supposed by the gentleman from Potter (Mr. Mann.) The people will judge wisely and rightfully of our action, and if we present them a Constitution containing wise, beneficial and salutory provisions, the people will endorse it without regard to the length of time occupied in its preparation. So far we have done well. We are doing well enough now, and if we have this little adjournment we will return prepared for thorough and continued work until our labor is done. Therefore, I am in favor of adjourning until the fifteenth of April.

The PRESIDENT. The Chair will observe that the only question before the House is the question of meeting, after the adjournment, at Harrisburg. There is no question of the time of adjournment before the Convention.

Mr. CRAIG. Mr. President: When this Convention was sitting at Harrisburg it determined, by an almost unanimous vote, that all its sessions held after the seventh of January should be held in the city of Philadelphia. The Convention adjourned to the city of Philadelphia, although some of us voted in the negative. For one, I voted against that proposition, because I believed that if the Convention was brought here, it meant play and not business. It took me and many others one hundred and six miles further from our homes than the city of Harrisburg. But we adopted a resolution to meet in this city, and, on the faith of that action, we induced the city of Philadelphia to purchase this building at a large cost, and to fit it up at an expense about which much complaint has been made in this city. Now, are we going to be guilty of child's play again, and move back to Harrisburg? The very fact which I believed would take place, if we came to this city, has taken place; and ever since we have met in Philadelphia some thirty to forty members of this Convention have been absent all the time; and of those who have remained here attending to their business, nearly one-half have voted for every adjournment, no matter how long it has been, nor how untimely.

The history of this Convention is that it does not design to do work, and now it is asked that we adjourn again, and that we do not perform the contract which we have made with the people when they sent us here. If we adjourn until the fifteenth of April, we are necessarily pushed off that much further into the warm weather of the summer, and we ought to remain here and work. We have determined that the reports of the standing committees shall be all made, if possible, before the coming adjournment. Having done this, by adjourning one week, as I think we might, but which I would rather not do, we can get back here, hold two sessions a day, finish our work, and get done in some moderate time before the hot weather sets in. Then, when we adjourn again, we can adjourn entirely.

I am opposed to this whole matter.

Mr. MANTOR. Mr. President: I came to this city on the fifth day of last January, and took my seat in this Convention. When I left the city of Harrisburg it was with the hope that this question of adjournment would never again trouble the Convention. We were told, not only by gentlemen from Philadelphia, but by gentlemen living in the vicinity of this city, that if we should hold our Convention here, we would have a quorum from day to day, and see the work before us going on without interruption. But since I have been here, I have made the same discovery that other gentlemen have made in respect to this House. And that is: That we have sat here from day to day, and many days, seemingly, without a quorum, or at times of our sessions without a quorum. Now, sir, I am not prepared to go back to the city of Harrisburg, but I give notice here in my place—although I trust no man will be frightened by it—that when I shall return after this short adjournment which has been proposed here, if the quorum is not hereafter present during the hours of our session, I will vote with any majority to go back to the city of Harrisburg. I do not believe, as some gentlemen believe, that the city of Philadelphia has wined and dined this Convention to death. It is true, that we

have received at the hands of the Philadelphians very great courtesies, and we have accepted them, and I am not prepared this morning to vote to go back to Harrisburg; not because the people of Philadelphia have treated us so kindly, but because I would like to see the work consummated here. I have come into this hall for the purpose of helping to consummate this work, and, in my humble way, I have sat here from day to day, and done my duty.

I hope that the Convention will indulge me in saying that I have been opposed to any adjournment whatever all the time, and shall oppose an adjournment. This morning, when this question was brought up in this Hall, I was in hopes that the adjournment was only to be from the twenty-eighth until the eighth. In that time gentleman would have an opportunity to go to their homes. There is no delegate on this floor who travels more miles to reach this Convention than I do. There are, perhaps, a great many gentlemen who suffer more, in a pecuniary point of view, or in their business, than I do, and there are, perhaps, a great many who do not, perhaps, suffer as much. I desire while I am a member of this body to do what I can to facilitate its work, and to bring our labors to a speedy completion and place them before the people. I believe that it was stated by the gentleman from Potter, (Mr. Mann,) that the Convention of the State of New York lost its excellent work simply by its adjournment, and I have been told so by citizens of that State who had something to do with it.

I hope, therefore, that if this Convention will determine to meet here and work with a will, and work until its labors are done, I hope it will be the entire aim and object to do so. I would vary from the pledge that I have made to myself to vote no, and would vote aye, in order to give gentlemen an opportunity to go home and attend to this business, if I thought that it would have its desired effect, but I am afraid it would not. I believe as the warm season approaches that this Hall will not be so comfortable as the Hall of Representatives at Harrisburg. I simply rose in my place to say that if the amendment is not carried in the Convention this morning, when we return again to this Hall I shall assuredly vote to go to the city of Harrisburg, unless the members attend to their business.

Mr. CURRY. Mr. Chairman: I do hope that the motion now before the Convention will not pervail at this time. The Legislature may continue its sessions until the fifteenth of April, and if we shall adjourn to meet in Harrisburg at that particular time we may find it impossible to get a room sufficiently large to entertain this body.

In relation to this Hall, I would say that if any of the members of this Convention have a right to complain it is the few of us who occupy the rear seats, where it is almost impossible for us to hear, and would be very glad if we could be transferred to some other hall, where we could have the privilege of hearing what members have to say, and at the same time be recognized by the Chair. In view of the facts, however, as they now exist, I do hope that the resolution as now before the Convention will not prevail.

The PRESIDENT. The question is upon so amending the resolution as to provide for the meeting of the Convention at Harrisburg after the recess.

The amendment was not agreed to.

The PRESIDENT. The question is upon the resolution as amended. It will be read.

The CLERK read:

Resolved, That when this Convention adjourns, on the 28th inst., the time for the assembling of the Convention shall be extended to Tuesday, the 15th of April next, at twelve o'clock M.

The yeas and nays were required by Mr. D. W. Patterson and Mr. D. N. White, and were as follow, viz:

YEAS.

Messrs. Achenbach, Addicks, Alricks, Armstrong, Baker, Black, Charles A., Bowman, Boyd, Brodhead, Cassidy, Church, Clark, Cronmiller, Curry, Curtin, Dallas, Davis, De France, Dunning, Elliott, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Hall, Hanna, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Kaine, Long, MacConnell, M'Murray, Mitchell, Minor, Mott, Newlin, Palmer, H. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Purviance, Sam'l A., Read, John R., Reed, Andrew, Ross, Simpson, Stanton, Van Reed, Wetherill, J. M., Wetherill, John Price, Woodward, Worrell and Wright—61.

NAYS.

Messrs. Baily, (Perry,) Barclay, Beebe, Broomall, Brown, Campbell, Carter, Coch-

ran, Corbett, Craig, Darlington, Dodd, Edwards, Ellis, Ewing, Hay, Horton, Howard, Knight, Lawrence, Lilly, M'Culloch, Mann, Mantor, Niles, Patterson, D. W., Rooke, Russell, Smith, H. G., Smith, Henry W., Smith, Wm. H., Struthers, Temple, Turrell, Walker, White, David N., White, J. W. F. and Meredith, *President*—38.

So the resolution was agreed to.

ABSENT OR NOT VOTING.—Ainey, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Biddle, Black, J. S., Buckalew, Carey, Collins, Corson, Cuyler, Fell, Finney, Gowen, Lamberton, Landis, Lear, Littleton, M'Allister, M'Camant, M'Clean, MacVeagh, Metzger, Palmer, G. W., Parsons, Pughe, Reynolds, James L., Reynolds, S. H., Runk, Sharpe, Stewart, Wherry and White, Harry—34.

INHERITANCE TAX.

Mr. BROOMALL offered the following resolution, which was read and referred to the Committee on Revenue and Taxation:

Resolved, That the Committee on Finance, Revenue and Taxation inquire into the expediency of prohibiting the Legislature from imposing any tax upon inheritance unless the same be imposed equally upon all inheritors, lineal as well as collateral.

SPECIAL JUDGES.

Mr. BROOMALL also offered the following resolution, which was referred to the Committee on the Judiciary:

Resolved, That the Committee on the Judiciary inquire into the expediency of reporting the following provision:

The Legislature shall provide by law for the election, by a vote at large throughout the State, of any number of judges not exceeding six, who shall be assigned from time to time, by the Supreme Court, to hold court in the several judicial districts in cases where the judge is interested or unable to act, or where the business of the district requires additional judicial aid.

THANKS TO HON. E. C. KNIGHT.

Mr. J. N. PURVIANCE offered the following resolution, which was read:

Resolved, That the thanks of the Convention are hereby tendered to the Hon. E. C. Knight, president of the American Steamship company, for the courteous invitation which it was his pleasure to extend to the members of this Convention yesterday, to be present on board the steamship *Twilight* on the occasion of the launch of the steamship *Indiana;* and the Convention expresses its hearty desire for the entire success of the enterprise.

The question being, shall the Convention proceed to the second reading and consideration of the resolution, it was agreed to.

The resolution was then unanimously agreed to.

LEAVE OF ABSENCE.

Mr. WOODWARD asked and obtained leave of absence for Mr. Gowen for a few days from to-day.

EVENING SESSIONS.

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

Resolved, That on and after Tuesday, April 15, this Convention will hold evening sessions from seven P. M. until nine P. M.

The question being, shall the Convention proceed to the second reading and consideration of the resolution, a division was called for, and resulted: Affirmative, forty-nine; negative, twenty-eight.

So the resolution was again read.

Mr. LILLY. Mr. President: I move to postpone the further consideration of the subject for the present.

On this motion a division was called for, and resulted: In the affirmative, forty-eight; in the negative, forty-four.

So the motion was agreed to.

REPORT OF THE COMMITTEE ON THE JUDICIARY.

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

Resolved, That fifteen hundred copies of the report of the Committee on the Judiciary be printed for the use of the Convention.

The question being, shall the Convention proceed to the second reading and consideration of the resolution, it was agreed to.

So the resolution was again read.

Mr. ARMSTRONG. Mr. President: The report of the Committee on the Judicary is now ready to be presented to the House, except that there are some verbal corrections, mere typographical errors, which it will be necessary to correct; and the report will doubtless be presented to the House to-morrow morning. As the number to be printed, as contemplated in that resolution, is larger than the regular number, I did not feel at liberty to order so large a number to be printed without the direction of the Convention. The general

impression of members of the Convention, so far as it has come to my knowledge, is that at least fifteen hundred copies should be printed, and if the Convention desires that number the order should be given now, so as to save expense if other copies should be wanted, as the type will be distributed as soon as the first lot is printed.

Mr. WOODWARD. Mr. President: I have no objection whatever to the motion of the chairman of the committee, except that I think the number is rather unusually large for one hundred and thirty-three members of this body. What they will do with so many copies I have not the least idea. I have no objection to their having them, however.

The purpose for which I rose was to say that the report of the Committee on the Judiciary is not to be a unanimous report by any means. There will be one, if not more than one, minority report from that committee. So far as I know, the minority report is not quite ready to be presented, but if the Convention prints the majority report, I wish they would include all minority reports as well. I make this statement for the information of the Convention, as I suppose everybody will want a few copies of the minority reports, as well as that of the majority. I therefore move to amend the resolution, by adding all minority reports.

Mr. S. A. PURVIANCE. Mr. President: I do not deem it necessary that the minority reports should be embraced in this order. I believe it is very well settled that the minority report will be very brief and simple, and dissenting from that part of the report of the majority that relates to one subject, and, probably, will not occupy half a day to decide. I therefore think that the Convention can get along very well without the printing of the minority report.

Mr. LILLY. Mr. Chairman: I desire to say that if this committee wishes to make this a suggestion for the Convention, I have no objection; but the matter is not properly before the House until the report of the committee is presented. I perfectly agree with the gentleman from Allegheny (Mr. S. A. Purviance.) There is no such thing as a minority report. It merely consists of the views of a minority of the committee.

Mr. KAINE. Mr. President: I hope the suggestion of the gentleman from Philadelphia, (Mr. Woodward,) in regard to printing the minority report, will not receive any consideration, or at any rate, that it will not be adopted. The report of the majority of the Judiciary Committee is now ready to be printed and made to this body. Those of the minority of this committee who design making minority reports do not, for a moment, desire to retard the presentation of that report to the Convention, nor its printing and distribution among its members. So far as I am concerned, the report of the minority will be very short, and I do not think that any member of the committee in that minority who desires to sign the minority report, cares any thing about its being printed at all. Therefore, I hope the gentleman will withdraw his suggestion in that regard, and that the suggestion of the chairman of the committee (Mr. Armstrong) will be adopted. I do not care anything about the number, whether it is five hundred, or a thousand, or fifteen hundred; but I desire the majority of the committee to have whatever number they would like printed.

Mr. LAWRENCE. Mr. President: I have a very great respect for the chairman of this committee and for all the members of it, but I cannot see why we should adopt a resolution in the case of that committee which does not apply to any other committee. If the chairman of that committee wants to have his report printed he can go to the agent of the Printer here and send for as many copies as he desires in the same way that other committees have done. He can correct the report after it is sent to him, and then have it re-printed if he chooses, just as the Committee on Declaration of Rights has done, and as other committees have done. I do not see why the Convention should be burdened with giving instruction on the subject at all. Let the gentleman make the regular report, and let the regular course be pursued with regard to it. If he had his regular report ready to submit to the Convention now, it would be another thing, but it seems he has no report here. The gentleman will find, as the other committees have found, that when these reports are printed they will need many corrections, and I suggest to him that the proper way would be to have it set up and printed, and sent to the committee, and let them have it corrected as the other committees have done. Then let it be submitted to the Convention when the committee is finally ready to report.

Mr. ARMSTRONG. Mr. President: The chairman of this committee, and perhaps

the committee itself, seems to have been placed in a false light by this discussion. Neither the chairman nor the members of that committee have any personal desires, whatever, on that subject. The chairman of the committee, and the committee, will be entirely satisfied if this Convention will print only one hundred, or less than one hundred, or more than one hundred, if they please. I have offered the resolution, however, at the suggestion of members of the committee, and of the Convention, who regard the report as important, and one which they have repeatedly expressed their desire to circulate freely among the lawyers and judges of their respective districts. I would rather withdraw the resolution and let the report of the committee stand in the same way as reports of other committees on the general order of the Convention, than have the least disposition to resistance. If there is any disposition to oppose its adoption I certainly will withdraw it, for we have no special desire upon the subject any further than to state that I have the report of the committee in my hands, and we expect it to be printed. Upon examination I find that there are some mere verbal corrections which are necessary to be made, and I have telegraphed the Printer at Harrisburg to delay the printing of any further copies of this report until these corrections can be made.

Mr. BRODHEAD. I would like to ask the gentleman whether the reports of the committee can be printed in time to be placed in the hands of members before the adjournment on Friday.

Mr. ARMSTRONG. I think the whole number of copies can be printed by to-morrow morning.

Mr. NILES. I hope the gentleman from Lycoming (Mr. Armstrong) will not withdraw this resolution. If there is any one proposition that ought to pass this Convention, it seems to me it is the resolution which has just been offered by him, and I am only surprised that any delegate should make any opposition to it. I make these remarks in support of the resolution, in order that we may be able to take copies of the reports home with us, to distribute them among the members of the bar and the judges of our courts. They will, without a doubt, be deeply interested in the subject, and we will thus have an opportunity to learn their views. I hope, therefore, that the resolution will pass.

Mr. WOODWARD. Mr. President: I do not know that this resolution should create so much discussion. It has been suggested that the report of the minority should be printed along with the majority report of the committee. It is certainly a usage common to all parliamentary bodies, and I cannot see why the majority report of this committee is so sacred that the minority cannot be heard. Can it be possible that it is the intention of the Convention to take up the majority report, and, without debate, adopt it, before the minority has an opportunity of being heard? I confess I cannot believe this action will be taken, when I tell the Convention that there is a carefully prepared minority report now ready to be presented for their consideration.

The gentleman (Mr. Armstrong) says that he hopes no such report will be presented, and he begs me to withdraw the suggestion I offered. I have not heard from any other member of the Convention, but I presume it is the prevailing sentiment, and therefore I will withdraw my amendment.

Mr. HAY. Mr. President: I think this is a very important matter, and I think the minority report should certainly be printed.

Mr. WOODWARD. I withdraw my amendment.

Mr. D. W. PATTERSON. I renew the amendment.

Mr. ARMSTRONG. Mr. President: I desire to say, in connection with the amendment offered by the gentleman from Philadelphia, (Mr. Woodward,) that the committee does not object in the slightest degree to the printing of what the gentleman calls the minority report of the committee for the consideration of this Convention. It is doubtless right that it should be printed, but I think it would be entirely inappropriate to print it in connection with the majority report. The gentleman from Philadelphia (Mr. Woodward) proposes to amend my resolution, which is to print the report of the committee. There can be no minority report. There can be only one report of the committee, and when the minority report is presented it is merely called so by courtesy, and if the gentleman desires, or any other member of the committee, to print any number of the suggestions which they have to offer to the Convention, I have not the least objection. I do not, however, desire that report to go forth as

part of the report of the Judiciary Committee.

Mr. HAY. I desire to call the gentleman's attention to the fact that the minority, as well as the majority report of the Committee on Legislation, was printed and laid before the members of the Convention.

Mr. KAINE. I think the gentleman from Allegheny (Mr. Hay) is mistaken.

Mr. ARMSTRONG. I did not so understand it. I would like to inquire of the Chair whether I am correct in supposing that the gentleman from Philadelphia (Mr. Woodward) has withdrawn his proposed amendment?

The PRESIDENT. The amendment was withdrawn, and was then renewed.

Mr. ARMSTRONG. Mr. President: I will withdraw the resolution, and let the report stand as it is.

The PRESIDENT. The resolution cannot be withdrawn. The Convention has proceeded to its consideration after it has been twice read.

Mr. D. W. PATTERSON. Mr. President: As I renewed the motion of the gentleman from Philadelphia, (Mr. Woodward,) I merely wish to state that I did so because I desired to obtain a vote of the Convention upon it. I cannot understand why the majority of that committee are so sensitive in regard to this question, or why they desire to keep the light from the members of the Convention who are not on that committee. I am not aware of the nature of this report, but I understand it is very revolutionary in its character, and, in fact, changes the entire system of our judiciary. I think therefore it is certainly proper and magnanimous to allow the minority report to be printed in connection with the majority report, in order that we may be possessed with the views of all the members of that committee.

The PRESIDENT. The Chair asks leave to make a few remarks in connection with this question, because it seems as if some confusion is likely to arise. In the resolution which has been offered the report is called the report of the Committee on the Judiciary. No doubt it is intended to be a report of an article by the committee, and if the phraseology of the resolution were so changed that the article reported by the committee should be printed, that is all that ought to be printed in bill form. That is a question that has been well settled, and all trouble would be avoided if the gentleman who offered the resolution to print the report of the committee would connect with that the printing, in journal form, of the minority report.

Mr. ARMSTRONG. I will be very glad to accept the suggestion of the Chair, and if it is in order I will move to modify the resolution.

The CHAIRMAN. The resolution can be amended. Is the pending amendment withdrawn?

Mr. D. W. PATTERSON. I withdraw the amendment with the understanding indicated by the Chair.

Mr. ARMSTRONG. Mr. President: I now make a motion in conformity with the suggestion of the Chair.

The PRESIDENT. It is moved and seconded to amend the resolution by making it read, that fifteen hundred copies of the article to be reported by the Committee on the Judiciary shall be printed, and that a like number of the minority report from that committee shall also be printed in journal form.

Mr. MACVEAGH. Mr. President: Before that motion is put I desire to say that we cannot vote upon it in that form for a very simple reason, and I have not yet heard any more satisfactory reason for printing this immense number of the reports in bill form, especially the report of the commitee, than Judge Woodward's alternative scheme. I think the Convention will see when this matter comes up for decision that it is almost as important to have an alternative scheme in a report, perhaps opposed to the report of the committee, but that an alternative article is almost as important to be printed in bill form as the original report, if it is to be considered at all in juxtaposition with it. In addition to this I do not see the necessity of printing one thousand five hundred copies of this report. I do not know what the Convention may decide to do in the matter, but I cannot say that it is desirable to make a special order upon this subject.

Mr. COCHRAN. Mr. President: I do not feel very much encouraged to say anything upon the subject of printing in a question of this character, because it seems to me that the Convention has determined that they will print everything in that line that is proposed, but I do say I concur entirely in the idea that it is unnecessary to print this report in any other form than other reports of committees have been printed. If this report possesses that large general interest which is said to be attached to it, it seems to me it will

reach the public as speedily through the press as by any other means. I know nothing of the contents of either the majority or the minority reports, but I believe nearly every report which has been made to this Convention by our standing committees have been published *in extenso* in the public press. I cannot therefore see why we should incur this large expense in printing these reports merely for the purpose of scattering a few copies among a single class of our people. I think it would be a great deal better if we should abide by our standing order, and print only the same number of these reports that we print of all other reports, and if it is a subject that attracts general interest, the press of the State will see that their readers possess all the necessary information,

Mr. WALKER. Mr. President: My objection to printing such a large number of these reports is because I do not know, and the Convention does not know, what these reports are. If we order the printing of fifteen hundred copies of the majority report, we will, in a measure, be endorsing the report, and if it is of the revolutionary character I am told it is, I do not propose to vote for its printing by way of endorsing it. This is my objection against sustaining the motion that has been made.

I think the resolution had better be withdrawn, and when the article is reported it can come before the Convention in the regular way, and when we see it we can then commit ourselves to its support or not, just as we may deem proper.

Mr. BOYD. Mr. President: I am not aware that there is anything revolutionary at all in the character of this report. I think I should know something in regard to it. I was present during most of the sessions of the committee, and certainly am familiar with this report. I think it is hardly worth while to think so much about that which the members of this Convention have so very little information. The report of the committee has been in different shapes, one way and another. It has been modified and changed very much from its original shape, and probably it has been this fact which has led some gentlemen in the Convention to form an idea that there is something revolutionary in its character. I think these gentlemen will find their mistake when they come to read the report itself.

I desire, for one, that fifteen hundred copies of the report should be printed, and for this reason: There are one hundred and thirty-three members in this body, and this number of copies will allow ten to every member. I hardly think any of our members will require more than that number, but I am very certain that there are more than ten or fifteen lawyers in every county who will desire to read the report. It is certainly a subject in which every lawyer who is engaged in active practice feels a deep interest. Every judge will want a copy, and when fifteen hundred copies come to be distributed it will be found that they will not extend very far. I entertain no objection whatever to the printing of a like number of the minority report, in order that the views of all the members of the committee may be fully ascertained. The cost will be but trifling, and I hope such a consideration will not deter gentlemen from voting in favor of the proposition of the chairman of the committee.

Mr. KAINE. Mr. President: I do not exactly understand the amendment which was proposed by your Honor in regard to printing the report of the Committee on Judiciary. It is very well understood that a minority of a committee cannot report an article, and all that is intended, so far as I am concerned, by the minority of that committee, is to dissent from the article reported by the majority, and to give some reasons therefor. I think that is all that ought to be done in reference to the report of the minority of a committee on a question of that kind. Therefore I do not see any necessity for making any provision for the printing of the minority reports at all, except such as is necessary for their appearing on the Journal. That, I take it, will be done as a matter of course, and the minority reports will appear there without any action of the Convention on the subject. That is all I desire; that, I think, is all the Convention could desire, and it is all that ought to be done.

Mr. WOODWARD. Mr. President: I wish to correct an error into which some of the members of the Convention have fallen. In the Convention of 1837, the late Francis Hopkinson was chairman of the Committee on Judiciary. He made a majority report, and at the same time that he made his majority report, the minority made a minority report. They were both printed, and there was no sensibility manifested by Judge Hopkinson on that occasion,

and when the debate came on, the minority report was moved as an amendment to the report of the majority. Judge Hopkinson spoke three days upon the subject, and the Convention adopted the minority report, and still there was no sensibility on the subject.

Now, the gentleman says he never heard of a minority report being printed. That occurred, sir, in the last Convention, as you very well know, and I think it is a precedent for us. Whence comes, to-day, this excessive sensibility about a minority report? As I said, when I was up before, it is past my comprehension. I confess I cannot understand it. I did, from respect for my friend, the chairman of the Committee on Judiciary, (Mr. Armstrong,) withdraw my abominable amendment—I was told it was abominable in effect—and I am sorry that my friend, the gentleman from Lancaster (Mr. D. W. Patterson) has renewed it. I have no control over it, or I would withdraw it again.

Mr. ARMSTRONG. Mr. President: I do not think it proper to pass by in silence the statements which have been made here, that there is a sensitiveness on the part of the chairman of the Committee on Judiciary in regard to the minority report. On the contrary, it would be extremely satisfactory to the majority of a committee to have the minority report printed and published to the largest extent; and the wider the better.

As to the revolutionary character of this report, the gentleman from Lancaster (Mr. D. W. Patterson) has been greatly misinformed. Instead of being revolutionary, he will find that there is close adherence in this report to the present judicial system of Pennsylvania. It is not materially changed, and is only supplemented in such few particulars as will improve it as a system. It is not right that an impression should go out from this Convention that the Judiciary Committee proposes to revolutionize the judicial system of the State. It is a total mistake from top to bottom. It is a report which adheres closely to the judicial system of the State as it is now ——

Mr. TURRELL. Mr. President: I rise to a point of order. The gentleman from Lycoming is discussing a report that is not before the House.

Mr. ARMSTRONG. Mr. President: In reply to the point of order, I will state that I am simply answering debate which has called in question the character of that report.

The PRESIDENT. The Chair is of opinion that the gentleman from Lycoming is in order. He is discussing the question of printing and publishing a report which the House has not seen, and unless he is allowed to state the contents of it, it will be difficult for the members to judge whether it ought to be printed or not.

Mr. ARMSTRONG. Mr. President: I hope again, and will express it, that unanimous consent may be given, that this whole matter may be withdrawn from the further consideration of the Convention.

Mr. BROOMALL. Lay it on the table.

Mr. ARMSTRONG. I do not wish it laid on the table, because it could be called up again. I wish the whole subject withdrawn from the discussion of the Convention, that no suggestions may be made as to the character of the report of the Committee on the Judiciary, or any sensitiveness on the part of that committee concerning it.

The PRESIDENT. The gentleman from Lycoming asks unanimous consent to withdraw his resolution. Is there any objection?

The Chair hears none. Unanimous consent is given, and the resolution is withdrawn.

THE OFFICIAL DEBATES.

Mr. STRUTHERS. Mr. President: I offer the following resolution:

Resolved, That the Committee on the Judiciary be instructed to inquire and report whether the Printer is justified by his contract in repeating in the record of Debates, the Journal of proceedings of the Convention, and whether the Convention have power to prohibit such double printing.

The resolution was read a second time.

Mr. LILLY. Mr. President: I move to amend, to strike out the "Committee of the Judiciary," and insert, the "Committee on Printing."

Mr. STRUTHERS. Mr. President: I hope the amendment will not prevail. It appears to me the proper committee to inquire into this subject would be the Judiciary Committee. This matter came to my attention only two or three days ago. I had been paying no attention to the Debates, and had not looked into the record of Debates at all, but when I came to look there, I find there is a repetition of nearly the whole of the Journal published with the Debates, which I had understood was not to have been. I see no necessity for it whatever. I conversed with some

gentlemen, and one or two, or more, suggested that they thought the contract with the Printer allowed him to do it. The question arises, then, whether there has been an unfortunate contract made with the Printer, which justifies him in this double printing of the proceedings of the Convention, and it appears to me, therefore, that the proper committee to refer it to is the Judiciary Committee.

I hope, sir, the amendment will not prevail, and that the original resolution will pass.

Mr. LILLY. Mr. President: The reason why I moved the amendment was, that the Committee on Printing is composed, I believe, of five members—four of whom are lawyers. They made the contract with the Printer, they know what that contract is, and they are eminently qualified to settle this question, or any other that may arise in reference to their department. They were selected to do this duty, and the Committee on the Judiciary was not. The duty of the Judiciary Committee, I believe, is to frame a general article for the Constitution of the State, and not to decide law questions for this body. Consequently I think that the Committee on Printing ought to have the consideration of this subject. Let it be referred to them, and this question of double printing, if it be a question, looked after.

Mr. COCHRAN. Mr. President: With regard to this question, I say very reluctantly that it does not seem to me to be a question between the Convention and the Printer. It really relates to what matter should be reported by the official Reporter. The arrangement was that the matter should be furnished by the official Reporter every day to the Printer, and he was to print it. Now, the Printer cannot be expected to go over all that copy to see what may be proper matter to be published in the Debates or not. Whatever is reported is given, as I understand it, to the Printer, and the Printer prints the copy as it is furnished to him. Now, if there is anything wrong in the matter, it is with the official Reporter, and not with the Printer.

The Convention the other day, by vote, adopted a resolution which I resisted, directing certain matter to be reported and printed, which I do not believe has any place in the Debates. If there is anything wrong in this matter, it must be in what is reported and given to the Printer, not in the action of the Printer in taking the copy that is sent him and printing it. I do not see, therefore, that it is a question of what the Printer's contract is at all. It is really a question of what the Reporter should report.

Mr. BOYD. Mr. President: Is it in order to move to lay this resolution on the table?

The PRESIDENT. Certainly.

Mr. BOYD. Then I make that motion, sir.

On the question of laying the resolution on the table, a division was called, which resulted, twenty-two in the affirmative. Not being a majority of a quorum, the motion to lay on the table was lost.

The PRESIDENT. The question is upon the amendment, to strike out the "Committee on the Judiciary," and insert the "Committee on Printing."

On the question of agreeing to the amendment, a division was called, which resulted: Forty-two in the affirmative, and twenty-four in the negative. So the amendment was agreed to.

The PRESIDENT. The question is upon the resolution as amended.

On the question of agreeing to the resolution, as amended, a division was called, which resulted fifty-five in the affirmative, and none in the negative. So the resolution as amended was agreed to.

REPORT OF JUDICIARY COMMITTEE.

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

Resolved, That the Committee on the Judiciary be instructed to report to-morrow morning, and that one thousand five hundred copies of the report, and also the same number of any other report which may be offered, shall be printed and delivered to the members of the Convention on Friday morning next.

Mr. BRODHEAD. Mr. President: I offer this resolution for the sake of getting that report.

The PRESIDENT. What order will the House take on this resolution?

Mr. JNO. R. READ. Mr. President: I move that the Convention proceed to the second reading thereof.

The motion was not agreed to.

Mr. HAY, from the Committee on Accounts and Expenditures, presented the following report, which was read:

The Committee on Accounts and Expenditures respectfully report the following resolution:

Resolved, That a warrant be drawn in favor of D. F. Murphy, official Reporter

of the Convention, for the sum of $5,000, to be accounted for by him in the settlement of his accounts.

The resolution was again read and unanimously agreed to.

LEAVE OF ABSENCE.

Mr. DUNNING asked and obtained leave of absence for Mr. Pughe.

THE MILITIA.

Mr. PORTER. Mr. President: I move that the Convention now resolve itself into committee of the whole for the purpose of considering the article reported by the Committee on Militia.

The motion was agreed to.

So the Convention, as committee of the whole, Mr. S. A. Purviance in the chair, proceeded to the consideration of said article.

The CHAIRMAN. The first section will be read.

The CLERK read:

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; the Legislature shall provide for maintaining the militia by direct appropriation from the State Treasury.

Mr. PORTER. Mr. Chairman: It will, perhaps, be proper for me to state the reasons which actuated the committee in presenting this report. The article as reported is brief, and in the remarks which I will make I shall endeavor, also, to be very brief. The first question that arises in this matter, is the necessity of recognizing a military organization in our State. It is true that under the Constitution of the United States, this power might be exercised by the general government; but the history of our State, and in fact all the States of this Union, has been uniform in the matter, and it has been left to the individual States, and it is right that it should be so. It will be an unfortunate day for the individuality and the sovereignty of the States when this power of local defense or local government, and of sustaining the civil process of the laws, shall be taken away.

The late war, I think, demonstrated to all the people of this Commoowealth the necessity of haivng a military organization. The south far excelled us in military spirit when the war broke out, and the consequence was that they were able at the beginning to obtain decided advantage over the north. States like Massachusetts and New York, where a good military system prevails, were enabled at the very outstart of the war to throw forces into the national capital, and thus rendered valuable aid. In the career of Governor Curtin, now an honored member of this body, no act in his administration, as Governor of this State, reflected more credit upon him than his foresight in organizing the Pennsylvania Reserve Corps. That corps, after the Bull Run disaster, he was enabled to throw into the city of Washington, and although it was not thoroughly disciplined, yet it was armed and organized in such a manner that it did effective service in that dark day of our history.

The recent trouble at Scranton, and the still more recent one at Williamsport, I think establishes beyond a doubt that there is a necessity for recognizing a military organization in the fundamental law of our State. It has been the uniform history of our State since its organization in 1790, down to this time. The first part of the section reported by the committee is: "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." This is the exact language of the Constitution of 1838. We have in the report that we have made authorized all this power to be vested in the Legislature, where it properly belongs, because, sir, if there is one mistake that we, as a Convention, are committing more than another, it is that, instead of establishing a Constitution for the State, we are enacting a code of laws, and in relation to the military organization of our State, it is a matter that should be left to the Legislature. Hence, the committee have reported, referring the matter to the Legislature.

It has been left to the Legislature to determine when they will organize the militia, or whether they will organize it at all. The manner of organizing has also been left to the Legislature. They can determine whether men from eighteen to forty-five years of age shall be compelled to do service, or whether it shall be from twenty-one to sixty, or whether they will exempt judges or the clergy or men who have conscientious scruples against war. The whole matter has been remitted to the Legislature, and they have full control over it.

The great objection to the Constitution of 1838 made by the society of Friends,

was with regard to the latter clause of it, which reads thus:

"Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service."

This was considered by the Quaker element as improper and unjust to them. Whilst you would relieve them from performing this military duty, by reason of their conscientious scruples, yet you would make them pay, in lieu thereof, a certain amount of money. I do not agree with their view in the matter, that this was to be regarded as a fine or penalty. I look upon it simply as a tax, and if this militia is of any use at all it is to protect the person and property of the individual, and they could as well pay this military tax as they could pay for sustaining the judiciary, in which, I believe, they take no part. But this has been removed, and this feature, so obnoxious to this very respectable class of citizens, is proposed to be stricken out of this Constitution.

Before our committee the representatives of the society of Friends claimed that when they went to the Legislature and presensed their petition to be exempted from service, that the Legislature was willing to do so, but they were met with this constitutional restriction.

Now, I do not have any faith in the Quaker doctrine, in regard to war. I look upon war as a calamity; but I am not prepared to endorse the idea here that all wars are anti-christian. I do not believe in that doctrine. I believe that when our fathers, in 1776, declared this land free, and pledged their lives, their fortunes, and their sacred honor, for the defense of it, and went forth, and for seven years battled bravely for their independence, and established the government under which we live, there was nothing anti-christian in it. Neither do I believe the war of 1812 was anti-christian, when the American people rose up and asserted their manhood and honor, and resisted English tyranny and usurpation. Nor do I believe the late war which passed over our country was anti-christian, when our nation saw its freedom and civil liberty threatened by treason, and it was shaken to its very centre, when men, without respect to party or creed, rushed to the defense of the national government. I believe wars are a necessity, and instead of being anti-christian, are, at times, christian. I believe, sir, that the nation that will stand by and not defend her honor, does not deserve the name of nation. I believe the man who will allow his honor to be assailed, his life attacked, or the virtue of some one dear to him assailed, and who will stand by and cry peace, is less than a man. The same rule which governs the great laws of self-preservation in the man, governs it in the nation and there are times in the history of a nation, when every citizen of a nation, no matter whether he have conscientious scruples or not, has a right to defend his country. As the government owes protection to the citizen, so the citizen owes allegiance and submission to the government, and the government at times, when this emergency does arise, has a right, not only to the property, but to the life of the individual. Hence, sir, in this Constitution, I would put no clause exempting any man from performing military service. I admit that the Quakers are honest and conscientious in their belief, and I would exempt them in time of peace from service, as they can be exempted under this article, and I would exempt them in war, until the necessity arose, and then I would make the Quaker fight as well as I would the cowardly craven who shrinks from his duty through fear.

The second part of the section provides, "and the Legislature shall provide for the maintaining of the militia by direct appropriations from the State Treasury." Heretofore the militia have been sustained by a commutation tax of fifty cents, and I believe, in the city of Philadelphia, of one dollar. The tax has been found very troublesome, being so small that there is great trouble and annoyance in collecting it. It has not answered the purpose. The act of 1858, under which the militia was organized, authorizes companies to be formed in different parts of the State, and these companies were to receive, I believe, six dollars and a half as soon as uniformed, and six dollars and a half more after serving six months. I know that in the section of country from which I come quite a number of companies were organized on this plan, and when they came to demand pay for their uniforms, there was no money to be had. That law also directed the commissioners of the different counties to provide an armory for the safe-keeping of the arms furnished by the State, and when they asked the commissioners to provide them with armories they were refused, as they had not the necessary funds. The section, as now reported, will correct that evil, and, in addition to that,

if this militia, as I have said before, is of any use, it is to be used in protecting the person and the property of the individual. Why, therefore, should not every man pay for that service? And why the necessity of imposing this tax alone upon men who are liable to military duty, as under the present law? Should not every person who receives the benefit of protection to his person and property pay for it?

In addition to this, there are great corporations having interests all over the State, which must, whenever necessary, be protected by military power. Why should not these corporations be required to pay their proportion to sustain the militia? By providing for this, and taking away this obnoxious commutation tax, and placing the expense equally and fairly upon all citizens and all corporations, the militia will be placed on a firm and efficient foundation.

I think the latter part of this section is important and necessary for the proper performance of military duty in our State. The Legislature, I believe, is now providing for the organization of five thousand volunteers.

There seems to be a disposition in the Convention to use the word "Commonwealth" instead of "State," and, as this report uses the words "State Treasurer," I would move to amend—it is a mere verbal correction—by striking out the words, "State Treasury," and inserting, in lieu thereof, the words, "Treasury of the Commonwealth."

Mr. DARLINGTON. Permit me to ask one question. Do you not think the word "direct" unnecessary there? Can there be any "indirect" appropriation from the State Treasury? I ask whether the section would be perfect without the word corrected.

Mr. PORTER. Mr. President: The committee, in placing that word there, desired, simply, to make it so strong and clear that there could be no possible misunderstanding about it. I presume, however, there will be no possible objection to striking it out.

The question being upon the amendment of Mr. Porter, it was agreed to.

Mr. CARTER. Mr. President: I offer the following amendment: To add at the end of the section these words: "But the Legislature may exempt from military service members of religious societies who have conscientious scruples against bearing arms."

I desire, in as brief a manner as possible, to present some thoughts for the calm, dispassionate consideration of this Convention. In regard to the character and import of my amendment, I will say, in the outset, that I do not dissent at all from the general view presented by the chairman of this committee, and heartily approve its provisions, so far as it goes. I do not consider it at all necessary for the consideration of my amendment, nor to commend its adoption, (and I trust it will be adopted,) that we shall enter into any discussion as to whether those religious sects, holding the opinions that I refer to, are right or wrong in that matter. My sympathies are with the chairman of the committee in regard to it; but we cannot refuse to recognize honest conscientious scruples. They are something that no man can fail to respect. The only question, then, is whether we can, with propriety and entire safety to the State, recognize the sacred right of conscience in this case. It always has been recognized to a greater or less extent, and, so far as I know, without any compromise of principle, or leading to any disastrous result. I contend that this is necessary, for this reason: It does not conflict—and I desire to call the attention of the committee to the fact—that it does not conflict with, or embarrass in any way, or militate against the section as reported. I have the consent, I may say, of the gentlemen composing the committee to this. They have said to me that they had no objection to its being offered, and I presume they have none now. The only question with them was, whether this amendment was not superfluous. Therefore, to that consideration I will direct a portion of the few remarks that I have to make.

Sir, I take this position, that if it be not essential to the guaranteeing of the rights of conscience to those few religionists who hold this view, we owe it to ourselves, meeting here under the shadow of that august presence, [pointing to the portrait of William Penn over the President's desk,] and within the limits of this city of brotherly love, founded by him and that very sect, which sect has even yet a moral influence in this State far superior to their relative numbers. I say we owe it to ourselves, meeting here under these happy auspices, and surrounded as we are by all those influences of peace and prosperity, whose foundations were laid by the sect holding those

opinions, to give some expression to that sacred principle of the right of conscience. I regret exceedingly—and I trust the Convention will pardon me for the reference—that the gentleman from York (Mr. J. S. Black) is at present absent from the Convention. His great mind, filled as it is with all the teachings of history, and capable of grasping, as it were, the entire history of all the peoples and institutions of the earth, and his whole grand intellect and high moral nature, thoroughly awakened to the importance of perpetuating and sustaining the great principles of religious freedom of thought, is strongly in favor of the proposition which I have had the honor to submit to the Convention. He said that he would not only support it, but would speak in favor of it; and for the reasons that it involves a question of paramount importance to the human race—the sacred right of conscience.

When William Penn founded the Commonwealth of Pennsylvania he said: "I am founding a colony for all mankind." This great principle of perfect religious toleration, which he always observed, constituted one of the main elements of his greatness, and the society which he founded, and of which he was a most eminent teacher, has always observed with scrupulous care this right. The far-seeing mind of William Penn long years ago foresaw that this city in which we are now holding this Convention was to be one of the great cities of the earth, and it is stated in history that when he was laying it out he directed, among other things, (as showing his almost prophetic view of its future,) that there should be no buildings erected on the east side of Front street; that the whole river front should be forever kept open for the immense commerce that would sometime require it. The neglect to observe it can never be repaired, though the large sum left by Girard for the purpose can partly do so. Imagine, if you can, the scene and its surroundings when he first landed on the shores of the Delaware. The few straggling houses of the colonists who had preceded him, the wide expanse of wood and marsh between the two rivers, and he then proceeding to lay out this now magnificent city, with its wide streets, extending from one to the other, that here and there, a mile or so off or apart, should be left a public square for health and adornment.

It is related that one of his simple friends, in their quaint language, said to him in view of all this: "Why, friend William, thou art laying out a Babylon here." "I am, indeed," said the great man, "and verily a greater than Babylon will this city sometime become." And does it not look as though the prediction will be fulfilled?

I therefore do say, then, that this Convention owes it to itself, meeting as it does here in this city, thus founded under the guidance of that great man, the chief of the religious sect which holds the opinions to which I refer, to embody the proposition that I have proposed in the Constitution or organic law of the State bearing his name. Some will say that if you concede this to the rights of conscience, you will open a door that you cannot close. I believe nothing of the kind. I know nothing in which christian enlightenment and advancement is discerned and manifested more fully than in this desire to recognize the rights of conscience everywhere. A man has to rise to a high pitch of enlightenment, and to attain to a sublime christian elevation of thought, before he will acknowledge that others shall have all the rights to which their conscientious beliefs entitle them, and before he will admit, fully and without reserve, the right of others to conscientiously differ from him. This principle has in in all times, since the inauguration of christianity, been settled, and the conviction has grown with the growth of civilization that concessions should be made to the rights of conscience. First, as I remarked already, I regret exceedingly the absence of the distinguished gentleman from York (Mr. J. S. Black.) He intended to have aided me in this amendment, and I should like to have heard his splendid oratory and his finished rhetoric, and his noble, eloquent and wise thoughts in a matter of such importance as this.

Let us examine, however, whether there would be any danger in this. Every State and every Constitution in the Union recognizes the right of conscience in this respect. One and all say that the man having conscientious scruples in regard to bearing arms shall not be *compelled to do so*. There, as you perceive, is an *acknowledgement* of the *principle* everywhere in all of them. It is true they require something in the form of an equivalent, a tax, or a sum of money; but, as the chairman of the committee says, this militia tax was found to be vexatious, and the committee most wisely have otherwise provided.

All have recognized, however, the principle of the right of conscience in the matter, and no harm has ever come of it. As a matter of fact, the Quakers have always contributed as much as any others, cheerfully, when required. A large portion of the members are always possessed of the "war spirit," as they term it, and when danger to the country ensues are prompt to go to the rescue. The society always lose somewhat on such occasions, instead of gaining, as some suppose, by accessions in time of danger, by the timber who retreat behind them. But they are not the only sect, nor am I speaking for them alone. There are other sects holding the same peace principles, and I would have this Convention recognize this sacred right for all. The advancing humanitarian spirit of the age demands it. The time, and place, and all the history of our past demands it. The future, to which we look and aspire, should be in the direction of peace and religious toleration.

I am speaking now of this concession to the great principle of the right of conscience which has always been made, always acceded to, in this State. In the State of North Carolina they have gone so far as to exempt entirely this class of their citizens. The section of the Constitution of that State in referring to this subject, says; "All able bodied citizens, of the State of North Carolina, between the ages of twenty-one and forty years of age, who are citizens of the United States, shall be liable to duty in the militia, provided that all persons who may be *adverse* to *bearing* arms from religious scruples shall be exempt therefrom."

I appeal then to this committee, and ask if we cannot afford to go as far in this Constitution as the State of North Carolina has gone in the determination of this question. I do not, however, ask this Convention to go even as far as that State has gone, because if you read the language of the amendment it will be observed that the Legislature *may* exempt this class of our citizens; it is not mandatory, does not say they shall.

The amendment I have offered follows and accords with the direct line of the argument made by the honorable chairman of the committee. He has argued that this subject should be left to the Legislature. So I say, and so I believe, and this the amendment I have offered proposes, but at the same it draws a line to prevent abuses, by saying that *all* persons having conscentious scruples shall be exempt from military service. This privilege might possibly be abused, and some miserable scallawags, without principle, might claim exemption upon this ground, but the amendment I have offered embraces only the members of religious societies who have given evidence of their faith, or have attached themselves to a religious organization, a portion of whose creed is adverse to bearing arms. But the Legislature may exempt others, or more, or classes of citizens in addition, if they deem it expedient to do so. There can no possible question of danger, or of opening doors that cannot be closed, as some say, arise in this matter, inasmuch as none has arisen in the past.

The State of Maine, for years past, has adopted a similar provision in her Constitution, and to-day the justices of her Supreme Court, and the Quakers and Shakers, as members of religious societies, are exempt from military service. These two States, the States of North Carolina and Maine, have exempted this class of their citizens from bearing arms, and the amendment which I have offered is in entire accord with the general animating spirit of the past State Conventions. It has been intimated that this is a matter of supererogation on the part of this Convention, that the section as reported might permit it, but I think it is necessary. The object of the amendment is to avoid any constitutional inhibition, or supposed want of constitutional power, but in order that the Legislature may be authorized to act in this matter whenever, in their wisdom, they may deem proper to exempt any class of our citizens who may have conscientious scruples against bearing arms.

Mr. TEMPLE. I would like to ask the gentleman how he is to determine whether the class of persons included in his amendment are conscientiously opposed to bearing arms or not?

Mr. CARTER. I will explain. The Legislature has the privilege, if it chooses to exercise it, to exempt persons of religious societies who are opposed to bearing arms on christian principles.

Mr. TEMPLE. I desire to inform the gentleman that I have learned from the very best authority that some of the members of the society of Friends are not opposed to bearing arms.

Mr. CARTER. Then the amendment which I have offered will not apply to them. But the gentleman does not comprehend the question at all. That is,

however, another question, which we are not considering at all. I desire to repeat, that I am in full accord with the sentiments as expressed by the chairman of this committee. I do not profess to be a peace man, but at the same time I entertain much respect for the right of conscience, and I shall always endeavor to entertain that respect, and always will accord full liberty thereto when I can do so, without endangering the safety of the State, and believing as a general principle that it is always safe to do right. In the discussion of this question it has been argued by gentlemen that this concession to the right of conscience cannot be made unless the door is opened to all classes who might, on various pretences, claim exemption in other ways. Sir, all history falsifies that assertion. This concession has been made to the members of various religious societies throughout this country, and all over the world, and I trust there is enough practical common sense in this community to prevent the possibility of any abuse of this exemption. So long as the public school system of this State continues to exercise its influence I think the possibility of this provision in the Constitution being abused will be rendered exceedingly small. The Legislature of the State is constituted the judge of the expediency or inexpediency of granting this exemption, and I have no doubt that this power which shall be conferred upon that body will be exercised in a manner consistent with the discharge of all their duties.

I do not desire to enter into a discussion of peace principles, but I think the country, as well as the State, certainly owes something to that sect who taught such principles as a part of their fundamental creed.

There has never been found any difficulty in obtaining men to do the fighting of the country, and in times of emergency no occasion of complaint will probably ever occur from that source. To the silent influences of these peaceable sects much has been due, and much good may be looked for in the future.

The policy of the early Quakers in regard to the Indians has been a most glorious example of the practical success of a system of justice, peace-inspiring confidence and trust to overcome their savagery, and the mistrust created by a contrary course. That, Mr. Chairman, is a noble precedent for our nation to follow. Sir, I venture to predict that the "Quaker policy" of General Grant will yet succeed. It must succeed sooner or later, because, sir, it is founded on those great primal truths of our common humanity, and in accord with the great fundamental principles which will, in God's good time, do away with all wars and fighting, and herald a reign of peace and love.

When the Quakers had a controlling power in this then infant colony they always granted the fullest liberty of conscience to all, no matter how much they might differ. They only asked, is this a matter of conscience? And now, weak relatively in numbers, they are just as liberal as in the past, just as willing to concede to all the fullest rights of conscience in others as they ask this Convention to be now in dealing with their claim for it.

I hope, therefore, the Convention, in dealing with this question, will consider well its importance and the grounds on which the amendment is based, which I have offered, and make this very small and safe concession for the sake of a great principle.

Mr. BROOMALL. Mr. Chairman: I am opposed to war in all its forms and under all circumstances. I believe it to be bad, wholly bad, without a redeeming characteristic.

Mr. WOODWARD. I would like to ask the gentleman whether he was opposed to the late war?

Mr. BROOMALL. Yes; I was opposed to the late war, and regretted that it ever commenced. I certainly was opposed to the firing on Fort Sumpter. I do not believe there is any christianity in fighting, and I think no person who reads the doctrines laid down by the founder of our religion can come to any other conclusion; but I know that upon this question I stand comparatively alone. I admit that when wicked men will take up arms they must be prevented from doing damage by coercion, and that is a further answer to the question of the gentleman who interrupted me (Mr. Woodward.) I admit, as manhood is now constituted, war seems to be a terrible and unfortunate necessity; one which is to be deplored by all thinking men. Hence it is that I am opposed to compelling those who agree with me in opposition to it to do that which is in violation of their consciences.

I doubt the utility of military training in times of peace. I dissent entirely from the commonly received notion that the

way to avoid war is to be always ready for it. I believe the way to avoid war is never to be ready for it.

I believe the rule, which every person admits is without exception, when applied to individuals, is a good one when applied to nations. That is to say, that a man who goes out armed into the streets, or with his fists doubled up, will be very sure to get into a fight, whereas a man who goes into the streets, not ready for a fight, will be very sure to escape it. It would have been well for the Empire of France if Napoleon had fully appreciated this principle, that war was caused by France and Germany being ready for a fight. If that had not been the case, the Empire of France would have existed to-day, and would still have been in the dynasty of the Napoleons. A gentleman to my right asks me whether that would have been an advantageous result. The result itself must decide that; we have not lived long enough to answer that question.

I object, moreover, to the attempt to make this class of our people fight, on the ground that it is impracticable. The chairman of this committee says that he would make the Quakers fight. I ask that gentleman if he knows what he is talking about? Does he know that these people are the descendants of those who were imprisoned because they would not conform to laws they believed to be in violation of their rights of conscience, which they held to be above and independent of all human government. Does the gentleman know that this class of our citizens are the descendants of the men and women who were hanged, who were burned to death, for refusing to obey laws which they believed required them to violate their consciences, and that the ancestors still live in their descendants? Now, I know that during the last war, and I want this to be understood, there were more men and money contributed by the Quakers to the cause of the government, in proportion to their numbers, than by any other society in the country. I repeat, there was more money and more men contributed by them, in proportion to their numbers, and all contributed on the right side. No Quaker was found fighting in the ranks of the rebels, but in regard to this I may have something to say, if my time will allow me. Those who went into the war, went voluntarily. Those who were conscientiously opposed to bearing arms did not enter the war, and could not be compelled to serve in the ranks by any earthly power. A gentleman to my left asks me if those who lived south of Mason and Dixon's line did not fight in the rebel ranks? I tell him, no. I have, in my desk, a detailed account of some half a dozen of them who were forced into the rebel army, and who had their muskets strapped to their backs, and were kept in the guard house, and treated with every kind of ignominy, but they would not and did not fight. They were punished in all the ways that man could devise. They were compelled to stand up before a file of soldiers, to be shot, pursuant to the judgment of a court-martial passed upon them, because they would not fight, but so high a regard had the common rebel soldiers for these people, that they refused to fire at the command, and, by that means, these men escaped death. This incident happened the day before the battle of Gettysburg. The next day these people were taken by our forces and liberated.

They fought on the right side, where they fought at all. Where they were conscientious, they refused to fight, even at peril of death, and they always will Where they were not conscientious, they fought like any other citizens, fully as well and, as I said, always on the right side.

This proposition looks like trying to take one step backward. The Constitution of 1838 recognized the conscientious scruples of these people, and it made a provision for them. Why should that be abolished now? The amendment offered by the gentleman from Lancaster (Mr. Carter) puts the Constitution precisely as the Constitution of 1838 was. I want this to be distinctly understood. In the Constitution of 1838 there is this provision: "The freemen of this Commonwealth shall be armed," &c., just as it is in the article before us. "Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service." Now, the last sentence is unnecessary, because we have made another provision for the payment of military services out of the treasury, to which the Quakers contribute like all other citizens, thus abolishing military fines, so that the last branch of the sentence in the Constitution of 1838 is unnecessary, and all that the gentleman from Lancaster proposes to do is to restore the Constitution of 1838 exactly as it was, modified by the abolition of mili-

tia fines. Why not do that? What harm can possibly result from it? Did not the Constitution of 1838 work well? Has anybody complained of it in that particular? Why should we go backward? But, again, the object of all military laws is to get soldiers. We exempt men over forty-five years of age. Why? Because we think they are not efficient. We exempt those under eighteen years, or under twenty-one years. Why? Because we think they will not make efficient soldiers. We exempt men who are infirm in body. Why? Because we think they will not make efficient soldiers. Now, if it can be once shown, and it can be shown by the history of the world everywhere, that men conscientiously opposed to war will not make efficient soldiers, all the arguments apply with full force to them for the purposes of exemption. Is there any reason why they should be required to pay the equivalent provided by the Constitution of 1838, instead of having the expense paid out of the State treasury, to which they contribute? I want to know what earthly utility there would be in changing the Constitution of 1838 in this particular, other than to abolish the system of fines, as the committee have done.

But, Mr. Chairman, I would go one step further. I would compel no man to do military service in time of peace, except to repel invasion or to suppress insurrection, unless by his own voluntary act. The last war ought to show that compelling men to fight amounts to nothing; that the day of compulsory fighting has gone by. The efficient men who went into the army were volunteers. They did not go there until their services were well paid for by bounties, but still they were volunteers. The men who went into the army by compulsion, I will venture to say, were good for nothing. It was the men who volunteered who put down the rebellion. They volunteered, it is true, under high pay and high bounties, but we ought to pay high for that kind of service, and if I had had my way in the late war I would have abolished the compulsory system altogether, and would have offered such pay as would have brought the men willingly, and I would have made the people who would not go bear the burden in taxation, by paying well those who would go.

Mr. Chairman, why, I ask again, this step backwards? Who complains of the Constitution of 1838, and that is all that we ask to restore, exactly in its very words, except so far as it is improved by making payment out of the treasury of the State, instead of having it paid by fines? Let us be satisfied with that instrument as it is, and let us not change it in this respect. There will be complaints enough of change. The people are already beginning to think us revolutionary, and if we make changes where there is no necessity to make them, the cry against us of being revolutionary will be doubled. Let us, then, leave the old Constitution as it stands, modified just as the Committee on Militia have modified it, and with the amendment of the gentleman from Lancaster, which, as I said before, just restores the provision of the old Constitution, except as to the odious militia fines.

Mr. DARLINGTON. Mr. Chairman: I am unwilling that this debate should pass without saying a word or two in connection with it. I will not detain the committee but a very short time in behalf of the principle which is enunciated by the amendment of the gentleman from Lancaster.

There is in the community, amongst us, more than one class of individuals who have conscientious scruples against bearing arms; not in my county, not in my district, but in other districts, as I am informed by other gentlemen. There are classes of religious people who are as conscientious against bearing arms as are the members of the society of Friends, among which we are, and they are entitled to the same exemption, if it be right to exempt any on this score of conscience. It will not do, therefore, for us to further argue here that we are claiming any special exemption for the members of the society of Friends. It is, as well, for the members of other societies who have like conscientious scruples.

The question, then, as it strikes me, presented for the consideration of the committee of the whole, is this: Is the right to concede to those having conscientious scruples against bearing arms the privilege of being exempted therefrom? Now, this question will be answered in the affirmative by every man within the sound of my voice, unless there be a public necessity which requires this conscientious scruple to be over-ridden.

I suppose that we would all agree that our conscientious scruples upon matters of religion and faith are sacred, and must never be touched by the government. In other words, that no number of men can

or ought to interfere with my conscientious convictions, unless it becomes a matter of State necessity that those convictions should be disregarded.

This, then, necessarily brings us to the consideration of that important question, is it necessary for the public weal that any man's conscience should be forced? In other words, can the great State of Pennsylvania be maintained in peace and in war. Why resort to this violence upon the conscience of any one? Now, I submit to you that the past history of this State fully answers that question. The patriotism and the law-abiding spirit of the people is such that there is no danger whatever of any injury coming to the State, or any wound ever being inflicted upon her, even if she were to respect the conscientious scruples of those who cannot go into the army.

I am less familiar, of course, with that class of religious people in other counties, to which I have alluded, than I am with the Quakers, of which I was born a member, although I am said to be now not an adhering member. Still the Quaker principles imbued in me from my birth and from my education will, I trust, last; yet, in this matter of conscientious scruples, I am not like all the others. I have no conscientious scruples myself against going into the army and bearing arms, and there are those who have borne arms. There are those members of the society of Friends who, in times past, have shown their devotion to their country, and who have not felt the conscientious scruples that others have felt. They have gone into the army; and, as my colleague from Delaware (Mr. Broomall) has said, and as has been said by the gentleman from Lancaster, (Mr. Carter,) it is perfectly well known that during the late war for the suppression of the rebellion the Friends were among the first to enter the army, and among the last to come out of it. Before we get through with this subject I hope to hear from my friend, the gentleman from Centre, the respected ex-Governor of this Commonwealth, (Mr. Curtin,) who knows what services were rendered by that class of people, and I desire to hear his testimony given for the satisfaction of this committee of the whole, and of this Convention, that that class of people do not affect the possession of religious scruples for the purpose of avoiding military duty. It is from a higher motive than that that these scruples are entertained, and those among the society of Friends who do not feel themselves restrained by these religious scruples have always been among the first to go into a just war, and are among the longest to remain there.

Then I say there is no danger, there can be no danger to the State, respecting the conscientious scruples of this society, and I presume the same may be said of every other society. If I am right in this, what follows? The conscientious scruples of every individual should be observed unless the public safety requires that they should be disregarded. And that the public safety does not require that they should be disregarded has been shown by the past history of the State.

Why, sir, in the war of the revolution, we must not forget that Gen. Green himself was a member of the society of Friends, probably not affected by the same conscientious scruples that some others are, but his being a member of the society of Friends was no impediment to his going into the army, and commanding it, and leading it to victory. During the late war large numbers, both privates and officers, from the ranks of the Friends society, enlisted in the army. Nay, more, that society, as a society, were patriotic in all they said and did. You might have found them, even on the Sabbath, laboring in their houses, the Quaker women associated together, making clothes for the soldiers, even on the Sabbath day. You might have seen them in the hospitals. They were seen everywhere, ministering to the wounded and the sick, and performing all the offices that were incumbent upon human nature to perform.

As a society, to be sure, they recommend their friends and their young men to adhere to the principles of the society, which are against fighting and against bearing arms. And yet it is said, and, I believe truly, of a distinguished member of the society of Friends in the city of Philadelphia, that at a quarterly meeting, when the subject came before them, he depicted in glowing colors the lovely and the beautiful land which God has permitted us to inhabit—the smiling valleys, the pleasant hills, the delightful plains, and everything that could please the eye, and asked, "who could blame the patriotic youth for going out to defend them?" There was nothing like solicitation. It was permissive. It was not ordering, but it was permissive to the patriotism of the young men to go forth to defend their country. Aye, and when, in so doing,

they were deemed to have infringed the rules of the society, and the principles of the society, it dealt with them as it deals with all its members who transgress, mildly and gently, so as to retain them in the bosom of that society after the war was over. Those who went to the war were treated with no harsh conduct. Nothing of that kind. The members of the society were good, loyal citizens, all dealing gently with those who had offended against their rules, because it was in the interest of their country that the offense had been committed.

Now, Mr. Chairman, I hope never to see here, in this committee, or in this Convention, any stigma cast upon a single member of that society, nor any insinuation urged against their patriotism or their devotion to the institutions of the land under which they live. I am glad that none have yet been cast upon the patriotism of a single member of that society. It is not because they desire to avoid the danger of war that they decline to enter the army, but it is because, as a part of their religious profession and faith, they are conscientiously scrupulous against bearing arms. That is the ground, and the only ground, upon which they have asked to be exempted from militia duty. Now, cannot we respect that conscientious scruple with safety to the State? The society of Friends is not large. It formerly was much more important than it is now in this Commonwealth. Among the three millions and a half that inhabit this State, there is but a small proportion of the society of Friends. If they were all opposed to war, and none of them are right to go into the army, still the State would be safe in any war in which we might be engaged, domestic or foreign. It would be found that nine tenths of all the people of the State, able to bear arms, would be in the army whether you respect these conscientious scruples or not. Then, all I ask and beg of this committee is, while we can with perfect safety to the State respect this conscientiousness, this faith, these scruples of these people of all religious societies, let us respect them, because no danger to the State can follow from doing so.

Mr. KNIGHT. Mr. Chairman: I favor the amendment of the gentleman from Lancaster, (Mr. Carter,) and I approve of the remarks he has made, as well as those made by the other gentlemen, who have previously spoken upon this subject before the committee of the whole.

During the late rebellion I know that some persons were forced into the Confederate army, who refused to inflict injury upon the Union troops. Some were taken at Gettysburg, and one of them in particular, now a minister of the society of Friends, during the whole time that he was in the Confederate army, he never fired his gun at a Union man or any one in the opposing army. Now, a soldier of that kind, either in their army or ours, is of no use. He is mere dead wood and in the way. This does not apply entirely to the society of Friends, as there are those of other denominations, ministers and others, who have conscientious scruples against bearing arms, where the result would be death to those in the opposing ranks. I would ask of what service would be a company of Quakers or members of the society of Friends or any other denomination, of what earthly use would they be to an army? A company of soldiers who would not use the weapons put into their hands for the purpose of warfare would only be in the way. Now, sir, if a company would be in the way, of what use would a regiment, or a brigade or an army be, except to be shot down by the enemy? I have always understood that when you go to war you go for the purpose of defeating your opponents, and you want men who will fight and fight bravely and determinedly to conquer the enemy. You do not want people to be merely counted by numbers to be shot down by the enemy. I am speaking now in a business way, of the way in which anything would be done in a commercial, mercantile, manufacturing or in any other business pursuits. And in war you must reduce it to the same science as you would anything else, if you desired to be successful.

When a court is about summoning a jury they examine into the character of the different jurymen, and particularly where a case is before a court in which the verdict of the jury might require the infliction of the death penalty. A juryman is always asked whether he has conscientious scruples of returning a verdict, if that verdict would be death. If he says that he has, then he is exempted from jury service. Now, if you exempt a man before a court who has these conscientious scruples, or because he would probably bring in a verdict contrary to the law, why would you force men into an army to be shot at, when they are of no earthly

use to the army in whose ranks they serve?

Rather, sir, let us be magnanimous. Let us do justice. Let us live up to the principles of William Penn, the great founder of this Commonwealth. We will have men enough left; and, as my friend from Delaware (Mr. Broomall) says, let us pay those who go more liberally, in order to induce voluntary service. I believe that one Quaker who would go into an army with a determination to fight the battle through, would be worth a whole regiment of men forced in against their convictions, and believing that I shall vote with great cheerfulness for the amendment proposed by the gentleman from Lancaster.

Mr. WRIGHT. Mr. Chairman: I desire to add a few words upon this subject, and to express my regret that the Committee on Militia have seen fit to change the Constitution of the State. I believe that no one has complained, because from the year 1838 we have recognized the question of conscience, and that a man who was not disposed to bear arms should pay his quota for that exemption. Here is a proposition to strike out that provison and to place men who are under conscientious influences in the same position as those who are not. I accord with the remarks of the gentleman from Philadelphia, (Mr. Knight,) that our courts pay respect to the consciences of men, and when a juror is called to the box, who says that he has a conscientious scruple, he is excused. If a witness says that he has a conscientious scruple against swearing, he is permitted to affirm. We should recognize the same principle in regard to this matter, which it is now proposed to place in the Constitution. I have personal recollections upon this subject, when I lived among that particular class of persons known as Quakers. I have seen them dragged by a constable to the jail at Doylestown for a refusal to pay their militia tax. Some other person kindly stepped up and paid it for them, and in this way they were released from an obligation that to them was odious. We must not forget our obligation to that class of men. They were the founders of the greatest Commonwealth of the Union. They founded it upon principles of peace, and have been from that day to this the best of our citizens.

I am sorry to see, however, Mr. Chairman, that the sect that shares so largely of late years is dwindling out. Day after day they are growing less in number, and it may be that the time will come when there will be no longer any necessity of persecuting these pious people by the infliction of militia taxes, and calling upon them to do military service. Remembering what they have been in the past, let us not forget to recognize their rights now, and to leave this Constitution exactly as it was framed in 1838. I know that the people particularly under view are the Quakers. It is true that there are others who exercise the right of conscience, but it is these people that we have now under contemplation, and I say from my own knowledge that no persons have been more loyal, or have paid their contributions to the government more freely, or who in any way that they possibly could have carried on the cause of right, and are disposed to do so now.

Mr. PORTER. Mr. Chairman: If the gentleman from Luzerne will pardon the interruption, I would like to ask him, have not the petitions that have been presented to this body from the society of Friends had for their purpose the repealing of this part of the Constitution, in order, while exempting them from military service, to exempt them from the payment of a certain sum of money in equivalent thereof?

Mr. WRIGHT. Mr. Chairman: I have never read a single petition on that subject, nor heard one read, and therefore cannot answer the question.

I simply speak upon the general principle of the right of conscience. It should be unrestricted. We are not called upon, in any department of life, to do that which is against the conscience which God has given unto us, and a man who is opposed to war upon conscientious and religious principles, and is willing to pay to be released from military service, ought not to be called upon to put a musket upon his shoulders. Now, that is the way the Constitution of 1838 stood, and to strike out that principle now would be to do great injustice to a class of persons that are entitled to our profoundest respect.

I shall most cheerfully record my vote in favor of the amendment offered by the delegate from Lancaster, (Mr. D. W. Patterson,) and I hope that the good sense which actuated those that framed the former Constitution will not depart from us at this time, when we are about to form a new one.

Mr. LILLY. Mr. Chairman: The report of this committee was made after the committee had listened to the representatives

of both branches of the society of Friends. The gentleman from Luzerne (Mr. Wright) speaks about conscience. If he had heard those gentlemen talk, he would have seen that his remarks would be only an aggravation to them. We presented a report to them similar to the one which the gentleman would like to have adopted, and asked them if that would suit them. They said: "By no manner of means. If we are opposed to war ourselves, we are opposed to hiring other men to fight for us. We have suffered in years gone by beyond our knowledge of computation. We have refused to pay military fines, and the collector has seized our horses and our cattle, and sold articles of a hundred times the value of the fine, and the property has been frittered away because we have been conscientiously opposed to bearing arms and against paying an equivalent therefore."

The committee, in making this report, thought it was a compromise. The majority of the committee, if not all of it, thought it would be opening the door too wide to exempt every man that said he had conscientious scruples, but we were willing to exempt them during the time of peace, and then the idea was to allow the Legislature to fix it in times of war, or the general government would step in in front of the Commonwealth and supersede any constitutional power that we could impose in time of war, invasion or insurrection, national in its extent, and they would have to yield to it. This section was agreed upon by the committee after full consultation with these people who have the subject so much at heart. We have had them with us daily almost, talking to us upon this subject. After the report was made the gentleman from Lancaster, (Mr. Carter,) and some others, approached me on the subject. I told him that I was perfectly satisfied to vote for his amendment, which I shall do, but if we go back to the old Constitution we will not satisfy these people, because we will leave them to suffer, according to their own ideas and their own consciences, exactly as they did before, and they complain of that very much. They say they have gone to the Legislature from time to time, and the Legislature has said: "We have not the power to exempt you, because the Constitution contains this clause, and we cannot give you any relief." I went into the committee with the full intention of giving these people relief to the utmost of our power, provided we would not jeopardize the government or the peace of the State by so doing. I am ready to vote for the amendment offered by the gentleman from Lancaster (Mr. Carter.)

Mr. H. W. PALMER. Mr. Chairman: I am in favor of this amendment. I am neither a Quaker nor a son of a Quaker, but I will vote for this Quaker amendmend. I should have been ready to have left the Constitution as it now stands, but our Quaker Friends are willing to do better than that; they are willing to concede something. This amendment gives more than they were obliged to give under the old Constitution. The old Constitution provides that those who conscientiously scruple to bear arms shall not be compelled to do so. They are now willing to leave it in the hands of the people, to be disposed of by the Legislature as they shall see fit. The Legislature may exempt a man from bearing arms. They may impose terms on him. They may make him pay, and inasmuch as no citizen of the Commonwealth has petitioned this body to change the old Constitution, and inasmuch as a great many citizens have petitioned us, and asked us to make some such provision as the one now proposed, I certainly shall vote for it. It seems to me to be expedient; it seems to me to be just. We shall save five or ten thousand votes in favor of the Constitution as we amend it, if we put it in. Now, why vote it out? If the question was one that was now for the first time proposed, whether they should bear arms or not, I would not be of the opinion that I am, but we have lived under the Constitution as it is for thirty-five years, and as this amendment is more liberal than the like provision in the old Constitution, it seems to me that we ought to adopt it without any hesitation.

Mr. W. H. SMITH. Mr. Chairman: I am not one of those who believe that the time has come to put away the sword. I do not believe that "States can be saved without it." I yield to none in my veneration for William Penn, whose acts have been praised, and whose influence has been invoked in this behalf. I believe he was among the greatest and purest of men and the best of law-givers, but times have changed and men have changed with them. I believe that this amendment ought not to be adopted. I have been instructed in history, written and oral, that in the war of the revolution the

Friends were not found on the side of liberty.

They were just as certainly united to the government of Great Britain as any set of men could be, and those of them who chose to stand by their country were promptly expelled from meeting. In 1812 it was no better. There were very few of the Friends or Quakers throughout the land who were on the side of their country in that contest. I am not going to call them to account for that. I am not going to say that that was a sin for which their children should now be punished, but as I said, I am not willing to put away the sword, not believing that "States can be saved without it," and no citizen of any State can be excused from the use of the sword in defence of the State when she requires their aid. I am opposed to granting any species of exemption to any class of voters, from the duties which are attendant upon the privilege of voting. I think it is dangerous to say to one set of men, you may do all that we do, but you may be excused from doing things which we have to do. The special plea of conscience against bearing arms is well enough. We cannot invade the realms of conscience, but whoever lives under the protection of a government, it seems to me, must discharge all the duties required of a citizen and of an elector. Therefore, I cannot agree with the amendment. I find the same argument used with reference to the question of female suffrage. A great many gentlemen in favor of that proposition believed that women may be granted the right to vote, and without being required to bear arms. This is a point of the same principle.

I hope that this amendment will not prevail. While I would be in favor of making the laws as easy and as gentle as possible upon those who conscientiously aver that they do not want to bear arms, at the same time I would not excuse any one from that duty who is an elector, and claimed the right to assist in controlling the government.

Mr. CURTIN. Mr. Chairman: I would remind the delegate from Allegheny (Mr. W. H. Smith) that the Quakers are not the only people in Pennsylvania who have conscientious scruples, which forbid war and the use of arms. There is that highly influential and temperate and virtuous class, known as Menonists, and the Dunkards, who are equally conscientious; and there are other sects in Pennsylvania who maintain peace and good will to be the foundation of true christian faith.

Now, Mr. Chairman, in time of war, if we ever have another, and no man in Pennsylvania who remembers the desolation of the last war can desire to see this State or country plunged into another, and I accept it as settled that the people of Pennsylvania are faithful to the great principles of the founder of this State, when it was declared that Pennsylvania was founded in deed of peace, and there is no one in this State, and surely no delegate in this enlightened body, who can have failed to notice in the observations of his life, the peaceful, unassuming, yet constant influence exerted over the morals, the steadfast fidelity, the industry and the love of peace of the people of Pennsylvania by the Quakers and kindred peaceful people. True, they are few in number and are dwindling away, but if there be a body of men in Pennsylvania who have conscientious scruples and the State will not suffer, then this Convention should not impose duties upon them which they cannot perform without a violation of religious belief, of Christian duty and obligation.

In time of war, we will always have enough men to fight. The infusion of Irish blood, to say nothing of the German disposition to fight, have made us a population only too willing to go to war, and this Quaker and Menonists and Dunkard element is not a bad thing to hold back the fiery, impulsive blood of the foreign and combative element in the people of Pennsylvania. This State has always been willing to go to war, when the cause is just, or appeals have been made to patriotisms, and while gentlemen may be afraid that if the country should again suffer the greatest of human calamities, the exemption of certain classes of Pennsylvanians, would be fatal in its results; but remember that this State, notwithstanding its peaceful element, furnished more men for the war of the revolution than any State of the Confederacy, and in 1812 we gave more men to the government than any State in the Union, and in the recent convulsion which agitated this country Pennsylvania furnished more men, in proportion to her population, than any State in the Union, save two, Rhode Island and Kansas. While the State of New York furnished one for every twenty-six of her population, we furnished one for every seventeen, and with great satisfaction, I can say that some of our best companies

and regiments had on their rolls many of the religious sects of non-combatants.

Mr. HAZZARD. What would we all have done if we all had been Quakers?

Mr. CURTIN. If we were all Quakers we would never have any war, and, perhaps, it would be better for you and me, and the world, if we were all of that sect if it would stop war and bloodshed. It is but proper to say that, notwithstanding, the peaceful disposition, and the strict religious walk in which the Quaker moves at all times, when he does goes to war he fights like a man. He is quite equal to any of his fiery neighbors. In the recent civil war, in our own country, the Quaker contributed of his money liberally to the support of the government, and he was found in hospital and camp, and everywhere else where his services were useful. The amendment proposed by the delegate from Lancaster (Mr. Carter) leaves the matter to the Legislature, just as the power of conscription is left to them. When a conscription is necessary the Legislature fixes the ages and conditions to which it shall extend.

Mr. PORTER. Mr. Chairman: I would like to ask the gentleman whether he does not think the section, as reported by the committee, leaves this matter also to the Legislature?

Mr. CURTIN. I would like to hear the section read again.

The CLERK read:

"The freemen of this Commonwealth shall be armed, organized and disciplined for its defense, when and in such manner as may be directed by law, and the Legislature shall provide for maintaining the militia by appropriation from the Treasury of the Commonwealth."

Mr. CURTIN. I no not think it does. I should like to hear the amendment of the gentleman from Lancaster (Mr. Carter) now read.

The CLERK read: To add to the section: "But the Legislature may exempt from military service members of religious societies who have conscientious scruples against bearing arms."

It is unnecessary to make any comment, as the article and amendment is a full answer.

Mr. CURTIN. Mr. Chairman: When you make a conscription you fix the ages within which it shall operate, as, for instance, between twenty-one and forty, or twenty-one and fifty, and you exempt, for the time being, all persons outside of these ages. You exempt minors, persons of old age and persons in delicate health, and as conscription follows conscription, as demanded by necessity, you narrow the limits of exemption. As I understand the amendment, you place these people with religious scruples in precisely the same condition in which the younger and the older ages are placed when so exempted. You leave to the Legislature to declare when they will compel the services of the man who has conscientious scruples as well as the service of the man who is too young or too old. First, you call out the men who are willing to go voluntarily. They make the best soldiers. They go from the instinct of duty and patriotism, and fidelity to their country. Next you call upon those whom you reach by conscription, and you reach that conscription by law. When this country is forced, as I pray God it never may be, to compel every man to bear arms, the amendment of the gentleman from Lancaster (Mr. Carter) leaves it to the Legislature te exclude the members of the sects I have mentioned who have religious scruples on this subject. It becomes a practical question for the Legislature.

Leaving it to the law-making power to say when men shall be compelled to bear arms seems to me to be the judicious conclusion, and is in perfect harmony with the history and institutions of our State. It is an agreeable duty we are called upon to perform in accepting this principle, as we do no injustice to the State or in the least taint her honor when we make a reasonable concession to religious conscientious belief of a part of her people.

Mr. HAZZARD. Mr. Chairman: I hope I may not utter a word that would reflect on the integrity and patriotism of the Friends in the State of Pennsylvania. Their honesty and integrity have been recognized by the government of the United States, in sending them west to make our treaties with the Indians. We know them well, sir. We know them to be men of sterling worth and of great integrity and honesty.

It seems to me, however, that this amendment ought not to prevail. The sovereignty of the State must be maintained; its laws must be enforced and vindicated, and the only way to do that, in a national and political capacity, is by the concentration of men in armies and navies, when one nation arrays itself against another. There must be some provision for repelling invasion. It seems to me,

therefore, to be all wrong to adopt this amendment. It is class legislation. It is said that the Friends contributed of their substance, in the last war, in order to sustain the government. Very good. But *quam facit per illum, facit pex se*, that is to say, what a man does by another he does by himself. We were very glad to receive aid from the Friends. I suppose the consciences of some Friends may be quieted as was the conscience of the Friend on board ship, when his vessel was attacked by another. Some of the attacking party were about boarding this vessel, and one of them was climbing up a rope, when a Quaker, who stood on deck, and was, of course, opposed to killing the man, remarked to him, in a quiet way: "If thee wants this rope, friend, thee can have it!" and, suiting the action to the word, he cut the rope, and let the invader drop into the sea. [Laughter.] It was a mere matter of giving him the rope.

So long as war exists, and that will be during all time, for in the last days we are told, "there shall be wars and rumors of wars," until the coming of the millenium, and if invaded, or if there is insurrection, or another civil war, who is to repel invasion? It is possible that we may get over the difficulty in the manner devised by the United States government, and illustrated in this great achievement of modern civilization—I mean the arbitration between the United States and England—I hope that many of the disputes between nations will be settled in the same way, but it is very probable, notwithstanding the success of this arbitration, that we shall some day be involved in war again; and, if so, how can we exempt one class of our citizens without exempting another? Might it not just as well be said that we should not pass Sabbatarian laws on account of the religious and conscientious opinions of the Jews? Wars must necessarily exist, for it is the only way in which one nation can repel the invasion of another. It is said that these persons are very friendly towards those who go into the army. They are willing that others shall fight, but they wish to be exempt themselves. They are very much, I fear, like some of my neighbors in the last war, who were willing to sacrifice every relative they had for the cause. [Laughter.] It may be they are like the oxen of whom I heard. A gentleman had a very excellent yoke of oxen. The oxen were exactly alike in all respects. One of them was black, with a white face; the other was white, with a black face. One was willing to pull the whole load, and the other was perfectly willing he should. Our Quaker friends are like them. They are willing, in time of war, that other patriotic people shall pull the whole load. [Laughter.]

It seems to me that all our people ought to be ready and willing to assist in case of invasion to repel the common enemy. What would we do if there was a difficulty such as we had a few months ago up here at Williamsport—where there was a riot? Who is to go and quell the riot, or who repel invasion? If we are all excused by law, and we may be if this provision prevails, great confusion and disorder will prevail. It seems to me that there should not be in the Constitution any class legislation. There should not be any class of persons exempted from the duties of patriotism, or any other duties. This provision exempting these people from patriotic duties like military service is, therefore, very obnoxious to me, and I must vote against it.

Mr. BUCKALEW. Mr. Chairman: I am clearly of opinion that if we put anything into the Constitution upon this subject we should make it decisive. We should say as the present Constitution says, that persons having conscientious scruples on the subject of bearing arms shall not be compelled to bear them. That means something, and leaves nothing to legislative discretion, which may be exercised one way at one time and another way at another. I am, therefore, strongly in favor of retaining the present provision of the Constitution upon this subject, instead of adopting a new and experimental provision. The amendment is that the Legislature "may exempt." That confers no *right* upon these persons, and I agree with the settlement of 1838, which was made with these people, that they should not be compelled to do that which their consciences were opposed to. I think that was a proper and a just settlement, and I am willing to continue it for the future. I do not understand that there is any general dissatisfaction in the State with that clause of the Constitution.

This new provision means constant agitation in the Legislature. The Legislature "may exempt" these persons. They will appeal to the Legislature for the exemption. Then they will be met by the argument, which is as old as the subject itself, that to exempt them would be unequal legislation; that while the burdens

of government are cast upon others, *they* are to be permitted to escape, and that this escape or exemption is one dependent upon themselves, upon a mere annunciation of an opinion on a particular subject. We ought to settle this matter one way or another, if we do anything about it in this Convention.

There is another point to which I wish to refer. This committee have introduced a new clause here, a clause providing that the Legislature shall appropriate money from the treasury, for the support, the arming and disciplining of the militia of the State. That is not in the present Constitution. As I understand this amendment it will prevent any legislation providing means or modes for organizing and disciplining the militia of the State, that are *not* dependent upon direct appropriation from the public treasury. You cannot support them by local means—by means raised in municipal districts. You cannot assign to this object any support except *direct appropriations* from the treasury. I am not disposed to burden the government in this manner. I do not think we have found any inconvenience under the present Constitution. Our military friends all over the state are very popular with the Legislature. Whenever they have a reasonable scheme and put it into the form of a bill they can get it enacted. We need not, therefore, put a provision into the Constitution providing that money shall be appropriated from the treasury in support of this object, and impliedly saying that no support shall be given in any other manner than by money from the treasury. That is to say, money may be raised in a certain locality, say Philadelphia, and then must be transported to Harrisburg and go through the manipulation which State officers give to public funds and appropriations from the treasury. This may be all well enough, but it may be found convenient to resort to other plans.

Then, sir, on both grounds, I am in favor of going behind the report of this committee, and taking the present clause in the Constitution on this subject. The first part of this report of the committee is exactly in the language of the present Constitution. It makes no change. The only change proposed by the committee is this providing for appropriations from the treasury, to which I am opposed. As the committee have reported this clause, dropping the old conscience clause of exemption, we are driven upon the amendment of the gentleman from Lancaster (Mr. Carter.) If we do not adopt his amendment, if I understand this clause, *everybody* of military fitness will be compelled to bear arms, if a general law be passed. At least there will be no constitutional protection at all.

Mr. MACVEAGH. Only such as the Legislature may prescribe.

Mr. BUCKALEW. Exactly; and I do not want the Legislature to have any discretion on the subject; I want to have the rule fixed.

Mr. BROOMALL. Mr. Chairman: I move to amend the section, by carrying out the idea of the gentleman from Columbia, (Mr. Buckalew,) as far as I think he will agree with me that it should be carried out. Then I desire to say a word or two in favor of my amendment.

In the place of the amendment of the gentleman from Lancaster, (Mr. Carter,) I propose to substitute what I have offered. I ask that the amendment may be read.

The CLERK read as follows:

"Those who conscientiously scruple to bear arms shall not be compelled to do so."

Mr. BROOMALL. That is the exact language of our present Constitution. The only difference between the present section and the one in the old Constitution will be this: That instead of the expenses being collected by military fines they will be paid out of the treasury.

Mr. PORTER. The Constitution of 1838 has this provision in addition to the amendment offered by the gentleman, "but shall pay an equivalent for personal service." That portion of the section the gentleman has omitted.

Mr. BROOMALL. I understand that perfectly well. That was the mode by which the militia system was maintained under the Constitution of 1838.

The committee that made this report have seen proper to change that system, and do away entirely with the militia fines, and compel the expense to be paid out of the treasury. The gentleman from Columbia (Mr. Buckalew) does not think that provision an improvement. I think it is. The collection of military fines was always odious to the people. I do not know of anything that has been more unpopular and more odious than the collection of military fines, ever since I began to take notice of public matters, and I think the idea that the expenses of our militia system should be borne out of the

public treasury, instead of by fines, is a very good one. When the section comes to be amended, in the manner I proposed, the Convention will see that it reads precisely like the Constitution of 1838, with that single exception: That the expenses are to be paid out of the treasury, instead of by the imposition of military fines. It may be said that this class of our citizens, who have conscientions scruples against bearing arms, will obtain some advantage by the adoption of this amendment; but they will not, because, while they will not render the service, they will not be paid. It is only those who serve in the militia who will be paid. I think there can be no difficulty about this question, and if the gentleman from Columbia (Mr. Buckalew) will reflect a moment, he will be convinced of the odium with which the collection of these militia fines was held by our citizens, and he will be convinced that it will be a much better plan to pay the expense of our militia system out of the State Treasury.

Mr. BUCKALEW. Mr. Chairman: I do not understand the point to which I spoke raised any question whatever of military fines. It is a question of commutation, and also a question whether men shall be enrolled in the militia or not. The whole question of military fines is one which has been decided. The whole object of military fines was to bear the expense of the militia system.

Mr. MACVEAGH. The present provision is to provide a pecuniary fine to take the place of personal service.

Mr. BROOMALL. I propose to take the position which has been taken by the the committee, and carry it out to its legitimate consequences. Why should a military fine be imposed upon any person when the expense is to be borne out of the Treasury of the State to which he directly contributes? Now, I shall endeavor to explain. I cannot conceive why the people of our State who pay to fight should also be compelled to pay a military tax. Hence they object to paying any commutation, and for the reason they object to fight they object to pay this military tax. They have never objected to paying for the support of the government, and if you blend their military tax with all their other taxes, they will gladly pay the military tax. It is only when you absolutely impose upon them a military tax that they are just as much opposed to it as they are to fighting. I think the amendment which has been offered by the committee to place this expense upon the State Treasury is much better, and I think that the amendment which I have proposed will leave the whole Constitution in the same position that it is now, with the exception of that particular section.

The question being taken, the amendment was not agreed to.

Mr. JOHN N. PURVIANCE. Mr. Chairman: I move to amend, by adding the following words: "But shall pay an equivalent for personal services."

Mr. DARLINGTON. Mr. Chairman: It strikes me that this amendment is simply restoring the old Constitution, and I think we had better leave that instrument alone without mixing it up with the amendment offered by the gentleman from Lancaster (Mr. Carter.) If I mistake not the amendment contemplates restoring the provisions of the old Constitution, that those of our citizens who have conscientious scruples to bear arms shall not be compelled to do so, but that they shall pay an equivalent for personal service.

Mr. CARTER. I hope this amendment will be voted down. I do not desire to reiterate the remarks I have made upon this subject, but as I said before, I earnestly appeal to the members of this committee to make this concession to the great principle of the right of conscience. This provision is in the Constitution of almost every State in the Union, and I hold it as a great principle, that no earthly power should interfere between man and his God. I think the remarks of the distinguished ex-Governor were exceedingly appropriate, and have an exceedingly important bearing with regard to this question. I hope, therefore, that this amendment will not pass.

The question being taken, the amendment to the amendment was not agreed to.

Mr. PURMAN. Mr. Chairman: I offer the following amendment: It is to strike out all after the word "law," and insert as follows:

"Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service."

I desire to say that this amendment, which I have offered, meets with the provisions of the present Constitution, and I believe it expresses the sense of this Convention. It takes care of our Quaker friends. We have lately passed through one of the worst wars any people ever ex-

perienced. Our Quaker friends experienced no inconvenience during those times of trouble, and I apprehend they will experience no inconvenience in the future. The amendment which I have offered will relieve them from military service by the payment of commutation. It is certainly quite fair to them, and is no injustice to those who actually bear arms. It takes out the objectionable features of the section, as reported by the committee, in allowing the Legislature to go down in the Treasury of the Commonwealth and bring up as much of the funds as they may deem expedient to support the militia system of this Commonwealth. I trust, therefore, the committee will adopt the amendment.

Mr. PORTER. Mr. Chairman: The committee having this matter in charge has certainly dealt very kindly towards the society of Friends, and it was the understanding when this report was made, that it would meet with their approval, and if the pending amendment is adopted the report will be worse off than ever. That is the very thing these people complain of. While they cannot conscientiously perform military service, yet it is contemplated that the State shall compel them to pay a tax in lieu thereof. I think a provision of this kind is merely reviving the old saying of "robbing Peter to pay Paul." The society of Friends were very urgent before the committee having this report in charge, and the committee endeavored to satisfy them in presenting this report to the Convention. I have no objection whatever to the amendment which has been offered by the gentleman from Lancaster (Mr. Carter.) The whole question, by this amendment, is left to the Legislature, and they will be empowered to exempt what classes of our citizens they may deem expedient.

You will pay men, then, justly for their services. You will get a good militia in this way; but under any law administered by the Legislature, by this commutation tax, never has the militia been worth anything at all. I received a letter from General Russell, who has long been connected with the military department of the State, and it meets his entire approval, and he says if it is adopted it will be the means of harmonizing the military law of the State, and doing justice in this matter.

Mr. DARLINGTON. Mr. Chairman: I hope the proposition of the gentleman from Greene (Mr. Purman) will not be adopted. It seems to me that it throws the Friends back upon what has been really their great annoyance—military service in times of peace—when they are called upon to muster or to pay militia fines as a distinct tax from all others. They have never objected, and do not now object, to paying their full share of all the taxes that go into the State Treasury for the support of the government, because they are not individualized nor selected out for a particular tax. They pay as all others pay. The little expense necessary for military purposes should be paid out of the treasury just as we have provided. That is right and should be adhered to, just as the committee has adopted it. If we can agree to the proposition of the gentleman from Lancaster (Mr. Carter) I would be better pleased, but if we cannot adopt that, let the proposition of the gentleman from Butler (Mr. J. M. Purviance) be brought in, if he chooses to present it, merely restoring or adding to what we have already agreed to, that they shall not be compelled to bear arms, not leaving it to the Legislature to do so, but shall pay an equivalent for personal service. If that must be retained it will operate in times of war, and they do not object to all that is necessary for the defense of the government. They only want to be relieved so far as their conscience goes. I hope, therefore, that the amendment of the gentleman from Greene (Mr. Purman) will not prevail.

Mr. PURMAN'S amendment was rejected, there being, on a division, thirty-four in the affirmative and forty in the negative.

The CHAIRMAN. The question is upon the amendment of the gentleman from Lancaster (Mr. Carter.)

Mr. D. N. WHITE. Mr. Chairman: It appears to me that this amendment is not well drawn. If gentlemen will look at it they will see that the members of any religious society who have conscientious scruples, whether Presbyterians, Methodists or Episcopalians, are exempt. If you extend it that far, why not extend it to every man who has conscientious scruples against bearing arms.

I suppose the intention was, that persons belonging to religious societies that have tenets against bearing arms should be exempted; for instance, the society of Friends, Menonists, &c. If that is what the gentleman means, the language should be changed. I move to strike out the words, "religious societies," and insert the word "those."

Mr. HAY. Mr. Chairman: I desire to ask the mover of that question whether the amendment alters the article reported by the committee; whether the Legislature has not the power to make such exemptions as it sees fit to make, whether for religious scruples or for any other reason?

Mr. CARTER. Mr. Chairman: Permit me to say a word in explanation. This matter was thought over by a portion of us with very considerable care; and to guard against fraud on the part of men professing to have conscientious scruples, which were perhaps gotten up for the occasion. It was to prevent that class of people from pleading conscience that we inserted the words, "members of religious societies who are conscientiously scrupled against bearing arms."

Mr. D. N. WHITE'S amendment was agreed to, there being, on a division, forty-four in the affirmative, and thirty-three in the negative.

The CHAIRMAN. The question is upon the amendment as amended.

Mr. H. G. SMITH. Mr. Chairman: I move to amend the amendment, by striking out the clause proposed by the gentleman from Lancaster, (Mr. Carter,) and inserting the following, to come in at the end of the section as it stands: "Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent in personal fine."

Mr. LILLY. That has been voted down.

Mr. H. G. SMITH. We did not vote upon it in that shape to-day.

The CHAIRMAN rules it out of order, the same having been previously voted upon. The question is upon the amendment of the gentleman from Lancaster (Mr. Carter) as amended.

Mr. BRODHEAD. Mr. Chairman: I move an amendment to come in at the end of the pending amendment: "But no person claiming such exemption shall ever be permitted to vote at any State or municipal election."

Mr. DARLINGTON. Mr. Chairman: I arise to a point of order. That amendment is not germain to the question.

The CHAIRMAN. The Chair over-rules the point of order, and thinks it is germain to the question.

Mr. Brodhead's amendment was rejected.

The question recurring upon the amendment offered by Mr. Carter, as amended, it was agreed to, there being, on a division, fifty in the affirmative and twenty-seven in the negative.

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

Mr. T. H. B. PATTERSON. Mr. Chairman: I move to strike out the word "shall," in the third line of the section, and insert "may."

It was not agreed to.

Mr. J. M. WETHERILL. Mr. Chairman: I propose to amend, by striking out, in the second line of the section, the words, "for its defence when and," so that the article will read: "The freemen of this Commonwealth shall be armed, organized and disciplined in such manner as may be directed by law," &c.

I desire to say a word or two on that subject. In framing a Constitution it seems to me proper that we should be governed by the experience that we have acquired upon every subject. These words were, during the late war, productive of difficulty among the militia of the Commonwealth. Gentlemen will remember, when the fact is called to their attention, that many of the militia regiments refused to advance over the border of the State when called upon by their officers, asserting that the Constitution turned all the militia companies and regiments of the State into debating societies, and caused them to do quite as much injury, probably more, to their friends than they did to the enemy.

I desire, for that reason, to have them stricken out, so that it will be understood that the militia are to be disciplined fully and effectually, both for defense and attack, should such be necessary. I hope and trust that it may never be necessary to employ them either for the one or for the other, but if we are to have a militia organization we should have it effective, and to be used in any manner that soldiers are used, whether in peace or in war. I hope, therefore, that the words will be stricken out.

The question being taken on the amendment, a division was called for and resulted: In the affimative, forty-one; in the negative, thirty-eight.

So the amendment was agreed to.

The question recurring on the section as amended, a division was called for, and resulted: In the affirmative, forty-five; in the negative, thirty-six. So the section was agreed to.

IN CONVENTION.

Mr. S. A. PURVIANCE. Mr. President: The committee of the whole have had under consideration the article reported by the Committee on Militia, and have instructed me to report the same with amendments to the Convention.

The PRESIDENT. The chairman of the committee of the whole reports that committee have had under consideration the article reported by the Committee on Militia, and has instructed him to report the same to the Convention with amendments. The amendments will be read.

The CLERK read:

To strike out, in the second line, the words, "for its defense when and;" to strike out, in the fourth line, the words, "direct" and "State," and add at the end of the section these words, "of the Commonwealth, but the Legislature may exempt from military service those persons having conscientious scruples against bearing arms."

The PRESIDENT. The amendments will be entered on the Journal.

RELIGIOUS AMENDMENT.

Mr. CUYLER presented four memorials, numerously signed by citizens of the State of Pennsylvania, asking for the recognition of Almighty God and the christian religion in the amended Constitution.

Mr. LAWRENCE presented a similar memorial.

Mr. BROOMALL presented a similar memorial.

Mr. RUSSELL presented a similar memorial.

Mr. J. N. PURVIANCE presented a similar memorial.

Mr. HARVEY presented a similar memorial.

Mr. STANTON presented a similar memorial.

All of which were referred to the Committee on Declaration of Rights.

Mr. DARLINGTON. Mr. President; I now move that the Convention resolve itself into committee of the whole for the purpose of considering the article reported by the Committee on Impeachments and Removal from Office.

The question being on the motion, a division was called for and resulted: In the affirmative, thirty-eight; in the negative, thirty-seven.

So the motion was agreed to.

Mr. DALLAS. Mr. President: I move to re-consider the vote just taken, on the ground that the chairman of the Committee on Impeachments and Removal from Office is not now present.

The PRESIDENT. Did the gentleman (Mr. Dallas) vote with the majority?

Mr. DALLAS. I did.

Mr. EWING. I second the motion. I also voted with the majority.

The question being on the re-consideration, a division was called for and resulted: In the affirmative, fifty-two; in the negative, twenty.

So the motion to re-consider was agreed to.

Mr. WRIGHT. Mr. President: I move that this Convention do now adjourn.

The motion was agreed to, there being, on a division, forty in the affirmative, and thirty-four in the negative.

So the Convention, at two o'clock and thirty minutes, adjourned.

SEVENTY-SIXTH DAY.

THURSDAY, *March* 27, 1873.

The Convention met at ten A. M.

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

RELIGIOUS AMENDMENT.

Mr. MACVEAGH presented a petition from citizens of Dauphin county, asking for a recognition of Almightly God and the christian religion in the Constitution, which was referred to the Committee on Declaration of Rights.

LUZERNE COUNTY COURTS.

Mr. WRIGHT presented a petition of nine hundred citizens of the upper part of the county of Luzerne, asking for a division of their courts, which was laid on the table.

RELIGIOUS AMENDMENT.

Mr. CRONMILLER presented the petition of citizens of the State of Pennsylvania, asking for a recognition of Almighty God and the christian religion in the Constitution.

Mr. LEAR presented a similar petition from citizens of Bucks county.

Both of which were referred to the Committee on Declaration of Rights.

PAY OF OFFICERS.

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

Resolved, That the Committee on Accounts be requested to report a resolution directing warrants to be drawn for such appropriation of the pay of the clerks and other officers as they may deem proper.

The question being, shall the Convention proceed to the second reading of the resolution, it was agreed to.

The resolution was then agreed to.

PRINTING OF DEBATES.

Mr. BRODHEAD offered the following resolution, which was read and laid on the table:

Resolved, That the Committee on Accounts are hereby directed to inquire into the cost of publication of the Debates by parties who will contract to furish them to this Convention on the morning of the day after such debates are had, and if a suitable contract can be made, they shall rescind the now existing contract with B. Singerly for the publication of the same, on the grounds of the non-performance thereof by said B. Singerly, and contract with other parties for such printing; first submitting the provisions thereof to this Convention.

THE LEGISLATURE.

Mr. MACVEAGH. Mr. President: I am directed by the Committee on Legislature to present to the Convention the article on the Legislature, which was re-committed to that committee.

The CLERK read as follows:

SECTION 1. The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.

SECTION 2. An election for members of the General Assembly shall be held on the day fixed for the general election next succeeding the adoption of this Constitution, and at the general election held two years thereafter. Their term of office shall begin on the first day of December next succeeding their election; when any vacancy occurs in either House, the Governor shall issue a writ of election to fill such vacancy for the remainder of the term in which such vacancy shall have occurred.

SECTION 3. Senators shall be elected for the term of four years.

SECTION 4. Representatives shall be elected for the term of two years.

SECTION 5. The General Assembly shall meet at twelve o'clock noon, on the first Tuesday of January succeeding the adoption of this Constitution, and the same hour on the first Tuesday of January, every two years thereafter, unless sooner convened by the Governor in special session.

SECTION 6. No person shall be a Senator who shall not have attained the age of twenty-five years, and have been a citizen and inhabitant of the State four years next before his election, and the last year

thereof an inhabitant of the district for which he shall be chosen, unless he shall have been absent on the public business of the United States, or of this State; and no person shall hold said office after he shall have removed from said district.

SECTION 7. No person shall be a Representative who shall not have attained the age of twenty-one years, and have been a citizen and inhabitant of the State three years next before his election, and the last year thereof an inhabitant of the district for which he shall be chosen, unless he shall have been absent on the public business of the United States, or of this State; and no person shall hold said office after he shall have removed from said district.

SECTION 8. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office under this Commonwealth, which shall have been created, or the emoluments of which shall have been increased during such time; and no member of Congress, or other person holding any office (except of attorney-at-law and in the militia) under the United States or this Commonwealth, shall be a member of either House during his continuance in Congress or in office.

SECTION 9. No person who has been, or hereafter shall be convicted of bribery, perjury, or other infamous crime, or who has been, or may be a collector or holder of public moneys, who shall not have accounted for and paid over, according to law, all such moneys due from him, shall be eligible to the General Assembly, or to any office of profit or trust in this State.

SECTION. 10. Every member of the General Assembly, before he enters on his official duties, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of this Commonwealth, and will honestly and faithfully discharge the duties of Senator (or Representative) according to the best of my ability, and I do solemnly swear (or affirm) that I have not paid or contributed anything, or made any promise, in the nature of a bribe, to corruptly influence, directly or indirectly, any vote at the election at which I was chosen to fill the said office; and I do further solemnly swear (or affirm) that I have not accepted or received, and I will not accept or receive, directly or indirectly, any money or other valuable thing, from any corporation, company or person, for any vote or influence I may give or withhold on any bill, resolution or appropriation, or for any other official act.

SECTION 11. The foregoing oath shall be administered by one of the judges of the Supreme Court, in the Hall of the House to which the member is elected, and the Secretary of State shall read and file the oath subscribed by such member; any member who shall refuse to take said oath shall forfeit his office; and every member who shall be convicted of having sworn falsely to, or of having violated his said oath, shall forfeit his office, and be disqualified thereafter from holding any office of profit or trust in this State.

SECTION 12. The members of the General Assembly shall receive such salary and mileage for regular and special sessions as shall be fixed by law, and no other compensation or payment whatever, whether for services as a member of any committee or otherwise; but no member of either House shall, during the term for which he may have been elected, receive any increase of salary, compensation or mileage under any law passed during such period.

SECTION 13. The Lieutenant Governor shall preside over the Senate, and in case of a vacancy in the office of Lieutenant Governor the Senate shall elect one of its members as Speaker; the House of Representatives shall elect one of its members as Speaker; each House shall choose its other officers, and shall judge of the election and qualifications of its members.

SECTION 14. A majority of each House shall constitute a quorum, but a smaller number may adjourn from day to day, and may be authorized by law to compel the attendance of absent members in such manner and under such penalties as may be prescribed.

SECTION 15. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for the Legislature of a free State.

SECTION 16. The doors of each House and of committees of the whole shall be open, unless when the business is such as ought to be kept secret.

SECTION 17. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other

place than that in which the two Houses shall be sitting.

SECTION 18. The members of the General Assembly shall in all cases, except treason, felony, violation of their oath of office, and breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses, and in going to and returning from the same. And for any speech or debate in either House they shall not be questioned in any other place:

SECTION 19. The Senate shall consist of fifty members, and the House of Representative shall consist of one hundred and fifty members.

SECTION 20. The General Assembly, at its first session after the adoption of this Constitution, and every ten years thereafter, shall apportion the State for the election of Senators and Representatives, according to its population as ascertained by the last preceding national census. Senatorial and representative districts shall, in all cases, be composed of compact and contiguous territory, and shall contain, as nearly as possible, an equal number of inhabitants: *Provided however*, That no city or county shall be entitled to more than six Senators.

SECTION 21. No city or county shall be divided, in any apportionment, for the purpose of annexing any part thereof to any other city or county in the formation of any sentorial or representative district.

DISSENTING REPORT OF MESSRS. JNO. P. WETHERILL AND DALLAS.

The undersigned, a minority of members of the Committee on the Legislature, are unable to concur in so much of the report of that committee as proposes the following: *Provided*, That no city or county shall elect more than six Senators.

The undersigned, therefore, respectfully submit that no such discrimination should be made, but that every city or county should be entitled to a full representation according to population, and therefore recommend the above proviso should be stricken from the section of the report as reported by the majority of the committee.

JNO. P. WETHERILL,
GEO. M. DALLAS.

Mr. MACVEAGH. Mr. President: I will state, with unanimous consent, the purport of the additional matter. It fixes the number of Senators at fifty, the number of Representatives at one hundred and fifty; provides for the apportionment, according to the last preceeding national census, once in every ten years, by the Legislature, subject to the restrictions, only, that the territory shall be compact and contiguous; that the population shall be as nearly equal as possible, and that no city or county shall be divided, in order to annex a portion of the same to any other city or county, to form a district, and retaining the restriction upon Philadelphia, enlarging the number of Senators to six.

That is the entire substance of the report.

Mr. DARLINGTON. Without single districts?

Mr. MACVEAGH. Yes, sir.

Mr. DARLINGTON. Then I care nothing about it, and withdraw the call for the reading of the report.

The PRESIDENT. The call for the reading of the report is withdrawn.

Mr. LILLY. Mr. President: I desire to state here and now, distinctly, and desire it to be understood, that the Committee on Suffrage, Election and Representation was not consulted, in the preparation of this report, and are responsible for nothing in it.

The PRESIDENT. The Chair will state to the chairman of the Committee on Legislature that if he desires this report printed, he must make that motion.

Mr. MACVEAGH. Mr. President: I move that the report be printed and placed on the files of the members.

The motion was agreed to.

THE REPORT OF THE COMMITTEE ON THE JUDICIARY.

Mr. ARMSTRONG. Mr. President: I offer the following report from the Committee on the Judiciary.

The PRESIDENT. The Committee on the Judiciary have reported, and the same will be read.

Mr. ARMSTRONG. Mr. President: I desire to state, perhaps it may be satisfactory to the Convention to know, that this report is intended to cover only the organization of the courts, including all courts of record, aldermen and justices of the peace. There are a number of other subjects, such as juries and other important questions, referred to the Committee on the Judiciary, which they have not thought proper to embody in this report, and which will be the subject of a separate report.

The PRESIDENT. The report will be read.

The CLERK read as follows:

ARTICLE —.

OF THE JUDICIARY.

SECTION 1. The judicial power of the Commonwealth shall be vested in a Supreme Court, in a circuit court, in courts of oyer and terminer and general jail delivery, in a court of common pleas, orphans' court, and a court of quarter sessions for each county, in justices of the peace, and such other courts not of record as the Legislature may determine, with civil jurisdiction not exceeding three hundred dollars, and with such criminal jurisdiction and powers as shall be conferred by law. No court of record other than those herein designated shall be established.

SECTION 2. The Supreme Court shall consist of seven judges, who shall be nominated by the Governor, and, by and with the advice and consent of two-thirds of all the members of the Senate, appointed and commissioned by him; they shall hold their offices for the term of twenty-one years, if they shall so long behave themselves well, but shall not be re-appointed; the judges who shall be in office when this Constitution takes effect shall continue until their commissions shall severally expire; two additional judges of the Supreme Court shall be nominated and appointed, whose term of office shall begin on the first Monday of ——, one thousand eight hundred and ——, and whose priority of commission shall be severally designated by the Governor when nominated; any vacancies happening by death, resignation or otherwise shall be filled by appointment for a full term, as hereinbefore provided; the judge whose commission will first expire shall be chief justice, and thereafter each judge whose commission shall first expire shall in turn be chief justice.

SECTION 3. The circuit court shall consist of nine judges, eight of whom shall be elected by the qualified electors of the Commonwealth at large. They shall hold their offices for the term of sixteen years, if they shall so long behave themselves well, (subject to the allotment hereinafter provided for, subsequent to the first election.) The first election shall take place at the general election next after the adoption of this Constitution. The persons who shall then be elected judges of the circuit court shall hold their offices as follows: One of them for two years, one for four years, one for six years, one for eight years, one for ten years, one for twelve years, one for fourteen years, one for sixteen years. The term of each shall, as soon after the election as convenient, be decided by lot by said judges, and the result certified by them to the Governor, who shall issue their commissions in accordance thereto.

Should any two or more judges of the circuit court, at any subsequent election, or any two or more judges of the court of common pleas, for the same district, be elected at the same time, they shall, as soon after the election as convenient, cast lots for priority of commission, and certify the result to the Governor, who shall issue their commissions in accordance thereto.

One of the judges of the Supreme Court, designated from time to time by that court, shall be a justice of the circuit court, and shall preside as chief justice of the circuit court when sitting as an appellate court, in banc, for the term for which he shall be so designated, but no justice of the Supreme Court shall be designated for more than three terms in succession. When sitting in banc five of said judges shall be a quorum, and the concurrence of three shall be necessary to any decision, but when more than five are sitting a majority shall be necessary. In the absence of the justice of the Supreme Court, the judge present whose commission will first expire shall preside.

SECTION 4. All judges required to be learned in the law, except the judges of the Supreme Court and the judges of the circuit court, shall be elected by the qualified electors of the respective districts over which they are to preside, and shall hold their offices for the term of ten years, if they shall so long behave themselves well, but for any reasonable cause, which shall not be sufficient grounds for impeachment, the Governor may remove any of them on the address of two-thirds of each branch of the Legislature.

SECTION 5. All the judges of the Commonwealth shall be commissioned by the Governor.

JURISDICTION OF SUPREME COURT.

SECTION. 6. 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. They shall have original jurisdiction in cases of *habeas corpus* and *mandamus* and in cases of *quo warranto* as to all officers of the Common-

wealth whose jurisdiction extends over the State, and in revenue cases in which the Commonwealth is a party, but shall not be invested with any other original jurisdiction. They shall have appellate jurisdiction by direct appeal *certiorari* or writ of error in all cases in which the subject matter in controversy shall exced in value two thousand dollars, to be determined as may be directed by law, or in which the judge who presided at the trial shall certify that the constitutionality of any law of the State or of the United States is involved, and of all judgments of the circuit court in the exercise of original jurisdiction, and in no other case whatever; and like jurisdiction by appeal, *certiorari* or writ of error from the circuit court, in the exercise of appellate jurisdiction, in all cases in which the subject matter in controversy shall exceed in value five hundred dollars, to be determined as may be directed by law, and in all other cases in which the judgment of the circuit court shall not have been unanimous by all the judges before whom it was heard, or in which any one of the judges before whom it shall have been heard shall certify that there is a question involved which ought to be submitted to the Supreme Court. Five of the judges shall be a quorum, and the concurrence of four shall be necessary to any decision. Every case in which four do not concur shall be argued before the full bench, and no case shall be affirmed by an equal division of judges. All appeals from, or writs of error or *certiorari* to the circuit court in *banc*, to be heard in the Supreme Court, shall be taken within such time and upon such terms as shall be prescribed by law.

JURISDICTION OF CIRCUIT COURT.

SECTION 7. The circuit court shall have original jurisdiction in each county in cases of *habeas corpus* and *mandamus* and in cases of *quo warranto*, and in election cases when directed by law, and in all civil cases, at law and in equity, in which the subject matter in controversy exceeds in value five hundred dollars, to be determined as may be directed by law. It shall have appellate jurisdiction in each appellate district in all civil cases which cannot be carried by direct appeal, *certiorari* or writ of error to the Supreme Court, and like jurisdiction in such criminal cases as may be conferred by law.

Their judgment in the exercise of appellate jurisdiction shall be final and conclusive as a court of last resort, unless carried to the Supreme Court, as hereinbefore provided, by appeal, *certiorari* or writ of error, within such time and upon such conditions as may be prescribed by law.

The decisions of the circuit court shall not be published by authority of the State.

SECTION 8. For the purpose of appellate jurisdiction the State shall be divided into six districts, in each of which the court sitting in *banc*, as a court of errors and appeals, shall hold at least one session each year, namely:

One at Philadelphia, which shall be called the First circuit, and shall embrace the city of Philadelphia and the counties of Chester, Delaware, Montgomery and Bucks.

One at Harrisburg, which shall be called the Second circuit, and shall embrace the counties of Dauphin, Lebanon, Lancaster, York, Adams, Franklin, Fulton, Bedford, Huntingdon, Juniata, Perry, Cumberland, Berks and Schuylkill.

One at Pittsburg, which shall be called the Third circuit, and shall embrace the counties of Allegheny, Washington, Beaver, Fayette, Greene, Somerset, Bedford, Fulton, Indiana, Armstrong, Butler, Lawrence, Westmoreland, Blair and Cambria.

One at Franklin, which shall be called the Fourth circuit, and shall embrace the counties of Erie, Crawford, Mercer, Venango, Clarion, Forest, Warren, Elk, Jefferson and McKean.

One at Williamsport, which shall be called the Fifth circuit, and shall embrace the counties of Lycoming, Mifflin, Union, Snyder, Northumberland, Montour, Columbia, Sullivan, Clinton, Centre, Tioga, Potter, Clearfield and Cameron.

One at Wilkesbarre, which shall be called the Sixth circuit, and shall embrace the counties of Luzerne, Carbon, Monroe, Pike, Wayne, Susquehanna, Bradford, Wyoming, Lehigh and Northampton.

SECTION 9. For the purpose of original jurisdiction, each county shall be a subcircuit, in which at least one term of the ciruit court shall be held by one of the judges thereof, at the county seat, every year, if the business shall require. The Legislature, at its first session after this Constitution shall be adopted, shall, and from time to time thereafter may, determine the time and continuance of the appellate terms of each circuit, and the time within which and the terms upon which appeals from, or writs of error, or

certiorari to the circuit court in its appellate jurisdiction, shall be taken, and the time and continuance of the terms of original jurisdiction, and shall provide for the removal thereto of such proceedings as are herein authorized to be removed into the circuit court, and for the summoning of jurors and witnesses, and generally for the efficient organization of said courts. The Legislature may, from time to time, increase the number of the justices of the circuit court, and with the concurrence of two-thirds of all the members of each House, change the appellate circuits, but a majority may attach any new county to its appropriate circuit.

SECTION 10. The several terms of the circuit courts of original jurisdiction, appointed by law, shall be held by one of the circuit judges, by such assignment as they may themselves determine, but not by the Supreme judge. Any proceedings in law or equity, commenced in the court of common pleas, which might have been originally instituted in the circuit court, may be removed thereto, by either party, within such time, and upon such conditions as may be by law prescribed.

SECTION 11. No duties shall be imposed by law upon either the Supreme Court, or circuit court, or any of the judges thereof, except such as are judicial, nor shall either of said courts, or any of the judges thereof, exercise any power of appointment except as herein provided. The court of *nisi prius* is hereby abolished, and no court of original jurisdiction, to be presided over by any one or more of the judges of the Supreme Court, shall be established.

COURT OF COMMON PLEAS.

SECTION 12. The commissions of the judges of the courts of common pleas shall continue as they are, until otherwise directed by law, the jurisdiction and powers of the courts of common pleas shall continue as at present established, except as herein changed. Not more than four counties shall, at any time, be included in one judicial district organized for said courts.

SECTION 13. In the city of Philadelphia and in the county of Allegheny, all the jurisdiction and powers now vested in the district courts and the courts of common pleas, or either of them, in said city and county, subject to such changes as may be made by this Constitution or by law, shall be, in the city of Philadelphia, vested in four, and in the county of Allegheny in two distinct and separate courts of equal and co-ordinate jurisdiction, composed of three judges each, and in such additional courts of the same number of judges and of like jurisdiction as may, from time to time, be by law added thereto. The said courts in the city of Philadelphia shall be designated respectively as the court of common pleas number one, number two, number three, and number four; and in the county of Allegheny as the court of common pleas number one, and number two, but the number of said courts may be by law increased from time to time, and shall be in like manner designated by successive numbers.

SECTION 14. Each court shall have exclusive jurisdiction of all proceedings at law and in equity commenced therein, subject to change of venue, as hereinafter provided.

SECTION 15. For the city of Philadelphia there shall be one prothonotary's office, and one prothonotary for all said courts, to be appointed by the judges of said courts, and to hold office for six years, subject to removal by a majority of the said judges, and one chief clerk for each of said courts, to be appointed by such court, and to hold office for six years, subject to removal by said court. The said prothonotary and the said chief clerks shall respectively appoint such assistants as may be necessary, and the said prothonotary and chief clerks and their assistants shall receive fixed salaries, to be determined by law, and paid by said city; and all fees collected in said office, except such as may be by law due to the Commonwealth, shall be paid by such prothonotary into the city treasury. Each court shall have its separate dockets, except the judgment docket, which shall contain the judgments and liens of all the said courts, and of the circuit court, as are, or may be, directed by law.

SECTION 16. The said courts in the city of Philadelphia and county of Allegheny, respectively, shall, from time to time, in turn, detail one or more of its judges to hold the criminal courts of said district, in such manner as may be directed by law.

JURISDICTION OF THE COURT OF COMMON PLEAS.

SECTION 17. Every judge of the court of common pleas shall, by virtue of his office, and within his district, be a justice of oyer and terminer and general jail delivery for the trial of capital and other offenders

therein, and shall be a justice of the peace therein, as far as relates to criminal matters, and shall be competent to hold the court of quarter sessions of the peace and the orphans' court thereof.

SECTION 18. The party accused, as well as the Commonwealth, may, under such regulations as shall be prescribed by law, remove the indictment and proceedings, or a transcript thereof, into the Supreme Court or into the circuit court, when authorized by law.

SECTION 19. The judges of the circuit court, in the exercise of appellate jurisdiction within each appellate circuit, and the judges of the court of common pleas, within their respective counties, shall have power to issue writs of *certiorari* to the justices of the peace and other inferior courts, not of record, and to cause their proceeding to be brought before them, and right and justice be done.

SECTION 20. When there is more than one judge of the court of common pleas for the same district, any two or more of them may sit in banc or in joint session for any purposes not appellate which may be authorized by law.

SECTION 21. Until otherwise directed by law the common pleas districts shall continue as they are.

Additional judges of the court of common pleas shall be elected, at the first general election after this Constitution shall take effect, in the following districts, namely:

In the First district, composed of the city of Philadelphia, two judges.

In the Third district, composed of the counties of Northampton and Lehigh, one judge.

In the Fifth district, composed of the county of Allegheny, one judge.

In the Tenth district, composed of the counties of Westmoreland, Indiana and Armstrong, two judges.

In the Twelfth district, composed of the counties of Dauphin and Lebanon, one judge.

In the Fourteenth district, composed of the counties of Fayette and Greene, one judge.

In the Seventeenth district, composed of the counties of Butler and Lawrence, one judge.

In the Nineteenth district, composed of the counties of York and Adams, one judge.

In the Twenty-eighth district, composed of the counties of Mercer and Venango, one judge.

JUSTICES OF THE PEACE AND ALDERMEN.

SECTION 22. Justices of the peace and aldermen shall be elected at the election to be held on the third Tuesday in February, one thousand eight hundred and seventy-four, and whenever thereafter vacancies shall occur, by the qualified electors in the several townships, boroughs and wards, for the term of five years, to commence thirty days after the date of their election, and shall be commissioned by the Governor.

The number of such officers shall not exceed one for every township, borough or ward; and no person shall be elected to such office unless he is a citizen of the United States, a qualified elector of good moral character and temperate habits, resident within the State for three years, and within the township, borough or ward for one year next preceding his election; nor if he has been convicted of any infamous crime, or been removed by the judgment of a court from any office of trust or profit.

Any justice of the peace or alderman may be removed from office by the judgment of any court of record having civil jurisdiction, held within the county or city where he resides, upon complaint of any ten citizens, and due proof upon hearing of such misconduct or unfitness for office as shall be declared by law sufficient ground for removal.

In each city having a population exceeding two hundred thousand, there shall be established, in lieu of the offiee of alderman and justice of the peace, as the same now exists, one court, not of record, of police and small causes for each thirty thousand inhabitants. Such court shall be held by judges learned in the law, who shall have been admitted to and shall have had at least five years practice in the court of common pleas in the judicial district in which said city is located. Their term of office shall be seven years, and they shall be elected on general ticket by all the qualified voters of such city. They shall be compensated only by fixed salaries, and shall exercise such jurisdiction, civil and criminal, as is now exercised by aldermen and justices of the peace, and such other jurisdiction as the Legislature may be from time to time prescribed by law.

All costs and taxes on the business of such courts, and all fines and penalties shall be discharged only by a direct payment into the city treasury.

GENERAL PROVISIONS.

SECTION 23. The judges of the Supreme Court, the judges of the circuit court, and the judges of the several courts of common pleas, and all other judges required to be learned in the law, shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit under this Commonwealth, nor under the United States or any other State. Any judge of the Supreme Court whose commission shall expire after the first day of January, one thousand eight hundred and seventy-four, and who shall have served a full term, shall receive two-thirds of his annual salary thereafter, for the remainder of his life. Any judge of any other court of record, who shall be in commission when this Constitution shall take effect, or who may be thereafter commissioned, and who shall have served for twenty continuous years, and shall have attained the age of seventy years, may thereupon retire, and shall be entitled to receive two-thirds of his annual salary thereafter for the remainder of his life.

SECTION 24. The judges of the Supreme Court and of the circuit court, during their continuance in office, shall reside within this Commonwealth, and the other judges, during their continuance in office, shall reside within the district or county for which they shall respectively be elected.

No person shall be eligible to the office of judge of the Supreme Court unless he be at least forty years of age, nor to the office of judge of the circuit court unless he be at least thirty-five years of age, nor to the office of judge of the court of common pleas unless he be at least thirty years of age, nor shall any person be a judge of either of said courts unless he be a citizen of the United States, and have resided in this state five years next preceding his appointment or election, and shall have had at least five years practice in some court of record in the State.

SECTION 25. The Supreme Court and the circuit court, and the several courts of common please, shall, besides the powers heretofore usually exercised by them, have the power of a court of chancery, so far as relates to the perpetuation of testimony, the obtaining of evidence from places not within the State, and the care of the persons and estates of those who are *non compos mentis*, and the Legislature shall vest in the said courts such other powers to grant relief in equity as shall be found necessary, and may, from time to time, enlarge or diminish those powers, or vest them in such other courts as they shall judge proper for the due administration of justice.

SECTION 26. A register's office for the probate of wills and granting letters of administration, and an office for the recording of deeds, shall be kept in each county. The register's court is hereby abolished, and the jurisdiction and powers thereof are vested in the orphans' court. The Legislature shall, at its first session after this Constitution shall take effect, provide for the election in the city of Philadelphia of three judges, and in the county of Allegheny of two judges, and in any county having more than one hundred thousand inhabitants may provide for the election of one or more judges, learned in the law, who shall be called judges of the orphans' court, and in whom shall be vested all the jurisdictions and powers to be exercised by the orphans' court of such county.

SECTION 27. The style of all process shall be: "The Commonwealth of Pennsylvania." All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Pennsylvania, and conclude against the peace and dignity of the same.

SECTION 28. Any vacancy happening by death, resignation, or otherwise, in any of the said courts except the Supreme Court, shall be filled by appointment by the Governor, to continue till the first Monday of December succeeding the next general election.

SECTION 29. The several district courts within this State are hereby abolished. All judges learned in the law, whose courts are abolished by this Constitution, and all associate judges learned in the law shall, as soon as practicable after this Constitution shall be adopted, surrender their commissions to the Governor, who shall issue commissions to them, respectively, as judges of the court of common pleas for the unexpired term of their office; and all the jurisdiction and powers exercised by such courts are hereby vested in the courts of common pleas of such district.

SECTION 30. The office of associate judge, not learned in the law, is abolished, but the several judges in office when this

Constitution shall be adopted may continue to serve for their unexpired terms. No such judge or judges shall be competent alone to hold a court.

SECTION 31. The nominations for judges of the Supreme Court shall be made by the Governor to the Senate of the Legislature, next preceeding the time when the term of office shall commence.

SECTION 32. All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process, judgment and decisions of such courts shall be uniform.

SECTION 33. It shall be the duty of the Supreme Court, as soon as practicable, and within one year after this Constitution shall take effect, and from time to time thereafter as may be necessary, to provide rules and regulations for a general system of practice in all the courts of record of the State, which shall be uniform in all courts of the same class or grade, and shall not be changed except by the Supreme Court: *Provided*, That special rules may be provided for cities exceeding one hundred thousand inhabitants, and special rules may be added thereto by the presiding judge in any judicial district with the consent and approval of the Supreme Court.

SECTION 34. The judges of the several courts of record of this Commonwealth shall, in every case tried before them, respectively reduce the whole opinion and charge of the court to writing, and deliver the same to the jury as written, and shall forthwith file the same of record, and any failure to do so, or any comments in the charge to the jury upon the law or the facts not reduced to writing and filed shall, upon the allegation of the plaintiff in error, be inquired into by the appelate court into which the case has been removed by affidavit or otherwise, and the fact, when established, shall be conclusive ground of reversal.

SECTION 35. All applications for change of venue in any cause pending in any of the courts of record, within either of said appellate circuits, shall be made to such circuit court *in banc*, upon affidavits to be taken in accordance with the rules of court, to be established as hereinbefore provided, and such court shall have power to direct a change of venue.

SECTION 36. The Supreme Court shall appoint one reporter of its decisions, and one clerk for each appellate district, who shall each hold office for six years, subject to removal by the court. The circuit court shall appoint one clerk for each appellate district, who shall hold office for six years, subject to removal by the court. The prothonotary of each county shall be the clerk of the circuit court of original jurisdiction within the same.

SECTION 37. The parties, by agreement filed, may dispense with the trial by jury, and submit the decision of any case to the court having jurisdiction thereof, and such courts shall hear and determine the same. The evidence taken and the law as declared shall be filed of record with right of appeal from the final judgment, as in other cases, and with like effect as appeals in equity.

THE SCHEDULE FROM THE COMMITTEE ON JUDICIARY.

The PRESIDENT. Accompanying the report are certain schedule.

Mr. ARMSTRONG. Mr. President. The schedule had perhaps better be read. They refer to courts specially in the city of Philadelphia and in Allegheny county.

The PRESIDENT. It cannot be received as an article.

Mr. ARMSTRONG. I trust the Chair will allow it to be read for information, at least.

The PRESIDENT. The Chair cannot very well do that now. It will be printed on the Journal.

Mr. ARMSTRONG. It might be read for information.

The PRESIDENT. The Chair cannot allow it to be done at present. We are reading articles.

The article reported by the Committee on Judiciary has been read a first time, and will be laid on the table and printed.

It is now moved and seconded that the schedule reported by the Committee on Judiciary be read for information. Will the House agree to the motion?

The motion was agreed to.

The PRESIDENT. The same will be read.

The CLERK read as follows:

SCHEDULE.

SECTION 1. The courts of common pleas, in the city of Philadelphia, shall be composed of the present judges of the district court and court of common pleas of said city, until their commissions shall severally expire, and of such other judges as may, from time to time, be elected. For the purpose of first organization in the city of Philadelphia the judges of the

court number one shall be Judges Hare, Lynd and Mitchell; of the court number two, Judges Thayer, Paxon and Briggs; of the court number three, Judges Allison, Finletter, and one other judge to be elected, and of the court number four, Judges Ludlow, Pierce, and one other judge to be elected. The judges first named shall be the president judge of said courts respectively, and thereafter the president judge shall be the judge oldest in commission.

In the county of Allegheny, for the purpose of first organization, the judges of the court number one shall be Judges Hampton, Kirkpatrick, and one other judge to be elected, and of the court number two, Judges Sterrett, Stow and Collier. The judges first named shall be president judge of said courts respectively.

SECTION 2. The causes and proceedings pending in the district court of the city of Philadelphia shall be tried in courts number one and two. The causes and proceedings pending in the court of common pleas shall be tried in courts number three and four. The records and dockets of both said courts shall be transferred to the prothonotary's office of said district.

The causes and proceedings pending in the court of *nisi prius* shall be tried in the circuit court of said district, and the records and dockets of said courts shall be transferred to the prothonotary's office of said district.

The causes and proceedings pending in the district court of Allegheny county shall be tried in court number one, and the causes and proceedings pending in the court of common pleas of said county shall be tried in court number two.

MR. KAINE'S DISSENTING REPORT.

Mr. KAINE. Mr. President: I, for myself, from the same committee, present a dissenting report.

The PRESIDENT. A dissenting report is presented by the gentleman from Fayette. The same will be read.

The CLERK read as follows:

The undersigned, dissenting from the report of the majority of the Judiciary Committee, desires to present some reasons and considerations for so doing:

First. He is not in favor of the appointment of the judges of the Supreme Court by the Governor, while all others are to be elected. The judges of the Supreme Court, heretofore elected, have generally given satisfaction to the people, who, in his opinion, desire no change in the Constitution in that particular.

Second. He is opposed to the establishment of a circuit court, as, in his opinion, the multiplication of tribunals would be burthensome, expensive, and only hinder and delay the administration of justice. A circuit court, much more simple than this, held by the judges of the Supreme Court, was tried in this State, found to work badly, and was long since abandoned. The one now proposed by the report of the majority of the committee is an innovation upon our judicial system—one to which our people are not accustomed, and which, in the opinion of the undersigned, would lead to confusion and delay.

Third. A remedy for existing and prospective difficulties might be found by increasing the number of the judges of the Supreme Court, and, perhaps, by a division of the judges of that court, so as to form two courts, each exercising supreme jurisdiction over different subjects, and over different classes of cases; and in a more efficient organization of the courts of common pleas.

In accordance with these views, the undersigned would suggest the following plans for the organization of the Supreme Court and the courts of common pleas:

THE SUPREME COURT.

The Supreme Court shall be composed of seven judges, who shall be learned in the law, one of whom shall be chief justice. Four shall constitutute a quorum, and the concurrence of four shall be necessary to a decision. They shall be elected by the qualified voters of the State at large, for the terms of fifteen years, at the times and in the manner following, that is to say: At the general election in the year one thousand eight hundred and seventy-three, three persons shall be elected judges of said court, and every fifth year thereafter two or more persons shall be elected as may be necessary to maintain the number of seven judges of the said court; and in all elections of said judges, each qualified voter may distribute his votes to and among candidates, as he shall think fit, or may bestow them all upon one, and when three judges are to be elected, he may divide his votes equally between two, and the persons highest in vote shall be declared elected. The judge whose commission will first expire shall

be chief justice during his term, and thereafter each judge whose commission shall first expire shall in turn be chief justice, and if two or more commissions shall expire on the same day, the judges holding them shall decide by lot which shall be chief justice. In the absence of the chief justice, the judge oldest in commission, or oldest in commission and senior in age, shall act as chief justice. In case of a vacancy in the office of judge of said court, pending a term, the same shall be filled, for the unexpired term, by an appointment to be made by the chief justice and remaining judges of said court, and all of them concurring therein; and all appointments, made as aforesaid, shall be certified to the Governor by the chief justice and judges making the same, and shall in each case be an elector of the State, duly qualified, who shall have voted for the judge whose seat is to be filled. The said judges, and all persons appointed or elected to fill casual vacancies in said court, shall be severally commissioned by the Governor to hold their offices for the times or terms for which they shall be selected, if they so long behave themselves well. All regular terms of service in said court shall commence on the first Monday of December next following an election for filling the same.

FOR SCHEDULE.

The term of the two judges of the Supreme Court oldest in commission shall expire on the first Monday in December, one thousand eight hundred and seventy-eight, and the term of the other two judges shall expire on the first Monday of December, one thousand eight hundred and eighty-three.

COURTS OF COMMON PLEAS.

SECTION —. The judges of the several courts of common pleas shall be learned in the law, and shall be elected by the qualified voters of the districts over which they are to preside, for the term of ten years, if they so long behave themselves well. Until otherwise provided by law, the State shall be divided into the following judicial districts, to wit:

First. The First district shall be composed of the counties of Chester, Delaware and Montgomery.

Second. The Second district of the counties of Bucks, Lehigh and Northampton.

Third. The Third district of the counties of Berks and Lebanon.

Fourth. The Fourth district of the county of Schuylkill.

Fifth. The Fifth district of the county of Luzerne.

Sixth. The Sixth district of the counties of Bradford, Tioga, Sullivan and Wyoming.

Seventh. The Seventh district of the counties of Columbia, Montour, Northumberland, Lycoming and Union.

Eighth. The Eighth district of the county of Lancaster.

Ninth. The Ninth district of the counties of York, Adams and Cumberland.

Tenth. The Tenth district of the counties of Westmoreland, Indiana and Armstrong.

Eleventh. The Eleventh district of the counties of Franklin, Fulton, Bedford, Blair and Huntingdon.

Twelfth. The Twelfth district of the counties of Dauphin, Perry, Juniata, Mifflin and Snyder.

Thirteenth. The Thirteenth district of the counties of Clinton, Centre, Clearfield, Cambria and Jefferson.

Fourteenth. The Fourteenth district of the counties of Fayette, Somerset, Washington and Greene.

Fifteeenth. The Fifteenth district of the counties of Beaver, Butler, Lawrence and Mercer.

Sixteenth. The Sixteenth district of the counties of Crawford, Venango, Clarion and Forest.

Seventeenth. The Seventeenth district of the counties of Erie, Warren, M'Kean, Potter, Elk and Cameron.

Eigthteenth. The Eighteenth district of the counties of Carbon, Monroe, Pike, Wayne and Susquehanna.

SECTION —. At the general election in the year one thousand eight hundred and seventy-three, and every tenth year thereafter, the qualified voters of each district aforesaid, shall elect three judges, citizens of this Commonwealth, qualified as aforesaid; and in electing the same, each voter may distribute his votes among candidates as he shall think fit; may concentrate them upon one, or divide them equally between two; and candidates highest in vote shall be declared elected. The aforesaid judges, during their continuance in office, shall reside within the district for which they shall be respectively elected; and when more than one county shall compose a district, they shall so alternate in holding courts in the several counties composing the district, that the same judge shall not sit oftener than once in

every third successive regular term of the courts to be holden in said county, unless from some unavoidable cause it shall be rendered impracticable. Courts in banc shall be held by the judges of every district, or a majority of them, at least once in every year, in each county, at such times and for the transaction of such business as may be prescribed by law. When holding courts in banc, the judge oldest in commission, or the oldest in commission and senior in age, shall preside.

SECTION —. The county of Allegheny shall compose a judicial district, to be called the district of Allegheny, and shall elect seven judges, one of whom shall be president judge, who shall be elected by the qualified voters of the district at large, and in the election of the other judges each voter may distribute his votes among candidates as he shall think fit, or may concentrate them all upon one, and the highest in vote shall be declared elected. The president and three other judges shall be elected at the general election in the year one thousand eight hundred and seventy-three, and every tenth year thereafter, and the other three judges shall be elected in the year one thousand eight hundred and seventy-eight, and every tenth year thereafter.

The city and county of Philadelphia shall compose a judicial district, to be called the district of Philadelphia, and shall elect thirteen judges, one of whom shall be president judge, who shall be elected by the qualified voters of the district at large, and in the election of the other judges each voter may distribute his votes among candidates as he shall think fit, or may concentrate them all upon one, and the highest in vote shall be declared elected. The president and six other judges shall be elected at the general election in the year one thousand eight hundred and seventy-three, and every tenth year thereafter, and the other six judges shall be elected at the general election in the year one thousand eight hundred and seventy-eight, and every tenth year thereafter. Any three of the judges of the districts of Allegheny or Philadelphia shall hold courts in banc at such times, and for the hearing and trial of such matters, as a majority of the judges of said districts may, by general rule, prescribe, and when holding court in banc the judge oldest in commission and senior in age shall preside.

SECTION —. The Legislature, at its session in the year one thousand eight hundred and eighty-two, and every tenth year thereafter, shall have power to either alter or increase the judicial districts as herein established, but not to change the mode of electing judges. In case of a vacancy in the office of president judge, the judges of the district shall appoint a qualified person to fill the same until the first Monday of December following the next general election, which shall be held more than three months after such vacancy shall occur; or if the unexpired term shall be of less duration then only until it shall expire, and the said vacancy, if a continuous one, shall be further filled by a popular vote at said general election for the remainder of the unexpired term. In case of a vacancy in the office of judge, pending a term, the same shall be filled for the unexpired term by an appointment to be made by the remaining judges of the district; and all appointments made as aforesaid shall be certified by them to the Governor, and shall in each case be an elector of the district duly qualified who shall have voted for the judge whose seat is to be filled. The said judges, and all persons appointed or elected to fill casual vacancies in said courts, shall be severally commissioned by the Governor to hold their offices for the time or terms for which they shall be selected if they shall so long behave themselves well.

FOR SCHEDULE.

The court of *nisi prius* and all district courts are abolished. The commissions of the judges of the courts of common pleas and district courts, learned in the law, shall expire on the first day of December, in the year one thousand eight hundred and seventy-three, except in the county of Allegheny and the city and county of Philadelphia; the commissions of the three judges in the county of Allegheny, and of the six judges in the city and county of Philadelphia, youngest in commission, shall not expire until the first day of December, in the year one thousand eight hundred and seventy-eight; and until that time they shall severally discharge the duties of the court of common pleas, whether elected judges of the common pleas or district courts. The associate judges of the several courts of this commonwealth, not learned in the law, shall continue in office until their present commissions expire, at which time the office is abolished.

If the Convention should be of opinion that the judges of the Supreme Court should hold two separate courts of su-

preme jurisdiction over different subjects, and over different classes of cases, then one, or perhaps two, additional judges would be required in that court, so as to leave five judges for the Supreme Court, and three for the other, which might be called "the court of appeals."

In addition to the provision in the present Constitution, that the salaries of the judges shall not be diminished during their continuance in office, I would provide that their salaries should neither be increased nor diminished during their continuance in office.

Some constitutional provision should be made in regard to aldermen and justices of the peace in the cities; but, outside of them, the present system for justices of the peace is, perhaps, as good as we can get.

All of which is respectfully submitted.

D. KAINE.

MR. S. A. PURVIANCE'S DISSENTING REPORT.

Mr. S. A. PURVIANCE, from the same committee, made the following dissenting report, which was read as follows:

The undersigned member of the Judiciary Committee of the Constitutional Convention, respectfully begs leave to dissent from all that part of the report of the majority of the committee which relates to the creation of a circuit court.

Also, to all that part of said report which relates to the limitation of the jurisdiction of the Supreme Court.

Also, to that part of the report which provides for the abolition of the office of alderman and justice of the peace in cities of two hundred thousand inhabitants, and the substitution, in lieu thereof, of courts of police for every thirty thousand inhabitants, to be presided over by law judges.

All of which is respectfully submitted.

SAMUEL A. PURVIANCE.

Mr. BROOMALL. Mr. Chairman: As a member of the committee I ask leave, at this time, to make a minority report hereafter.

The PRESIDENT. The gentleman can present it when he has it prepared.

Mr. WOODWARD. Mr. Chairman: I have a report, which I will not call a minority report, but which I will call my report, which is partly ready, and I I will present it to the Convention immediately after it is re-assembled.

Mr. JAMES L. REYNOLDS from the same committee presented the following dissenting report, which was read.

MR. JAMES L. REYNOLDS' DISSENTING REPORT.

The undersigned, a member of the Committee on the Judiciary, dissents from the report of a majority of the committee in so far it recommends:

First, the creation of a circuit court; and second, the nomination of the judges of the Supreme Court by the Governor, and their confirmation by the Senate.

JAMES L. REYNOLDS.

The PRESIDENT. The foregoing minority reports will be laid upon the table, and printed in the Journal.

THE COMMITTEE ON FUTURE AMENDMENTS.

Mr. FUNCK, from the Committee on Future Amendments, presented the following report, which was read:

SECTION 1. At the general election to be held in the year 1894, and at the general election held every twentieth year thereafter, the electors of this Commonwealth shall vote for or against a convention to amend the Constitution, and whenever, at any of said elections, a majority of the votes cast shall be in favor of such convention, then the same shall be held, and the Legislature shall provide for carrying out the provisions of this section.

SECTION 2. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their Journals, with the yeas and nays taken thereon, and the Secretary of the Commonwealth shall cause the same to be published three months before the next election, in at least two newspapers in every county in which two newspapers shall be published; and if in the Legislature next afterwards chosen such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid, and such proposed amendment or amendments shall be submitted to the people in such manner, and at such time, at least three months after being so agreed to by the two Houses, as the Legislature shall prescribe, and if the people shall approve and ratify such amendment or amendments, by a majority of the electors of this State voting thereon, such amendment or amendments shall become a part

of the Constitution: *Provided*, That if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

RAILROADS AND CANALS.

Mr. COCHRAN presented the report of the Committee on Railroads and Canals, which was read as follows:

ARTICLE —.

OF RAILROADS AND CANALS.

SECTION 1. Any individual, company or corporation, organized for the purpose, shall have the right to construct a railroad or canal between any two points in this State. Any railroad may intersect and connect with any other railroad; and no discrimination shall be made in passenger and freight tariffs on persons or property passing from one railroad to another, and no unnecessary delay interposed in the forwarding of such passengers and property to their destination. The Legislature shall, by general law, prescribing reasonable regulations, give full effect to these powers and rights.

SECTION 2. Every railroad or canal corporation, organized or doing business in this State, shall maintain a public office therein for the transaction of its business, where transfers of its stock shall be made, and books kept for public inspection, in which shall be recorded the amount of capital stock subscribed or paid in, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the transfers of said stock, and the names and places of residence of its officers. The chief officer, or directors of every such corporation, shall annually make a report, under oath or affirmation, to the Secretary of Internal Affairs, which report shall include a detailed statement of its receipts and expenditures, assets and liabilities, and such other matters relating to its business as are now, or hereafter may be, prescribed by law, or required by said Secretary.

SECTION 3. All property, real and personal, of railroad, canal and other joint stock corporations, shall be subject to taxation for all purposes.

SECTION 4. No railroad, canal or other corporation, nor the lessees, purchasers or managers of any railroad or canal corporation, shall consolidate the stock, property or franchises of such corporation with, nor lease, purchase, or in any way control any other railroad or canal corporation, owning or having under its control a parallel or competing line; nor shall any of the officers of such railroad or canal corporation act as an officer of any other railroad or canal corporation owning or having the control of a parallel or competing line; and whether railroads or canals are parallel and competing lines shall always be decided by a jury in a trial, according to the course of the common law.

SECTION 5. No railroad, canal or other transportation company shall consolidate its stock, property or franchises with any other corporation engaged in the business of a common carrier, nor purchase the property or franchises, directly or indirectly, of such company or corporation, nor in any case lease or contract for a lease thereof, at any one time exceeding twenty-five years, without the consent of a majority of two-thirds in value of its stockholders, ratified by act of the Legislature; and no such ratification shall be made without proof that reasonable notice has been given to the stockholders personally, when practicable, and publicly at least sixty days, in other cases, before any such application to the Legislature, nor without full consideration by the Legislature of the rights and interests of all the stockholders and the public.

SECTION 6. No railroad or canal corporation shall, either in its own name or in the names of its officers, or through the intervention of trustees or other agents, hold, guarantee or endorse shares in the capital stock, bonds or other indebtedness of any other railroad, canal or other corporation to any amount exceeding one-third of each thereof actually issued or incurred.

SECTION 7. No incorporated company doing the business of a common carrier, or the officers or managers thereof, shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for other persons or corporations, or for transportation on the works of said company; nor shall such company, directly or indirectly, engage in any other business than that of common carrier, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining and manufacturing company may carry the products of its mines and manufactories on its lateral railroad or canal not exceeding fifty miles in length.

SECTION 8. No corporation engaged in the trasportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof, and such corporations shall carry the persons and goods of the people of this State on as favorable terms as those of other States, brought into or through this State on the works owned or controlled by such corporation, and no higher rate per ton per mile shall be charged for the transportation of goods, or higher rate per mile for passengers, than shall be charged for like service in this State to the people of other States; and the rates for the same classes of freight shall be uniform, and the charges or freights or fares for passengers shall, for equal distances, be the same, and a higher charge shall never be made for a shorter distance than is made for a longer distance, and no drawback shall, either directly or indirectly be allowed.

SECTION 9. All railroads and canals are declared public highways, and all individuals, partnerships and corporations, shall have equal right to transport persons and property thereon, except officers and partnerships or corporations, composed in whole or in part of officers of each respective railroad or canal, who are hereby prohibited from engaging in the business of forwarding or transporting on the lines thereof; and all regulations adopted by the companies owning, controlling or managing such railroads or canals, having the effect of hindering or discriminating against individuals, partnerships or corporations, except as above excepted, in the transportation of property on such railroads and canals, shall be void; and no railroad corporation, nor any lessee or manager of the works thereof, shall make any preference in their own favor, or between individuals, partnerships and companies shipping and transporting thereon, in furnishing cars or motive power, but shall supply the same in equal ratable proportions to each shipper or transporter in the order in which cars and motive power shall be called for and needed by them, as shippers or transporters on said railroad.

SECTION 10. Any combination, understanding or agreement, by and between any railroad companies, or by and between any railroad and coal or other companies, relative to increasing their rates of transportation of freight or passengers, or the prices of mined or manufactured products, shall work a forfeiture of their charters; and the Legislature shall provide by law for the proper enforcement of this section.

SECTION 11. No railroad or canal corporation shall issue any stock or bonds, except for money, labor or property actually received and applied to the purposes for which such corporation was created; and all stock dividends and other fictitious increase of the capital stock or indebtedness of any such corporations, shall be void. The capital stock and corporate indebtedness of railroad, canal or other corporations, engaged in the business of common carriers or transporters, shall not be increased unless the act of Assembly, by which such increase shall be authorized, shall strictly limit the amount thereof and specify the object to which such increase shall be applied, nor unless sixty days' notice of an intended application to the Legislature for allowance of increase shall first have been published in such manner as shall be directed by law, nor without the consent of a majority in value of the stockholders of such corporation first obtained at a meeting to be held after sixty days' notice given in pursuance of law. All laws heretofore enacted by which an increase of the capital stock, or of the bonds or other evidences of indebtedness, of any corporation has been authorized, are hereby declared void, except so far as may be necessary to maintain the obligation of contracts made and executed in accordance therewith.

SECTION 12. No railroad, canal or other corporation engaged in the business of common crriers or transporters shall permit the gratuitous transportation over its road or canal, of any person or persons, except its own officers and employees, or poor and indigent persons. Every ticket, except excursion tickets, issued to any passenger by any incorporated company engaged in the transportation of passengers, shall entitle the holder of such ticket to transportation over the works of said company, from his place of departture to his place of destination, either by continuous train or by any other train upon which the same rate of fare is charged; and no such company shall require any passenger to pay any additional fare, or subject him to any inconvenience, because of his stopping off at intervening point.

SECTION 13. Any violation by any railroad, canal or other corporation, of the provisions of the fourth or seventh sections of

of this article, shall be punished by a fine of five thousand dollars, and any violation of the provisions of the second, fifth, sixth, eighth, ninth, eleventh and twelfth sections thereof, by a fine of one thousand dollars, for the first offence, either by indictment or civil action, at the suit of the party injured, in addition to any damages which may be sustained by said party; and a continued or second offense shall work a forfeiture of the charter and franchises of such corporation, which shall be enforced by writ of *quo warranto*, sued out by the Attorney General, or by any citizen or citizens of this Commonwealth, and proceeded in according to law, and the Legislature is prohibited from restoring the charter and forfeited franchises to such offending corporation, or to any person or persons, so that they shall enure to its benefits. Every violation of the provisions of either of the sections of this article above referred to, by any officer or agent of such corporation, or by any other person, shall be a misdemeanor, and punished in such manner as shall be prescribed by general law.

SECTION 14. All railroad and canal corporations shall be liable for the payment of consequential damages committed in, or resulting from the construction, repair or enlargement of their works, and the said damages shall be paid or secured to be paid before the injury is done.

SECTION 15. All railroads shall be substantially fenced by the owners or controllers thereof, wherever such roads shall pass through improved lands; and any railroad company which shall neglect to erect and maintain such fences shall be liable for all damages sustained in consequence of such neglect, and the Legislature shall, by a general law, provide for carrying this provision into effect.

SECTION 16. Every borough or city shall have power to regulate the grade of railroads and the rate of speed of railroad trains within its limits.

SECTION 17. No law shall be passed by the Legislature granting the right to construct or operate a street railroad within any city, borough or township, without providing for the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad.

SECTION 18. No railroad, canal or other transportation company in existence at the time of the adoption of this article, shall have any beneficial legislation by general or special laws, except on condition of complete acceptance of all the provisions of this article.

SECTION 19. The existing powers and duties of the Auditor General, in regard to railroads, canals and other transportation companies, are hereby transferred to the Secretary of Internal Affairs, subject to such regulations and alterations as shall be provided by law, and in addition to the annual reports now required to be made, said Secretary may require special reports, at any time, upon any subject relating to the business of said companies, from any officer or officers thereof; and it shall be his duty, on complaint made against said corporations by any citizen, person or company interested, of a violation by law, or any infraction of the rules of said corporation, injurious to the rights or interests of such complainant, to investigate said complaint; and if it shall appear that any such violation has taken place, he shall proceed either against said corporations or the officers thereof, or both; and if, on complaint made, or of his own knowledge, it shall appear that any railroad, or part thereof, is so insufficiently or carelessly constructed, supported, guarded, protected, or so out of repair as to imperil life or property, he shall at once notify such delinquent corporation of the same, and specify and direct the remedy to be applied, and it shall be the duty of such corporation to repair, support, make safe from, or remove said cause of peril under such regulation, not inconsistent herewith, as shall be prescribed by the Legislature to carry this section into full effect.

Mr. CURTIN. I desire to give notice that my colleague, (Mr. M'Allister,) who is now at home on account of ill health, and who will not be here until after the recess, will present a minority report.

Mr. JOSEPH BAILY. Mr. President: I wish to say that I also, after the recess, shall present a minority report on this subject.

DECLARATION OF RIGHTS.

Mr. MACCONNELL presented the report of the Committee on Declaration of Rights.

Mr. MACCONNELL. Mr. President: In presenting this report I have a short statement to make. This report was completed in the lifetime of Mr. Hopkins, who was the chairman of the committee. On the day of his departure to his home it was finished, and he was instructed by the committee to report it to the Convention immediately after his return. On ac-

count of the unfortunate event of his death that was not done. Inasmuch as the report was wholly completed in his lifetime, and whilst he was presiding on the committee, I desire to present it and hear it entered upon the Journal as the report of Mr. Hopkins.

The CLERK read the report, as follows:

PREAMBLE.

We, the people of the Commonwealth of Pennsylvania, recognizing the sovereignty of God, and humbly invoking His guidance in our future destiny, ordain and establish this Constitution for its government.

ARTICLE I.

DECLARATION OF RIGHTS.

That the great and essential principles of liberty and free government may be recognize and unalterably established, we declare that—

SECTION 1. 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.

SECTION 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 these ends they have, at all times, an inalienable and indefeasible right, to alter, reform or abolish their government in such manner as they may think proper.

SECTION 3. That all men have a natural and indefeasable 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. No human authority can, in any case whatever, control or interfere with the rights of conscience; and no preference shall ever be given by law to any religious establishments or modes of worship.

SECTION 4. That no person, who acknowledges the being of 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 profit or trust under this Commonwealth.

SECTION 5. That elections shall be free and equal, and no power, civil or military, shall at any time interfere with the free exercise of the right of suffrage.

SECTION 6. That trial by jury shall be as heretofore, and the right thereof remain inviolate.

SECTION 7. That the printing press shall be free to every person who undertakes to examine the proceedings of the Legislature, or any branch of the government, and no law shall ever be made to restrain the right thereof. The free communication of thought and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. In prosecutions for the publications of papers, investigating the official conduct of officers or men in public capacities, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

SECTION 8. That the people shall be secure in their persons, houses, papers and professions from unreasonable searches and seizures, and that no warrant to search any place, or to seize any person or things shall issue without describing them as nearly as may be; nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

SECTION 9. That in all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and in prosecution by indictment, or information, a speedy public trial by an impartial jury of the vicinage. He cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land.

SECTION. 10. That no person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, or by leave of the court for oppression or misdemeanor in office. No person shall, for the same offense, be twice put in jeopardy of life or limb, nor shall any man's property be taken or applied to public use, without the consent of his representatives, and without the necessity for such taking being first ascertained by a jury, and without just compensation being first

made; the fee simple of land so taken and applied shall remain in the owner, subject to the use for which it was taken.

SECTION 11. That all courts shall be open; and every man for an injury done him in his lands, goods, person or reputation, shall have remedy by the due course of law, and right, and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts, and in such cases as the Legislature may by law direct; and that no law shall limit the amount of damages recoverable, and where an injury caused by negligence or misconduct results in death the action shall survive.

SECTION 12. That no power of suspending laws shall be exercised unless by the Legislature or its authority.

SECTION 13. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishment inflicted.

SECTION 14. That all prisoners shall be bailable by sufficient sureties, unless for capital offense, when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it.

SECTION 15. That no commision of oyer and terminer or jail delivery shall be issued.

SECTION 16. That the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors in such manner as shall be prescribed by law.

SECTION 17. That no *ex post facto* law nor any law impairing contracts or making irrevocable any grant of special privileges or immunities shall be passed.

SECTION 18. That no person shall be attainted of treason or felony by the Legislature.

SECTION 19. That no attainder shall work corruption of blood nor, except during the life of the offender, forfeiture of the estate to the Commonwealth; that the estates of such persons as shall destroy their own lives shall descend or vest as in cases of natural death, and if any person shall be killed by casualty there shall be no forfeiture by reason thereof.

SECTION 20. That the citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.

SECTION 21. That the right of the citizens to bear arms in defence of themselves and the State shall not be questioned.

SECTION 22. That no standing army shall, in time of peace, be kept up without the consent of the Legislature, and the military shall in all cases, and at all times, be in strict subordination to the civil power.

SECTION 23. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

SECTION 24. That the Legislature shall not grant any title of nobility or hereditary distinction, nor create any office, the appointment to which shall be for a longer term than during good behavior.

SECTION 25. The emigration from the State shall not be prohibited.

SECTION 26. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate.

REVISION AND ADJUSTMENT.

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

Resolved, That the Committee on Revision and Adjustment be instructed to consider and report in what order the several articles proposed to the Constitution shall be considered on second and third reading, and what articles, if any, reported from standing committees, it would be appropriate to consider together and consolidate in the same article.

Mr. ARMSTRONG. Mr. President: When the various standing committees of this body were appointed to attend to the business of the Convention, it was with the view of attaining a more deliberate and thorough investigation of the several subjects to be considered by the Convention. It is manifest that many of the committees are considering substantially the same questions; and when we come to the consideration of the questions upon second reading it would be appropriate, it appears to me, that all kindred topics, which should form the subject of the same article, ought to be at that time consolidated for the consideration of the Convention. And it is for this reason and with this view I have offered this reso-

lution, as I believe it will greatly facilitate the deliberations of the Convention, and aid us not only in saving time, but in reaching a better conclusion.

The question being taken, the resolution was agreed to.

Mr. J. W. F. WHITE. Mr. President: I rose for the purpose of offering an amendment, prior to the vote having been taken.

The PRESIDENT. The Chair will withdraw the result of the vote just taken, but will state that the gentleman ought to have directly addressed the Chair.

Mr. J. W. F. WHITE. Mr. President: I was on the floor at the time.

The PRESIDENT. The gentleman did not address the Chair. The gentleman's motion will, however, be now received.

Mr. J. W. F. WHITE. Mr. President: I will then move to amend the resolution by saying that the Committee on Revision and Adjustment shall be increased to fifteen members.

The CHAIRMAN. That motion cannot be entertained. A resolution of that kind will have to lie over for one day, under the rules.

Mr. DALLAS. Mr. President: I desire to say that Mr. Gowen, the chairman of the Committee on Revision and Adjustment, has obtained leave of absense from the Convention, and has left the city in consequence of ill health. He has gone some considerable distance from home, and I therefore move to amend the resolution by striking out the "Committee on Revision and Adjustment," and substitute the words, "a special committee of five."

Mr. J. M. WETHERILL. Mr. President: Under the rules of the Convention, I think that motion will have to lay over one day.

The PRESIDENT. There is no rule of the Convention in regard to that question.

Mr. BUCKALEW. Mr. President: I think it would be well to increase this Committee on Revision, not merely for this purpose but for the general transaction of the business of the Convention. I think the amendment the gentleman from Allegheny (Mr. J. W. F. White) has offered, is not in order to-day, and will have to lay over until to-morrow, when I think the Convention will act upon it, and increase the number of the committee.

Mr. WOODWARD. Mr. President: I learn that Mr. Gowen, the chairman of the Committee on Revision and Adjustment, has gone to Florida for the benefit of his health, but he is not to be considered as incapacitated for the performance of his duties here in the Convention, and probably by the time the Convention reassembles in April, Mr. Gowen will be able to participate in our proceedings.

Mr. DARLINGTON. Mr. President: I move to strike out the word "five," and insert the word "nine."

Mr. DALLAS. I accept that modification of the amendment.

The question being taken, the amendment was not agreed to.

The question recurring on the resolution, a division was called, which resulted as follows: Ayes sixty; noes twenty-one. So the resolution was agreed to.

Mr. COCHRAN. Mr. President: I desire to submit an additional section to the report of the Committee on Railroads. It will be numbered section No. 18.

The PRESIDENT. The section will be read.

The CLERK read as follows:

No railroad, canal, or other transportation company in existence at the time of the adoption of this article, shall have any special legislation by general or special laws except upon the condition of complete acceptance of all the provisions of this article.

Mr. J. W. F. WHITE. Mr. President: If it is in order, I desire to offer a resolution at this time.

The PRESIDENT. It is not in order without the leave of the Convention. Shall the gentleman have leave to offer the resolution?

["Aye!" "Aye!" "Aye!"]

Mr. J. W. F. WHITE. I now offer the following resolution:

Resolved, That the Committee on Revision and Adjustment be increased to fifteen.

The resolution was read a second time.

The PRESIDENT. The Chair desires to suggest to the gentleman from Allegheny (Mr. J. W. F. White) that, perhaps, it would be well if the resolution was so modified as to include the chairmen of all the standing committees.

Mr. J. W. F. WHITE. Mr. President: I will so amend the resolution.

Mr. BUCKALEW. I offer the following amendment in accordance with the suggestion of the Chair: "Members added to be selected from the chairmen of the standing committees."

The CHAIRMAN. That amendment is not now in order. The question is on the

amendment offered by the gentleman from Allegheny (Mr. J. W. F. White.)

Mr. J. PRICE WETHERILL. I desire to further amend the resolution by saying that the committee shall consist of ten, to be composed of ten chairmen from the twenty-seven standing committees.

Mr. J. M. WETHERILL. Mr. President: I rise to a point of order. The proposition of the gentleman is substantially the creation of a new rule for the Convention, and should lie on the table for one day.

The PRESIDENT. The gentleman is correct, and the point of order is sustained.

Mr. STANTON. Mr. President: I move that the rules be suspended, for the purpose of considering this resolution.

The motion was agreed to, two-thirds of the Convention voting in the affirmative.

The PRESIDENT. The question is on the amendment to the amendment offered by the gentleman from Philadelphia (Mr. J. Price Wetherill.)

Mr. J. W. F. WHITE. Mr. President: I offered this resolution this morning, believing that the Committee on Revision and Adjustment should be increased. This committee now consists of only five members, and I understand the entire arrangement of the work of the Convention, after it has been completed, will be committed to the care of its members. It will certainly be a very laborious work, and my own judgment is that the committee should be increased to fifteen members. At the suggestion of the Chair, I modified the amendment so as to embrace the chairmen of all the standing committees. I think, upon reflection, this would be entirely too large a number, and perhaps it would be best simply to increase the committee to fifteen members, the President of the Convention to appoint the ten additional members from the chairmen of the standing committees. This plan, I think, is the best that can be devised, and if it is in order, I hope some member of the Convention will make a motion to that effect.

Mr. J. PRICE WETHERILL. Mr. President: I move to amend the resolution by saying that the committee shall consist of fifteen, ten additional members there of to be composed of the chairmen of the standing committees, to be selected by the President.

Mr. J. W. F. WHITE. If it is in order I will accept that amendment.

The PRESIDENT. It will not be in order.

Mr. COCHRAN. Mr. President: I merely desire to say that I think it is very injudicious to enlarge this Committee on Revision and Adjustment, as far as I am capable of forming any judgment upon the subject. I remember very well that in the Convention of 1837–38 the subject of revision was referred to a committee consisting of only three members. I think it is very certain that a few gentlemen who are satisfactory to the Convention, can take care of this matter of arrangement and collocation of the articles and sections adopted by this Convention far better than fifteen men, or any considerable number of men, more than the number now comprising the committee. If it is the intention to invest this Commonwealth with any larger powers than the mere matter of the arrangement and collocation of the articles and sections, I would be in favor of an increase of the committee, or even if the Convention intended that its work should be substantially changed or altered in any respect, either in language or in its provisions, but if it is the mere matter which I have suggested I cannot conceive why the committee should be enlarged. I know from experience that three men having in charge the consecutive arrangement of articles and sections will do in ten minutes what ten men will not be able to do in an hour. I think, therefore, that the proposition is very inadvisable, and I hope, therefore, it will not be adopted.

Mr. CORSON. Mr. President: It seems to me the proposition, as it originally was made by the President of the Convention, was wiser than the one which is now pending. I think the better plan would be to leave the Committee on Revision and Adjustment to remain as it is, and then let every chairman of the committees appointed by the Convention consult the Committee on Revision in its deliberations. The Committee on Revision now consists of five gentlemen, and I have no doubt in their deliberations they will bring the secretary and the chairman of every other committee before them. I think, therefore, if the Committee on Revision is to be enlarged, the chairman of every other committee in the Convention had better be designated as members or be omitted entirely.

Mr. DARLINGTON. Mr. President: I am decidely opposed to any increase of this Committee on Revision. I think it is a great mistake, for I cannot fail to recollect that we had the same kind of a committee in the Convention of 1837-38, of which the lamented Dr. Cochran was chairman. That committee consisted of

three members, and the revision and adjustment was all satisfactorily attended to, and probably was better performed than if it had consisted of five members. The Committee on Revision of this Convention consists of five member, the chairman being absent at present. I move, therefore, to amend the resolution by striking out "ten," and inserting "two."

Mr. H. W. PALMER. Mr. President: I am unfortunate enough to be a member of the Committee on Revision and Adjustment, and I must confess that as yet we have not been able to accomplish anything, of course. The chairman of the committee is at present absent.

Mr. BOWMAN. I would like to ask the gentleman who is to blame for the absence of the chairman of this committee?

Mr. H. W. PALMER. The chairman of the committee is absent on account of ill health, and that is something over which, I presume, he has no control. I suppose the chairman of the committee was selected on account of his peculiar fitness to take charge of the deliberations of this committee; and I have no doubt if the Convention reflects a moment they will be convinced that one or two men can do the business of revision and adjustment of the Convention better than a dozen men. I would rather prefer to see the committee abolished altogether than to know it is to be composed of the chairmen of our twenty-seven standing committees. I think the chairman of the Committee on Revision has some sensibility in regard to this subject, from the tenor of the remarks which have fallen from him during the debate on the various questions brought before the Convention. I have no doubt he would vote for an increase of the committee, but as he is necessarily absent at this time I hope the Convention will not interfere with his duties in this respect. I therefore move the indefinite postponement of the whole matter for the present.

THE COMMITTEE ON ACCOUNTS AND EXPENDITURES.

Mr. HAY, from the Committee on Accounts and Expenditures, presented the following report, which was read:

That it has examined the account of the Chief Clerk, for expenditures made by him under the authority of the Convention, from the twenty-first day of February to the twenty-fourth day of March, instant, showing the payment during that time of $1,413 34, and a balance in his hands on that day of $675 66, and that the same is correct according to the vouchers exhibited to the committee. An abstract of the account is herewith submitted, marked "A."

The committee has also examined the following "accounts for certain expenses incurred, for the use of the Convention, presented to the House committee," and referred to the Committee on Accounts, on the twenty-second inst.:

1.	Philadelphia gas works, for gas used from February 21 to March 22	$90 39
2.	John A. Shermer, for repairs to water closet	19 00
3.	Smith & Campion, locks and repairing desk	31 25
4.	William Thornton, ten tons coal, delivered	80 00
5.	Littleton & Pidgeon, twenty tons coal, delivered	170 00
6.	Wolbert & Bro., ten tons coal, delivered	78 00
7.	Joseph B. Hancock, ten tons coal, delivered	85 00
8.	J. R. Warner, for stretching wire across the Hall, to improve the sound	4 00
9.	John A. Voorhees, for coal barrow, and other articles for the furnaces and firemen	20 25
10.	J. E. Walraven, for draping the Hall, by direction of the Convention	318 00
		896 89

These accounts, excepting that of gas used, have been certified to be correct by the Committee on House, under whose direction the work was done, and the supplies furnished for which they have been rendered. The accounts are for proper expenses of the Convention, and should therefore be paid.

The following resolution is accordingly reported:

Resolved, That the accounts of the Philadelphia gas works, John A. Shermer, Smith & Campion, William Thornton, Littleton & Pidgeon, Wolbert & Brother, Joseph B Hancock, T. R. Warner, John A. Voorhees and J. E. Walraven, mentioned in the foregoing report of the Committee on Accounts, and together amounting to the sum of $896 89, are hereby approved, and that a warrant be drawn in favor of D. L. Imbrie, Chief Clerk, for the sum of $896 89, for the payment of said accounts.

The resolution was twice read and agreed to.

Mr. HAY, from the Committee on Accounts, also presented the following report, which was read:

That it has had under consideration the following resolution, adopted by the Convention, March 27, to wit:

"*Resolved*, That the Committee on Accounts and Expenditures be requested to report a resolution directing warrants to be drawn for such proportion of the pay of the clerks and other officers of this Convention, as they may deem proper."

And that in its opinion it would be proper at this time to pay the clerks and other officers thirty per cent. of the compensation fixed by the Convention, as follows:

D. L. Imbrie, Chief Clerk.....	$450 00
Lucius Rogers, Assistant Clerk....	360 00
A. D. Harlan " "	360 00
John L. Linton, Transcribing C'k	300 00
A. T. Parke, " "	300 00
James Onslow, Sergeant-at-arms..	255 00
C. M. Brown, Assistant Sergeant-at-arms	180 00
Clement Evans, Door-keeper.....	180 00
Frank Bentley, Assistant Door-keeper.....	150 00
Henry Price, Post-master.....	240 00
B. F. Major, Assistant Post-master.....	180 00

The committee therefore submits the following resolution, viz:

Resolved, That warrants be drawn for the payment to the Clerks and other officers of the Convention, as named in the above report, of the several amounts reported as proper to be paid to them respectively.

The resolution attached to the above report was again read and agreed to.

PROHIBITION.

Mr. WOODWARD presented a petition from certain citizens of Philadelphia, praying for an amendment of the Constitution prohibiting the manufacture and sale of intoxicating liquors, and asking for the submission thereof as a separate article.

MR. DALLAS'S DISSENTING REPORT.

Mr. DALLAS. Mr. President: I ask leave at this time to present a dissenting report on the judiciary.

Leave was granted.

The report is as follows:

The undersigned, a member of the Committee on Judiciary, respectfully dissents from the action of the majority of that committee in reporting the article now before the Convention, because:

First. Said article provides for the appointment of the judges of the Supreme Court by the Governor, instead of for their election as heretofore.

Second. Said article fails to provide, in any manner, for a non-partisan judiciary, or for minority representation upon the bench of any of the courts of the Commonwealth.

Third. Said article creates a circuit court with original and appellate jurisdiction, to be composed of one judge of the Supreme Court, and of eight judges who shall not be judges of any other court.

Fourth. Said article fixes the term of all judges (other than of the proposed circuit court, and of the Supreme Court) at ten years. It is respectfully submitted that it should be extended to fifteen years.

Fifth. Said article fixes a money limit to the right of suitors to invoke the jurisdiction of the Supreme Court for the correction of errors.

Sixth. Said article creates four districts and separate courts of common pleas, of concurrent jurisdiction, for the city of Philadelphia, and provides for future additions to the number of such courts.

Seventh. Said article establishes a separate orphans' court, to be composed of three judges, for the city of Philadelphia.

Eighth. Said article makes no provision for official reporters to assist the courts.

Ninth. Said articles limits the age at which a person, otherwise qualified, may be chosen to fill the office of judge.

The undersigned having thus briefly suggested the principal matters in which he finds himself unable to acquiesce in the article reported, will hereafter offer such amendments to, and so vote upon its several sections as to advance the views herein indicated.

GEO. M. DALLAS.

MESSRS. DALLAS AND CUYLER'S DISSENTING REPORT.

Mr. DALLAS also, from the same committee, submitted a second minority report, which was read as follows:

The undersigned, members of the Committee on Judiciary, are unable to approve the sections reported by that committee in relation to the courts of Philadelphia, and in lieu thereof respectfully present the following, viz:

SECTION —. In the city of Philadelphia, the district court, and the court of

common pleas, and the jurisdiction, powers and duties of said courts shall remain as at present, except that the district court shall not hereafter have any jurisdiction in equity, and all the jurisdiction of the court of common pleas for the trial of common law cases, and upon *certiorari* and appeal from any lower court or magistrate, is hereby transferred from said court of common pleas to, and vested exclusively in, the said district court. This provision shall not effect any proceeding which may be actually pending when this Constitution shall go into effect.

SECTION —. The prothonotary of each of said courts shall be respectively selected by the judges thereof, and the numbers of his subordinates, and the general regulation of the business of his office shall also be prescribed by them. The said prothonotaries and subordinates shall be compensated only by fixed salaries, the amount of which shall be fixed by the court, and all fees collected in said offices, except such as may be by law due to the State, shall be paid into the city treasury.

SECTION 3. The Legislature shall provide for the employment of phonographic reporters in the said courts.

Respectfully submitted.

GEO. M. DALLAS,
THEO. CUYLER.

MR. BROOMALL'S DISSENTING REPORT.

The undersigned regrets that he cannot concur in the report of the committee, and the more that he seems to stand alone in his desire to leave the judiciary system substantially as it is. He would prefer the appointment of the judges by the Governor, with the consent of the Senate, if the old tenure, "during good behavior," could be restored. But if the judges must look to a future term, it is quite as well that they should feel dependent upon the good opinion of the people of the district, as upon that of a political Governor and Senate.

The circuit court, recommended by the committee, does not commend itself to the judgment of the undersigned. It would undoubtedly relieve the Supreme Court, as far as it arrested and settled cases. But a large proportion of the cases it would arrest might as well be finally settled in the common pleas.

The cases in which the circuit court is proposed to have original jurisdiction, would be very tedious in their progress. With a session of once a year, as there would be in most of the counties, it is frightful to think of the interminable length to which litigation might be drawn out by the ingenuity of counsel.

A single continuance would cover a year, and half a dozen of them are easily attainable by the inventive genius of the profession.

The undersigned can see no advantage in increasing the number of the supreme judges.

The pretext is that the Supreme Court is over-worked—is behind with its business. The increase in the number of judges would not remedy this. Large bodies, if the components must act together, move slower than small ones. The evil exists certainly, but it is the fault partly of the law and partly of the judges.

All cases involving a controversy purely about money, ought to be settled finally in the common pleas, when the amount in litigation does not exceed one hundred dollars.

When the cost of reversing a decision is equal to the amount involved, it is wrong to suffer the parties to litigate further, and the Constitution or the law should prevent it.

But the Supreme Court has brought this over-work upon itself. The disposition to accompany every decision with a treatise upon law not only takes time but does damage. Where so much is said, something will be said that will mislead the profession, and bring cases up needlessly, to be dismissed with explanatory treatises upon law, containing other extraneous and mischievous matter. The length of the decisions is even excelled in its evil tendency by the recklessness with which cases are over-ruled. A single case over-ruled gives rise to hundreds. When judges learn that it is better that the law should be settled than that it should be right, much of this over-work will disappear. Adding additional judges would only put more pedantry upon the bench, causing more over-ruling and more mischievous *dicta*.

The undersigned would agree to extending the judicial term, and to retiring old and infirm judges on pay; to abolishing the court of *nisi prius*, and the district courts, as recommended by the committee; also, to limiting the supreme judges to a single term.

JOHN M. BROOMALL.

PRINTING THE REPORT OF THE JUDICIARY COMMITTEE.

Mr. J. M. PURVIANCE offered the following resolution, which was twice read:

Resolved, That a thousand copies of the report of the Judiciary Committee be printed for the use of the members of the Convention.

Mr. DALLAS. Mr. President: I move to amend, by including in the resolution the printing of an equal number of each of the minority reports of the same committee.

The amendment was agreed to.

The resolution, as amended, was then agreed to.

PRINTING THE REPORT OF THE COMMITTEE ON RAILROADS.

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

Resolved, That five hundred copies of the majority and minority reports of the Committee on Railroads be printed in journal form, for the use of the Convention.

Mr. COCHRAN. Mr. President: There has been no minority report made, and if the printing is to be deferred until the minority reports are presented we cannot receive them until after the Convention re-assembles, and I think it would be best for us to have copies of the report which has been presented as soon as possible.

The resolution was agreed to.

COUNTY, TOWNSHIP AND BOROUGH OFFICERS.

Mr. LILLY. Mr. President: I move that the Convention now resolve itself into committee of the whole, to consider the report presented by the Committee on County, Township and Borough Officers.

It was not agreed to.

COUNTIES, TOWNSHIPS AND BOROUGHS.

Mr. LILLY. Mr. President: I move that the Convention do now resolve itself into committee of the whole, to consider the report submitted by the Committee on Counties, Townships and Boroughs.

Upon this motion a division was called for, and resulted: In the affirmative thirty-eight, in the negative thirty.

So the motion was agreed to.

IN COMMITTEE OF THE WHOLE.

The Convention then resolved itself into committee of the whole, Mr. Turrell in the Chair, for the consideration of the report presented by the Committee on Counties, Townships and Boroughs.

The CHAIRMAN. The Committee of the whole has had referred to it the report of the Committee on Counties, Townships and Boroughs. The first section will be read.

The CLERK read:

SECTION 1. The Legislature shall have power to erect new counties. No new county shall have an area of less than three hundred square miles, nor a population of less than eighteen thousand, and no county shall be reduced to a less area than four hundred square miles. No new county shall be erected until the same shall be approved by three-fifths of the votes cast by the electors embraced within each of the sections of the counties taken to form the new county.

Mr. LAWRENCE. Mr. Chairman: The motion to take up this report at this time was made without my consent, and perhaps without the consent of any member of the Committee on Counties, Townships and Boroughs. Perhaps, however, this is as good a time to take it up as any other, although, for myself, I did not expect it to come before the Convention until after our return from recess.

The report is so simple and plain as presented, that I do not propose to take up the time of the committee in discussing its propositions. Every member who reads the article will understand it for himself. There may be, and doubtless are, various opinions in the Convention on the subject of which it treats. I desire to say for the committee, that its members are not at all tenacious about the *form* in which its provisions shall be adopted. The report, as it stands, is a sort of compromise effected in committee, and is believed to be the best report that we could make under the circumstances.

In the present Constitution we find an amendment which was some years ago proposed by my friend from Columbia, (Mr. Buckalew,) then in the Senate of this State, just after the formation of the new county of Montour, the bill creating which was passed through the House and Senate, as he thought and as many others thought, by some extreme measure and without proper consideration. The amendment that I refer to effectually prevents the formation of any new counties in the State. I can scarcely imagine a district where the requirements called for by that amendment can be complied with. The committee have, therefore, thought it proper to report this section entirely different from the parallel section of the old Constitution, and yet so limiting the Legislature in its action in reference to population and territory that there is likely to

be no abuse on the subject. The first section says: "The Legislature shall have power to erect new counties." That power has always been given to the Legislature; and there was a report made to this Convention by the Committee on the Legislature and adopted limiting that power very much, and requiring the Legislature to pass general laws on the subject. There were some gentlemen in this committee at that time that objected to it very much, and it was agreed to pass it over until this subject should come up in a formal way. It is admitted, then, that the Legislature shall have power to make new counties. I presume nobody will dispute that, because there have been times in the past, and there doubtless will be times in the future, as the population of the State increases, when it will be necessary for the accommodation of the people to create new counties in some parts of the State.

The section further provides, that no county shall have an area of less than three hundred square miles. The Convention is aware that the limit of miles in the present Constitution is four hundred. Your committee thought that that was too large in many districts of the State where the population has become dense. It would be better to require a specific number of *inhabitants*, and not be so tenacious about the extent of territory. Hence we report in favor of three hundred square miles. The section further says: "Nor a population of less than eigthteen thousand."

This requirement limits the number of inhabitants to a county to eighteen thousand. I may remark that that number was a compromise. Some of the members of the committee thought it too large, and some thought it too small.

Gentlemen will observe that the committee does not propose to reduce any of the old counties of the State so that they shall not have four hundred square miles of territory.

Perhaps the most important provision in this matter is in regard to the vote which shall be necessary in the several sections, before new counties are created. By these provisions, if it is proposed to take a part of two or three counties to form a new county, it is necessary that a majority of three-fifths of the voters in the sections which you propose to put into the new county shall favor the scheme. That is a limitation not exactly agreeing with the provision of the present Constitution. Your committee believe that if you require a vote of all the citizens of the counties interested, that is to say, a vote of the whole county, you never could create new counties in many parts of the State where they might be desired. The members of the bar, and others in the vicinity of county seats, will always oppose the erection of new counties, and it will be found, I think, from experience, that there is scarcely a county in the State that would agree to part with any of its territory. The committee, therefore, thought it better to leave it to the voters of those portions of territory proposed to be amalgamated into a new county, and to require a majority of three-fifths of those voting in each division before being thus amalgamated.

It is not necessary for me, however, to go through the report in detail. I merely desire to say that I have no particular feeling in the matter. I believe the time will come when it will be necessary to form new counties in many sections of the State, On looking over the number of counties in other States, I find, upon a very partial examination, that many, indeed most of the larger States in this Union, have more counties than we have. Some of the States have twice as many counties. Some even of the new States have more than we. Indiana has over ninety already, and provisions for forming more. There are gentlemen on this floor, I know, who are opposed to cutting up the old counties, and to some extent, I am, myself, of the same disposition. I believe, however, that it should be done whenever it becomes really necessary for the accommodation of the citizens.

While the committee are not tenacious at all, as to the provisions of the articles in their present shape, they would be very glad if the committee of the whole should *adopt them.*

Mr. NILES. Mr. Chairman: I am very sorry, indeed, that this report has been taken up this morning. I, in common with very many delegates from the country, have an interest in this question, and in looking about me I see that a very large number of the gentlemen who have a personal interest in it, or whose constituents have, are absent this morning. The delegate from Lycoming, in my rear, (Mr. Parsons,) is absent, and very many others that I could name, and if it is the pleasure of the committee they would accommodate, not only those gentlemen who are

absent, but myself also, if this question could be postponed for the present, and then taken up at some other time, when there is a fuller delegation of members from the country, and for the purpose of testing this question, and to give those of our members who come from the country an opportunity to be heard and vote, I move that the committee now rise and report progress.

Mr. LILLY. I hope that motion will be withdrawn for the present.

Mr. NILES. I withdraw the motion for the present.

Mr. LILLY. Mr. Chairman: I desire to say that I did not desire to take up the report of the committee at this time for the purpose of pressing it on the Convention, but I supposed the report could be acted upon just as well to-day as at any other time.

I do not aspire, as the gentleman from Washington (Mr. Lawrence) said, to run this Convention, by any means. I want this Convention, however, to understand that I can remain here with as little injury to myself and my business as any man on this floor. If it is necessary I can remain here an entire year, or any other time, if it is actually necessary. I think the business of this Convention ought to proceed as fast as possible. I have no desire, whatever, to crowd any of its business to the detriment of any delegate. The resolution which was passed yesterday morning to adjourn to-morrow evening, is working just the effect I expected. The members of the Convention are already making preparations to leave to-day, and in fact the members that remain are not anxious to transact any business at all, and two more days will be wasted in consequence of this proposed adjournment.

I do not desire to tread on anybody's toes, but I earnestly desire to see the business of this Convention completed at as early a day as possible. The report of this committee has been upon our files for several days, and I think that it would be just as well to occupy the attention of the Convention for the remaining two days of our present session, as to postpone the consideration of this report until the Convention re-assembles in April. At that time the report of the Committee on Judiciary will have to be taken up, and from what I learn the discussion of this report alone will occupy three months at least. In making the motion to take up the report of this committee, it was with the purpose of expediting the business as rapidly as possible. I desire to get rid of some of the small reports of the committees, so that when the Convention re-assembles, we can be ready to go to work upon other reports which have been presented.

Mr. LAWRENCE. Mr. President: I desire the gentleman from Carbon (Mr. Lilly) to understand that I did not intend to reflect upon him in the remarks I made upon the report of the committee. I only meant to say that I did not expect the report of the committee would have been taken up to-day, and of course I was not prepared to discuss it as I might have been. I agree entirely with all that he says about the necessity of expediting our deliberations, and in reply to the gentleman from Tioga (Mr. Niles) I would say that this report has been ready for for some time, and I see no good reason why its consideration should be postponed. We might as well consider it now as at any other time.

Mr. NILES. Mr. Chairman: I offer the following substitute for the first section reported by the committee:

SECTION —. No new county shall be formed or established by the General Assembly which shall reduce the county or counties, or either of them, from which it shall be taken, to less contents than four hundred square miles; nor shall any county be formed of less contents; nor shall any line thereof pass within less than ten miles of any county seat of the county or counties proposed to be divided.

SECTION —. No county shall be divided or have any part stricken therefrom without submitting the question to a vote of the people of the county, nor unless a majority of the legal voters of the county voting on the question shall vote for the same.

SECTION —. There shall be no territory stricken from any county, unless a majority of the voters living in such territory shall petition for such a division, and no territory shall be added to any county without the consent of the majority of the voters of the county to which it is proposed to be added. But the portion so stricken off and added to another county, or formed in whole or in part into a new county, shall be holden for and obliged to pay its proportion of the indebtedness of the county from which it ha been taken.

The CHAIRMAN. The question is upon the substitute of the gentleman from Tioga.

Mr. NILES. Mr. Chairman: If the Committee will turn to the one hundred and thirty-fourth page of the Journal, they will find a copy of the substitute just offered by me. It was offered by me to the Convention on the seventh day of January, and by it referred to the Committee on Counties. Having some interest in this question, I desire to say a few words in support of the substitute just offered, to take the place of the report of the committee. While the committee's report, in some respects, is an improvement upon the amendment of 1857, in the present Constitution, in many others it falls far short of it, and in my opinion, the pending report, if adopted, will not protect our people against inroads that will be made against them by men who are eager for the formation of new counties. The report is at fault wherein it reduces the required size one hundred square miles, or one-fourth. This is an advance in the wrong direction, and gives us smaller counties than have other States of the Union, save one. No reason has been, nor do I believe there can be, given for this departure. Another objection to the report is, that it does not submit the question of the formation of new counties to the vote of the people of any of the counties affected, no matter how much territory may be taken therefrom. Three-fourths of a county may be taken away without consulting any except those who are to be included in the proposed new organization. No county, as a whole, is to be consulted, whereas under our present Constitution, by virtue of the amendment originated in the Senate by the delegate from Columbia, (Mr. Buckalew,) if more than one-tenth of the population of any county are taken, the question must be submitted to the people of the whole county. I undertake to say, Mr. Chairman, the pending report of the committee is much more favorable to new county projects than the Constitution under which we are now living. This may not have been intended by the committee, but such, I submit, is its legitimate effect. Only those who desire new organizations are to be consulted. They propose to have the whole question fully and entirely decided by interested parties.

I much prefer the section in the report of the Committee on Legislation, passed by the committee of the whole, to the report of the Committee on Counties. In my opinion this whole question should be regulated by general law; that the people most deeply interested should control this, as we propose they shall all other questions deeply affecting their interests. But I do desire, Mr. Chairman, that if the power is still to remain vested in the Legislature for the creation of new counties, their powers may be so circumscribed by proper restrictions and limitations that the rights of the people of the State may be protected.

This proposition of mine is not an impracticable one, nor does it impose any unnecessary hardships upon those who desire the formation of new counties. In substance it has been submitted to the people of several States, and it has always been adopted by overwhelming majorities. What is my proposition? It prohibits the formation of new counties of a less area than four hundred square miles. That is the minimum under our present Constitution, and a less area than allowed in any other State, save one, where restrictions are imposed upon the legislative power. Do the delegates of this Convention believe that new counties should be created with a less number of square miles? It provides that existing counties shall not be reduced below that area. Is not this right? That is the intention of the present Constitution, and yet a bill is now pending before our Legislature, with a fair prospect of success, that reduces Sullivan county below that standard, and this, too, in opposition to her earnest protestations. It also declares "that no new county line shall pass within ten miles of any existing county seat." Is this prohibition wrong? And yet the report of the committee does not prevent ambitious corner lot men from running their new county lines to the very door of old and existing county seats, thus leaving them upon the very outskirts of what may remain of what had once been, in substance, a county.

But, Mr. Chairman, the part that will afford the people a substantial protection for all coming time, and which will defy legistative spoliation, is that which provides that "no county shall be divided or have any part stricken therefrom without submitting the question to a vote of the people of the county, nor unless a majority of the legal voters of the county voting on the question shall vote for the same." My substitute squarely raises the question as to the justness and propriety of consulting the people in the formation of new counties. In a matter so vital to their interests, it proposes to con-

sult the will of each and every party to be effected by the new proposed order of things.

The report of the committee allows the formation of new counties upon the mere application of the parties interested, *wherever* and *whenever* eighteen thousand can be found on any given three hundred square miles. It is practically, but most effectually, *peaceable secession.* When any portion of a community numbering eighteen thousand desire to sever their political relations, they can do it under the pending report, without "let or hindrance." Those that remain in the old organizations, have not a word to say; they will be powerless in the matter, and the most they can do is to quietly fold their arms and "see their wayward sisters depart in peace."

At present we have sixty-six counties, with a mean average of seven hundred square miles. The committee's report gives us, if our people avail themselves of its provisions, one hundred and fifty-three counties. Is it not apparent that a multiplication of counties meansan increase of local taxation? Does not an increase of county officers, jurors and the various judicial machinery of our courts carry with them a corresponding increase of expenditure? And in these days of extravagance and magnificence, who can calculate upon the cost of new county buildings, and the increased burdens of the people within its boundaries?

I confess, Mr. Chairman, that I have some interest in this question; that I desire the adoption of something that will prevent the creation of counties by special acts of the Legislature, without the approval of all of the parties interested. But few more important questions have or will come before this Convention. Every person living within the Commonwealth is interested in the result of our deliberations. In a great degree the permanent peace and prosperity of all our people depend upon the adoption of some substantial proposition. Mine is a very simple one. Any person can understand it. It simply prohibits bold, unprincipled men who have corner lots to sell, and who have a desire to traffic in municipal bonds to an unlimited extent, from going to the Legislature and, by a mere act of Assembly, destroying three or four counties for the purpose of creating one of their own. We simply say that old county lines and landmarks shall not be destroyed by special legislation to suit the convenience or to enhance the private ends of any man or set of men; that the rights of the many are superior to the rights of the few; that we will preserve the territorial integrity of the existing counties unless the emergency requiring a change shall bring their case within some wholesome provision that will afford protection to the people. I presume that cases will arise, as many have already arisen in the history of the State, where it will be convenient and perhaps necessary that new counties should be created. Judging the future wants and needs of our people by a glance at our past history and progress, I can readily understand that, with the development of our State, the organization of new counties may become a necessity. And when the commercial and business wants of a community have outgrown present organizations they should have the same relief in this that we desire to give them in any other particular.

Sir, in my opinion, whatever concerns the peace and to a great extent the prosperity of our people should be beyond the reach of any mere legislative rescript. We now propose to consult them in all matters of local and special legislation. We propose to prohibit the Legislature from even granting *divorces from bed and* board by special law, and to that I am agreed. How more important is it that we should inhibit them from tearing down county lines; from divorcing whole communities of people who may have lived a century together, who understand the wants of each other, and who are more than satisfied with their existing political organizations.

Sir, this is a practical question. Scarcely a session passes without an attempt being made by greedy land speculators for the creation of new counties, in opposition to the clearly expressed wish of the people affected by the change. In the Constitutions of 1798 and 1837 there was no legislative restriction in relation to the formation of new counties. In those days the greed of capital had not become so exacting. The Legislature had never attempted to exercise its power in opposition to the wants and wishes of the people. Time in this, as in many other things, worked a change. Corner lots became more valuable. By the creation and growth of our extensive system of railroads centres of population changed. The pressure had become so great that in 1837 by an amendment to our Constitution, one of the many originated and prosecuted to a successful

termination by the delegate from Columbia, (Mr. Buckalew,) the Legislature was prohibited from cutting off over one-tenth of the population of any county, without the express assent of the people interested. Nor were they allowed to create a new county of less than four hundred square miles.

The people of the Commonwealth owe much to this amendment originated and defended by the delegate from Columbia (Mr. Buckalew.) For sixteen years it has stood as a bulwark between corner lot men and the people. A great amount of ingenuity has annually been wasted in attempts to nullify its provisions. It was intended by the amendment of 1857 that in the future no county should be created save by consulting the counties affected by the change. It was then believed that no county of four hundred square miles could be formed without taking more than one-tenth of the population of some of the counties to be included in the new one. But the ingenuity of some men is past finding out. At this moment a bill is before the Legislature of our State; has already passed the House of Representatives, which proposes to carve a new county out of parts of Lycoming, Sullivan, Bradford and Tioga, the latter being the one that I, in part, represent upon this floor, and the one wherein I reside, without submitting the question of "new county" to a vote of the people of a single one of them. And to do this Sullivan is to be reduced to a less area than four hundred square miles, in violation of the true intent and meaning of the amendment of 1857. Do the people of Bradford, Sullivan, Tioga and Lycoming desire this? Sir, every member of the House of Representatives, from each and every one of those counties, is strongly opposed to this great outrage and wrong upon their rights! Every Senator from those four counties is opposed to this new county scheme, and back of a united senatorial and representative delegation stand one hundred and forty thousand indignant and outraged people, protesting through their members, by numerous and earnest remonstrances, against the consummation of this great wrong which is now pending before our Legislature, with a fair prospect of success.

Mr. Chairman, why, forsooth, should this new county be created? Why should four counties be despoiled of their territory in opposition to their earnest protestations? Why should the ill-fated people living within the limits of the proposed new county be subjected to increased taxation to build county buildings, and to pay the expenses of an extra municipal government? The reasons are simple. Some time since a supposed mineral spring was discovered in a Bradford county swamp, close by the line of the Northern Central railway. After passing through the hands of various speculators it came into the possession of its present owner. A clever analysis demonstrated the fact that it contained healing properties amply sufficient to cure all the ills to which humanity is heir!. Hundreds of acres of lands were purchased in the vicinity, a hotel has been built, and the spring and hotel have been named "*Minnequa*," which, in the *Indian tongue*, from which it is derived, is said to mean *healing water*. Now, sir, for the mere purpose of building up this spring, and the hotel attached to it, and of enhancing the real estate of the owner, now mostly woodland, with not another building in or about the premises, and which was a wilderness but three short years ago, the Legislature is asked to carve out a county in open and direct opposition to every county affected by the change. This scheme may now succeed. The will of the people may be successfully thwarted, but if my proposition is by us adopted, and subsequently ratified by the people, we shall not hear of any Minnqua jobs in the future.

Sir, in the early days of the republic the people were not in their present danger. The greed of real estate speculators had not then assumed its present gigantic proportions. In the older constitutions of the different States but little mention is made of legislative restriction in this regard. But as time wore on—as real estate became more valuable, we find that very many States have found it necessary to hedge their Legislatures around with limitations and restrictions. Almost every constitution formed within the last twenty years contains provisions designed to protect the people from the inroads of corner lot men.

For the purpose of showing the care taken by our sister States to preserve the integrity of their counties, I will glance at a few of their Constitutions upon the subject. Alabama, by her Constitution of 1868, prohibited her Legislature from creating new counties of less than six hundred square miles, and that by a vote of two-thirds of both Houses, and no boundaries can be altered except by a vote of

the people, and every new county must have a population sufficient to entitle it to at least one Representative.

Mr. BRODHEAD. Mr. Chairman: If the gentleman from Tioga will allow me, I would like to ask what population would that, at that time, have allowed for a county in Alabama?

Mr. NILES. I do not remember. But every county must have a sufficient ratio to entitle it to a member of the Legislature.

Mr. BRODHEAD. About one thousand five hundred population, while this report provides for eighteen thousand population.

Mr. NILES. Yes, sir. That would give one to Scranton. I have do doubt about it. The Alabama provision is that a county must have six hundred square miles, and the report gives us three hundred.

Mr. BRODHEAD. At two dollars an acre.

Mr. NILES. I have not been buying land in Alabama. Perhaps the gentleman has, and very likely he knows more about that than I do.

In Georgia, by her Constitution of 1868, every county must be created by a majority of two-thirds of each House, and ratified by a majority of the people.

Illinois, by her Constitution of 1870, declares that county seats cannot be located or changed by local law. No county can be formed of a less area than four hundred square miles, and the submission of the question to a vote of the people. Every question affecting the territorial integrity of her counties her people must be consulted. This was submitted as a separate proposition, and ratified by 105,171 majority.

Iowa prohibits the formation of counties with less than four hundred and thirty-two square miles, and no county can be reduced below that standard.

In Kansas no county can be formed of less than four hundred and thirty-two square miles, and no seat of justice removed without the consent of a majority of her voters.

Maryland, by her Constitution of 1867, prohibits the formation of counties of less than four hundred square miles, and without submitting the question to the vote of every county within the limits of the proposed new one.

In Michigan every county must contain four hundred and twenty square miles, and no county can be changed, except by a two-thirds vote. Her Constitution was framed in 1850.

In Minnesota, by her Constitution of 1857, all laws changing county seats or county lines must be submitted to a vote of all the counties affected, and none can be formed or reduced below four hundred square miles.

In Missouri, by her Constitution of 1865, no county shall contain less, or be reduced below five hundred square miles, and each must have a population sufficient to entitle it to at least one Representative. No county seat can be removed, except by a two-thirds vote.

Tennessee, by her Constitution of 1870, provides that no portion of a county shall be taken to form a new one, or any part thereof, without the consent of two-thirds of the qualified voters of the part taken off.

Texas, by constitutional enactment, prohibits the creation of counties of a less area than nine hundred square miles.

Virginia, in 1870, provided that no new county should contain less than six hundred square miles and must have at least eight thousand inhabitants.

West Virginia prohibits the making of counties of less than four hundred square miles, and no county can be reduced below that number in the formation of new ones.

Wisconsin, by her Constitution of 1848, prohibits the creation or division of counties without the approval of her people, and by an amendment adopted in 1871 her Legislature is prohibited from locating or changing county seats.

Mr. Chairman, it will be seen that many of our sister States have taken the precaution to insert into their organic law a substantial protection for their people. Do not our own people demand as much? Shall we not afford them this relief when we have it within our power? Is there a delegate upon this floor who doubts that this proposition could be ratified by a large majority? Would not this give strength to our work? The people would gladly endorse it. The corner lot men would oppose it, but while they may have power in our legislative halls, they are powerless to affect our four millions of people scattered throughout the length and breadth of the Commonwealth.

But, independent of its being a question of legislative power that is liable to abuse, I respectfully submit that it is one of those questions that should never be decided without consulting the people affec-

ted by the change. It is a branch of our political government that should be controlled only by those counties that are territorially interested.

In 1861 we opposed the secession of the southern States. Was it because they were not willing to go? Was it because they did not desire to form an independent government of their own? Nothing of the kind, sir. We said they had no right to withdraw from and destroy the family of States without the consent of the whole. By the amendment under consideration, we do not propose to keep counties where they now are against their consent. We only propose to give the people in every part of our great State full and ample security against being torn away from their present political condition against their consent. That forcibly and against their will they shall not be taken from their friends and delivered over into the hands of our modern real estate Ishmaelites.

At the proper time I intend to submit to the Convention a proposition to prevent the change of county seats, except by the approval of the people. This question was submitted in Wisconsin, in 1871 and adopted by a large majority, only 3,675 voting against it.

Mr. Chairman, I submit, is there anything wrong in declaring that in reference to the creation of counties, and the location of county seats, questions in regard to which every person has a direct and personal interest, that the people should be consulted? That the local member should not be the sole judge of the propriety of the act, and from whose decision there is no appeal. By legislative etiquette, he is the autocrat of his district.

It is highly discourteous to call in question anything affecting the district from whence he comes. His word is law. This is the rule. The exception is the case of Mr. Herdic, passing, or trying to pass, his county bill in opposition to the whole district. If the Representative for any reason desires to mis-represent his people, he should not have this power. If he well and truly desires to represent them, to act in accordance with their clearly expressed will, he will prefer that this power should be lodged with his constituents. It will transfer all future new county struggles from our halls of Legislation to a full and free discussion before the people most deeply interested, and by them will be decided in accordance with their convictions. Sir, we prohibit the Legislature from doing many things less injurious to the Commonwealth. We propose to lop off many of the branches of the legislative power that have given us real or fancied trouble in the past. Whether wisely or unwisely remains to be seen. We practically propose to cut up by the roots local and special legislation.

The extensive and transcendant powers heretofore exercised by our General Assembly are, in a large degree, to be returned to the people. One of the main reasons that induced the calling of this Convention was the alarm with which the people beheld the constant encroachment of the legislature power, and the easiness with which legislative grants have been and were being given to interested parties. It is an old axiom that "any law is better than anarchy." So is any law better than that condition of things which keeps a people in a constant state of unrest, to protect themselves from land pirates, who are constantly preying upon their borders. Adopt this proposition, and henceforth Minnequa jobs will no more disgrace the night sessions of our Legislature, continuing them until the early dawn, and then passing them in defiance of a united delegation, as was done on the night of the twenty-fourth of March. Our people need relief; shall it be denied? When they ask for bread, shall we give them a stone? Let them understand that in the future, for all time to come, they cannot be despoiled of their territory without their approbation. Then sharpers will no longer sit themselves at a conjunction of three or four counties, and whenever and wherever they can get four hundred square miles of blue sky, and less than one-tenth of any of the counties affected, a county can be carved out, without the approbation of any. Let us, in this respect, lay the axe at the root of the tree! We have long known the mischief! Let us apply the remedy.

The district from which I come has great feeling upon this question. Our people feel, and that correctly, that their rights will never be safe until the legislative power is restricted. For years we have had a war upon our borders. To-day one branch of the Legislature has fallen at his feet, and has crowned this iniquitous proposition with success. Sir, let us remove this great temptation from our representatives, and then all men will breathe easier.

I must beg the committee's pardon for trespassing so long upon their time. I can but thank you for the attention with which you have listened to these desultory remarks. I can now only hope and trust that you will sustain the substantial part of my proposition. Do this, and while corner lot speculators may not endorse you, the people of our great State, living upon our hill-sides and valleys, will ratify your work by an overwhelming majority.

Mr. HAZZARD. Mr. Chairman: I really desire to have the attention of the committee, because it is very probable that there is a majority here who are attorneys, who live at the present county seats, snugly ensconced upon corner lots. Now, the gentleman who has just addressed the committee is very much afraid that somebody else will have a corner lot, and he mentioned that fact to this committee five times in his address. I have the honor to own one, and I do not know whether he holds a house and lot or not; but if he has, he ought not to be quite so rantankerous about the rest of them who may have a corner lot in some new county, perhaps, thirty years hence. I have listened carefully, expecting to hear some reason why a new county should not be formed, but I have heard none, and I wish to hear some gentleman interrogate me in what way it will be disadvantageous to any person, unless it be to the gentleman from Tioga (Mr. Niles) in the depreciation of his corner lot, or to tavern keepers who entertain the people who now flock to the county seats, or the officers, whose fees are enhanced, enlarged and multiplied by making us travel thirty miles to bring our grist to their mills.

This article, as now presented, seems to me to be eminently proper, fair and just. The gentleman from Tioga (Mr. Niles) says that there is a parcel of indignant people up in his county. Well, let them indignate. There is a parcel of people in my district who have been indignant for over sixty years. They have been holding meetings at Parkinson's ferry, down on the Monongahela river, ever since sixty eight years ago, when the first meeting was held up to 1857, when the provision introduced in the Legislature by the gentleman from Columbia (Mr. Buckalew) was passed, and it was left to interested persons to say whether they should have a new county or not. You might as well leave it to Stokes to say whether he would be hung, as to leave a question of this sort to the old counties to be voted upon. They are interested that there shall be no new counties. There sit the landlords, waiting at their windows for us to travel twenty miles over a very poor road to stop at their hotels. There are the fine gentlemen and scholarly lawyers sitting there, waiting for us to bring our grist up to the old county mill.

The gentleman speaks about tearing down old county lines. Mr. Chairman, lines are nothing but a myth, and I wish some person to tell me what advantage there would be if there were four counties where there is now but one. He says you may take away two-thirds of the county. He has not read the section. This section, reported by this committee, says that there shall not be less than four hundred square miles left in the old county. How is it possible that two-thirds of any county should be taken away?

Mr. NILES. Suppose that there were twelve hundred square miles in a county?

Mr. HAZZARD. They could not get more than three hundred.

Mr. NILES. They could take eight hundred.

Mr. HAZZARD. This provision is fair in all its aspects, and it is right that the question should not be left to the old counties, whose inhabitants are interested and always will be, to vote such a proposition down. It has been said in this Convention that ever since 1857 this provision has stood as a bulwark. Yes, it is a bulwark, and it is just the same as to say in this Constitution that there shall never be a new county formed. Will the indignant persons up in the county of Tioga vote for it? Not much, under the inspiration of the eloquence of the gentleman who has just addressed this committee. When will they be ready to do it? Never.

I said I could give the committee some reasons why new counties ought to be established. It is very embarrassing for me to do so, because I know that the gentlemen composing this Convention are mostly located at the old county seat. It is commendable and right that they should think that the old county line which they have been accustomed to should not be broken up. But I know that I am addressing gentlemen of the highest integrity and intelligence, who have met here in Philadelphia in order to make just and proper provisions in the Constitution; and while I remember that there may be some selfishness with regard to corner lots, at

the same time I know that the integrity of the gentlemen composing this Convention will cause them to rise superior to all such considerations. Let any man rise in this Convention who will and tell me why counties should not be divided, and I will tell him why they should. I will wait with patience to hear in what way any one will be disadvantaged by the erection of new counties, except, perhaps, as it may result in the depreciation, as I said a moment ago, in the value of corner lots, taverns and other institutions at the county seats.

It will be better for the State, and better for the individual. If I can prove this, will this committee allow this provision, just and equitable in all its parts, to be passed? I said it was better for the people. Suppose corner lots are appreciated? Suppose there are, in the midst of these woods that he is speaking of, at the springs, large hotels, lawyers, physicians, and a respectable village growing up? Does it not enhance the taxable property of the State? Does it not add to the amount of property within the Commonwealth? And does not the State receive the benefit of it? I say it would be better for the State; it would enhance the value of property, and facilitates business in every way.

The report of the Auditor General, a copy of which is on the desk of each member, shows that the taxes are more promptly paid in the smaller than in the larger counties. Once before I made this assertion, but I had not the proof then at hand. I have examined the report since, and have found it to be true. The reasons for this I am not quite able to give, but it seems to me that it may be because it brings the publican, or collector of taxes, immediately in contact with the people. He is nearer to them; he can see them oftener. If you have a note against a man that he is a little unwilling to pay, if you can see him every day for about three months, you may be able to get a part of it, but if he lives sixty miles away, and you have to write to him, he will slip the letter into his letter box, and forget it on purpose.

I do not know exactly why it is, but it is a fact, that in the smaller counties the taxes are more promptly paid to the Commonwealth. It is good for the public and tends to the enhancement of property.

In my own county, Mr. Chairman, there is one point about thirty-five miles from the county seat. Let us take the people who live in that section, and look at the question in some of its aspects, and see if it will not be fair to them. A person dies; some body administers his estate. He must get his two witnesses into a carriage, and trot them off thirty-five miles. It takes him the whole of that day to go. They stay all night, and come back the next day, having incurred a bill at the county seat from fifteen to twenty dollars. Suppose there are but three hundred and fifty square miles in a county. In that case the distance from circumference to centre would be twelve miles. A man could wait until after dinner, obtain his witnesses, go down and back the same day. Would it not be a personal advantage to him? We will take it for granted that the distance is about twelve miles from the county town to the outward lines. Suppose I have a deed to record. It is true I can send it by mail, but if I should go I would be under the necessity of traveling but twelve miles, and I could go and return on the same day.

And again, it is good for the public in this way: There are three commissioners. They must build a bridge thirty-five miles from the county seat. They are paid in our county three dollars per day. One of our commissioners, three years ago, had to travel about forty-five miles to view a bridge. In that case it would take him all day to go. He views the bridge and makes his contract. That will use up another day. On the third day he goes home, and he has been to an expense of nine dollars to the county; but if the county were a small county, if the distance to be traveled were but twelve miles, he could go, make his contract and return on the same day. So with all the business of the commissioners.

Again, suppose the sheriff—this is personal, for I have a corner lot myself—suppose the sheriff comes down to sell me out. He comes forty-five miles. I must pay his travelling expenses, and that is added to my calamity, and eats me up and buries me deeper than I would be if he had but a few miles to travel. So it is in all the aspects in which you can treat it. It is better that there should be new counties created; and I wish some one would tell me why every county in this State should not be divided into four. If you can tell me one reason why these should not be small counties, I should like to hear it. I do not want any man to say that it is personal to them, because they have corner lots, and hence the old lines should not be torn away. They

must give me some reasons why they should not. I am ready to answer any question, for I have investigated it for twenty-three years.

Mr. H. W. PALMER. Would it not increase the number of county officers?

Mr. HAZZARD. Officers live on their fees, and it does not make any difference whether they live in one county or another.

Mr. H. W. PALMER. Can one man steal as much as two men?

Mr. HAZZARD. I make no allowance for stealing. I only answer the gentleman's question. It does not make any difference whether the man lives in one county town or another.

Mr. KAINE. Can you run two counties as cheaply as one?

Mr. HAZZARD. Just the same, because the officers live on their fees.

Mr. NILES. Are there not as many jurors in a small county as in a large one?

Mr. HAZZARD. There would be no more law suits because a county was divided, and hence there would be no more expense. That is the answer to that question, and I can answer every solitary question that may be put to me upon this subject, for I have thought over it, and I know it is right, and proper, and just that the section should be adopted. It will not multiply law suits. If a jury tries a case in a new county, it is tried, and if a case originates in a new county and must be tried in an old county, it is only tried by a jury once, and if there are two cases in a large county, the jury tries two cases, and it costs no more to try it in two counties than it does in one. Suppose it is a great deal more expensive. See what this provision of the section under consideration offers to do. If there is any indebtedness of the old county the new one must pay its share of it. It is said it involves the expense of building a new court house. In Washington county it cost about one hundred and eighty thousand dollars to build a jail and new court house, and I will go into Virginia and show you court houses that will do very well for small counties, that have been built at an expense of $20,000.

If the people are willing to pay the additional expense, what business is it to the gentleman who enjoys himself upon his corner lot? If we put our hands into our own pockets whose business is it? We take it upon ourselves; we are willing to do so, and we should be permitted to do it.

Mr. NILES. They would be mourners.

Mr. HAZZARD. Well, let them move into the new county, if they cannot get practice enough in the old one.

The amendment that is now proposed is just equivalent to saying that there shall never be a new county again while the world lasts. It makes no difference how your population is pressing upon you, it makes no difference how your docket has accumulated with business that you cannot reach; it makes no difference whether the people are willing to bear the expenses of the new counties, and pay their debts besides, you can never have a new county. It is just like saying that thieves shall not be sent to the penitentiary, even if they steal all you have, because if called upon to vote they will vote against it. Let us have a provision that is fair in all parts, and that will be approved by three-fifths of the persons who will be affected by the change.

My friend from Luzerne (Mr. H. W. Palmer) says that it will be "expensive." Well, suppose it will be, and suppose that the people agree to pay the expenses. If my wife wants a shawl worth one hundred dollars, and I am willing to pay that price for it, it is nobody else's business. It is no business of that gentleman, (Mr. H. W. Palmer,) even though his wife does not want so expensive a shawl. Have I not a right to pay what I please for it? As I have said, it is not his funeral.

This section provides, in any event, for a very respectable county. It says that the area shall never be less than three hundred square miles. In another section of the report it provides fairly for the payment of mutual debts. The parties interested are to bear all the expenses, if there are any additional expenses. I assert, however, they will make it up, in five years, in the expenses of travel saved, as compared with the travel necessary in the old county. If you wish, in these times, to look at the dockets you have to go forty miles through the woods in order to do it. If you wish to view a bridge you must travel forty miles; if you want to go to the county town for any purpose whatever, you are obliged to travel all this distance to accommodate a few gentlemen who are extremely afraid that somebody will make money on a corner lot. That is the gist of gentlemen's objections; they are afraid that somebody will get rich through corner lots.

For my part, I wish every man in Pennsylvania were worth half a million of

dollars; the richer they get the better for me, for if a rich man come to my town, a man who may be worth a half a million of dollars, I believe that before the end of the week I should have at least fifty cents of it. I would write up an article of agreement, or undertake a case at law, and make something out of it. I would rather have rich people about me than anybody else. I think they do a great deal of good to the community. It would be a most absurd provision to require that it shall be left to the old county to say whether they shall suffer all this great wrong that gentlemen have portrayed to us, who are so indignant about it. It is absurd to leave it to those people to vote for a fair measure who are brimful of wroth at the bare idea of division.

Mr. NILES. Will the gentleman permit me to ask him a question? Does he not think the southern States ought to have consulted the northern States when they desired to go in peace in 1860?

Mr. HAZZARD. Mr. Chairman: We do not propose to go "punching" them out of their dwelling houses with the bayonet. We do not propose to take their property by force of arms; we propose to take our own property legally and rightly, and under the sanction of justice. That is what we propose to do. The southern people undertook to punch us with the bayonet, and we would not stand it. They wanted to divide in an illegal and improper way. It was a way not laid down by constitutional provision. There was no fairness in it at all. They were taking property that belonged to us. We, in this case, propose merely to take care of our own property. They were about to take our ships, our munitions of war, our railroads, our forts and all that we had paid money for. In the case of these counties we propose to take nothing; we propose to go peaceably, according to law, and to pay all that we owe in adjusting the mutual debts between us. I wish the gentlemen opposing this section would ask now all the questions they may have to ask on this subject, for I feel myself quite capable of answering them all. It is upon this question, of all others, perhaps, that I may be prepared to vote and to speak intelligently.

[Here the hammer fell.]

Mr. MANTOR. I desire to offer a substitute.

The CHAIRMAN. It is not in order just now.

Mr. WOODWARD. Mr. Chairman: My friend from Washington (Mr. Hazzard) says he has heard no reason why these counties should not be cut up and mutilated. If he will recur to the early history of Pennsylvania, he will find that there were no counties at all in the colony originally. We were governed as one colony. We had a Governer and a Council, and all questions, either of domestic economy or of a judicial character, came before that Governor and Council for their decision. The division of the colony into counties arose out of the judicial necessities of the people consequent on the increase of population. When that was done we had only a few large counties, comprehending a great extent of territory, and where men had to go, not forty miles, but sometimes *one hundred* miles from where they resided to the seat of justice. These counties have diminished from time to time, according to the convenience of the people, in respect to judicial duties. We never would have had counties in the State had it not been for the sake of the administration of justice; hence those towns in which the court house is built, and justice is administered, are properly called the "seats of justice." It was for that purpose the county system was resorted to. The necessities of the population required it. So also the future necessities of the population require that the original large counties should be reduced sufficiently to bring the citizens within practicable distance of the county seat.

The idea that a county should be erected for speculative purposes, for purposes of enhancing the value of corner lots, at some "springs," or some other obscure neighborhood, is a novelty of modern times, and has no foundation in history, nor any sanction whatever in the experience of the people.

Sir, little counties make little men; that is one objection I have to them. Another objection I have to them, and I particulary ask the gentleman from Washington (Mr. Hazzard) to notice it, is this: If he goes into a little county to try a cause that has excited great public interest, he will find it extremely difficult to get a jury before whom he can safely try it, because everybody has felt an interest in it, has discussed it, and has in one way or another complicated himself in such a manner that justice cannot be administered in that little county.

You will find in these days applications to the Legislature continually being made to remove the *venue* of cases, in order that parties may get a fair trial, which they cannot get in the small county; and bear in mind, it is the administration of justice that makes the county.

I maintain that in a great class of cases you cannot have justice administered in a small county. Take a case. Here is a banker, for instance, who has a law suit; he has his bank in the county town; he has mortgages on real estate here and there throughout that county; he knows everybody; he is a party to this litigation; some stranger is the other party. I would like the gentleman from Washington (Mr. Hazzard) to go into that little, miserable court house, in that little, miserable county, to try that cause against the local banker. I say that if he got a safe deliverance he would have reason to be thankful. He cannot get it in the ordinary courts of justice, for he finds on the jury some tenant or some debtor of his adversary.

Mr. HAZZARD. Mr. Chairman: I would ask the gentleman whether he considers a man disqualified to act upon a jury if he is intelligent enough to read newspapers, and to form an opinion?

Mr. WOODWARD. Mr. Chairman: It is not a question of competence to serve on a jury. Undoubtedly you will find just as intelligent gentlemen in the small county as in the large one. I am speaking of these social and local influences, some of which I can define, and some of which I cannot, which are found in the jury box of small counties. I have seen them, and have felt them. I am not speaking at random, but of that which I know, and it is the direct consequence of your bringing your county lines into such narrow quarters as that everybody shall know all about the law suits that are to be tried.

As to townships, why, in the State of Kentucky, where I was for a short time last summer, they have no townships at all there. Their municipal divisions are all counties and cities; and as to the court houses, I went into the court house in Lexington, which is the most considerable town in that part of Kentucky, and I was never in such a scandalous court house in my life. There are a thousand horses that are stabled in this city as comfortably as the judges and lawyers are accommodated in that court house.

It is a small county, and it would require the imposition of a considerable tax upon the population to build a decent court house; and, therefore, they have not got a decent court house. It is so with regard to their jail. I remember the time when Miss Dix travelled through the State, scattering blessings in her path. She visited all the prisons in the State, and the report she made to the Legislature was of so crushing a character that the Legislature almost immediately commenced building the insane hospital at Harrisburg, and another below Pittsburg, at Dixmont. The jails of all the counties were cleaned out, under the influence of Miss Dix. Her account of the condition of the jails in some of the small counties was positively shocking. This state of affairs was particularly observable in some of the smaller counties, and it certainly affords an additional objection to the creation of small counties. The small counties of the State cannot afford to build prisons. I remember that the county of Luzerne never possessed a decent jail until some years ago, when, probably, the best prison in the Commonwealth, if not in the country, was built there. It is a magnificent prison, and such a prison which no small county in this Commonwealth can afford to erect.

The great counties of Lancaster, Berks and Montgomery may have as good a prison as can be found in Luzerne county, but you cannot find its equal in any of the small counties of the State. In the discussion of this question it will probably be well to look at the consequences which will be entailed by the creation of these small counties. In the first place, humanity demands that the people of our communities who are to be punished, shall be punished not only in an effective, but also in a humane manner. There can be no doubt that the inmates of our prisons should be kept off the ground, and kept free from lice and mice. They undoubtedly should be punished, but at the same time the principles and precepts of our christianity should not be forgotten. In the county of Luzerne the prison, before the new one was built, was such a miserable affair that the convicts were not secure at any time, and large expenses were entailed upon the community by reason of this defective prison. Now, Mr. Chairman, it is necessary to bear in mind that the administration of the criminal and civil law of the land enters largely into the affairs of every county, and certain facilities are required to accomplish this purpose, which small counties are less able and less likely

to supply than larger and more wealthy counties.

The Constitution provides that no county shall exceed four hundred square miles in area. That is twenty miles square. Is that too large an area? I think not. With all the improved roads of our day and the improved means of locomotion, twenty miles is not an unreasonable distance for our citizens to travel. Why, our fathers went a much greater distance than that to reach the seat of justice. I see, therefore, no reason for changing the Constitution as it now exists, and I make this remark in reply to the gentleman (Mr. Hazzard) who said that he perceived no reason for retaining this provision in the present Constitution.

Mr. HAZZARD. Yes, and our fathers carried their sacks across the mountains.

Mr. WOODWARD. It is true they did carry their salt and iron on pack horses, but they understood the principles of government quite as well as some people who now ride on railroads. They loved their country, and did not desire to legislate for corner lots. They legislated for principles.

I desire to say, Mr. Chairman, in this connection, that I have not a particle of interest in this question. I possess no corner lots, and I feel just as disinterested in this question as a juryman or a judge can possibly be, but I have in my experience seen the inconvenience of small counties and the advantage, in many ways, of large counties. Who does not feel that the mutilation of Lancaster and Berks counties would be a public calamity? Who does not respect those counties for their size and moral and political influence in the State? Who does not see that a division of those noble counties would occasion a damage to the Commonwealth itself? There are quite enough counties in this Commonwealth, and I am opposed to the Minnequa project which is now on foot. It is certainly a beautiful place in the woods, and possesses a beautiful spring, but I do not know that it has any medicinal value. I have spent some very pleasant days there, and I hope to do so again, but the idea of making Minnequa a seat of justice for the sake of corner lots is ridiculous. It is inconsistent with all the political history of our Commonwealth, and it is introductive of a principle calculated to destroy all these noble counties which now comprise the State, and introduces a confusion into their midst which will prove injurious in many ways.

Mr. DUNNING. Mr. Chairman: I confess that I am laboring under very great embarrassment in attempting to say a few words upon this question. The gentleman from Philadelphia (Mr. Woodward) I believe was formerly a resident of Luzerne county, and he speaks upon this subject as if he had no knowledge whatever of the condition of affairs as they exist in the country outside of this great city. I desire to say, in advance, that I do not believe there is a man in the Commonwealth of Pennsylvania who is better prepared to speak of the condition of affairs in Luzerne county than the gentleman who represents this city. I regret, when I reflect upon the distinguished record of the gentleman, that he should so mistake the position of the circumstances of the people, as they exist in Luzerne county. I say that I regret it, because there is no man better known in Luzerne county than my distinguished friend, George W. Woodward. It is true, he is no longer a resident of that county, and does not therefore feel, in common with the people, the interests which pertain to its welfare and prosperity. This distinguished gentleman has been lifted above the people of Luzerne. He has occupied a high position upon the Supreme bench of this State for years, and has been an honored representative in Congress. The people of Luzerne have felt a just pride in his success, and I trust I will be pardoned if I have been a little personal.

But, sir, we are justly and honesty proud of Luzerne. Where is the other county with one thousand four hundred and fifty square miles? Is there such another county in this Commonwealth? I believe there is not one, and I feel a just pride in representing in part so great and powerful a section of the Commonwealth. Luzerne has over one hundred and sixty thousand of population. There are three courts required for the prosecution of the legal business of that county, and they are insufficient for the necessities of the people, who in some cases have to travel twenty-five miles to attend court.

At different times we have asked for a division of the county. A few years ago an amendment was made to the Constitution, which absolutely prohibited the division of counties, and but for that prohibition Luzerne would have been divided long since. I stated a few days ago that I believed the true policy of gov-

ernment was to bring justice as near to every man's door as it was possible. Can this be done with any approach to convenience when a county contains one thousand four hundred and fifty square miles? Why, the simple extent of the county of Luzerne makes it impossible, under our present judicial system, to have legal business transacted with dispatch. We have two mayors' courts and another court, with an additional law judge, and the court lists are crowded with old and delayed causes. Cases have been on the list for the last eight, ten, twelve, or more terms, and the list swells with every succeeding term.

Is not division in such a county simply indispensable? And if so, should not the report of the Committee on Counties, Townships and Boroughs be sustained? I am ready to concede that gentlemen who come from counties in which a division is not desired will take the position assumed by the gentleman from Philadelphia (Mr. Woodward.) But it will impose upon many localities an inconvenience that may grow into injustice. We cannot now wisely limit the number of counties that may hereafter be necessary in this Commonwealth. The gentleman from Philadelphia says that we need no more counties in this State. Suppose that fifty years ago a similar provision had been incorporated into the Constitution. The error would have been apparent to the most casual observer, and who can assert that the coming years may not imperatively deny the truth of the proposition that there is no necessity for the formation of new counties?

When counties extend over large territories, and when their population becomes dense, and the judicial system requires its citizens to travel far from home to attend courts, the principle that requires justice to be brought to every man's door will require that counties be divided. And to say that that applies to Luzerne is but the truth. It is a county of greater area than any other in the State, with a great and thriving population and multiplied resources, which have been carefully developed and are developing daily. She has been truly called the Commonwealth of Luzerne, and her varied interests would be better guarded and promoted by dividing the county than retaining its present form.

The proposed division will leave two-thirds of the population in its old borders, creating two great counties out of the present one. Let us then, leave, the organic law in such a condition that division can be had where it is necessary. Let a three-fifth vote of the people of the proposed new county be required to determine the question of division, and there will be no unwise or uncalled for division of counties.

Mr. BOWMAN. Mr. Chairman: I do not propose, upon this occasion, to make any very extended remarks. Deeply sensible of my incompetency to make even a short speech, I have not thus far troubled the Convention with any long ones; and were it not from the fact that my honorable and venerable friend from Philadelphia (Mr. Woodward) has made some remarks, to-day, which I think are justly open to criticism, I would not ask the indulgence of the committee, even for a moment.

The gentleman commenced his argument by informing us that, under the original organization of this Commonwealth, there were no counties; and, I suppose, as a logical sequence of that proposition, he would claim that it would be better for us to-day if we were living under the same system; and the State of Pennsylvania, from the Delaware to Lake Erie, were one gigantic county.

The world moves. Since the organization of our State into its present form of government, it has grown to such proportions and has become so powerful that a system which might have been good, in the eyes of its founders, would be wholly inadequate now.

It was my fortune to have been formerly a resident of the county of Tioga, which is in part represented by the gentleman who has moved the amendment now under consideration (Mr. Niles.) From my home in that county we had to travel twenty miles to the county seat. To-day there is a railroad there, a thing which would then have seemed almost as improbable to me as the construction of a railroad to the moon.

Now, Mr. Chairman, I am somewhat interested in this question, and I will tell you why. If you look over the map of this Commonwealth, you will find that the average distance between the county seats of Wayne, Susquehanna, Bradford, Tioga, Potter, McKean and Warren is about thirty-five miles, while the distance from Warren to Erie is seventy-five miles. If the amendment proposed by the gentleman from Tioga (Mr. Niles) should prevail, the people between the

county seat of Warren and the county seat of Erie, south to Meadville, will for all coming time be the same distance they now are from county seats. Should this be so? Sir, in the locality which I, in part, represent upon this floor, there are teeming thousands; men are coming from the east, from the great State of New York, and from the west, and settling in the little city that I represent upon this floor, and we hope the day will come when our rights will be regarded and respected as they should be.

The amendment offered by the gentleman from Tioga, if embodied in the Constitution of this Commonwealth, as every member of this Convention can readily see, will preclude the formations of any new county hereafter, for all time to come. If gentlemen wish to put such a restriction in the organic law, let them say so by their votes. They might as well endorse the opinion of the gentleman from Philadelphia, that we should go back to the government of our fathers, and have no counties at all. Perhaps the gentleman is one of those who believes that because his ancestors, when they went to mill, placed a bushel of grain in one end of the bag, and a stone in the other end, to balance it, he should do the same.

As the world moves, new counties must be formed. For the speedy administration of justice it is necessary that it should be so. I am not standing here in my place advocating a division of the county in which I reside, but I do not wish such a provision placed in the Constitution, that when the time comes that the people of our county and of the counties of Erie and Crawford wish a seperate municipal organization and existence, they cannot have it, and the amendment proposed by the gentleman from Tioga precludes such an organization for all time to come. I hope the amendment will not prevail.

The opinions and decisions of the eminent gentleman from Philadelphia (Mr. Woodward) I have always considered to be the soundest and the best of law, and when I have read them to the court as supporting my side of a case, my chances of success have always been rendered more sure. I cannot as readily accept and endorse the opinion which he has expressed to-day, much as I respect and honor the man. He has said that small counties produce small men. What must have been the area of the county that produced the giant intellect which has wasted its force in supporting the amendment of the gentleman from Tioga (Mr. Niles.)

The CHAIRMAN. The question is upon the substitute offered by the gentleman from Tioga (Mr. Niles.)

Mr. H. G. SMITH. Mr. Chairman: I have had some little experience in this matter of small and large counties. I lived in one of the smallest counties of the Commonwealth, and I must say, sir, that many of the objections urged by the gentleman from Philadelphia (Mr. Woodward) were unquestionably well founded.

Mr. RUSSELL. It contained more than four hundred square miles.

Mr. H. G. SMITH. It is true, as the gentleman from Bedford, (Mr. Russell,) who lives alongside of the county to which I refer says, it contained more than the present constitutional limitation.

Mr. BEBEE. Did it contain one thousand eight hundred population?

Mr. H. G. SMITH. Upon my word, I cannot recollect. I moved out of it some years ago, and have not looked at the record of the last census.

Mr. RUSSELL. It contained about nine thousand.

Mr. H. G. SMITH. The objections urged by the gentleman from Philadelphia (Mr. Woodward) apply to it to a great extent. That large counties possess many advantages over small and weak ones I think no gentleman who has had any experience will deny. In the county of Lancaster, almost a Commonwealth within itself, there has been no talk as yet that amounts to anything in favor of its division.

I am in favor, sir, of preserving the present constitutional limitation, and of going a little further in that direction, and providing that it shall not be evaded, as it has been evaded in the Legislature of this State within the last week by trickery and cunning. Within this week, in the lower House of the Legislature, a bill has been passed forming a new county, which cuts into four of the existing counties for the purpose of evading that clause of the Constitution which declares that one-tenth of the population of a county shall not be taken away, and a township has been taken from one county which leaves it less than four hundred square miles. Now, sir, if what is said is true, that bill was passed by corrupt means. That is the charge broadly and sweepingly made. Nearly every step which I remember to have seen taken in reference to the formation of new and small coun-

ties, has given rise to charges of this kind. The propositions have come from interested parties, who have had a personal interest in securing some such division, and not from any considerable number of the people.

I believe, sir, that the present limitation in the Constitution is wise and proper, and that instead of the limitation, with regard either to numbers or territory, being stricken out or diminished, it should remain and be made more stringent. This Convention ought to provide against its invasion in the future by any means whatever.

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

The motion was agreed to.

IN CONVENTION.

Mr. TURRELL. Mr. President: The committee of the whole have had under consideration the article reported by the Committee on Counties, Townships and Boroughs, and have instructed me, their chairman, to report progress and ask leave to sit again.

Mr. LAWRENCE. Mr. President: I move the committee have leave to sit again on the sixteenth of April.

The motion was agreed to.

Mr. BROOMALL, from the Committee on Revenue, Taxation and Finance, presented the following report, which was read:

SECTION 1. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws. But the Legislature may, by general laws, exempt from taxation, except from the special assessments herein provided, public property used for public purposes, actual places of religious worship, places of burial, not used or held for private or corporate profit, and institutions of purely public charity.

SECTION 2. All laws heretofore passed, or hereafter to be passed, exempting property from taxation, other than the property above enumerated, shall be void.

SECTION 3. The Legislature may, by general laws, uniform as to the class and kind of improvements to be made, vest in the corporate authorities of cities, boroughs and townships the power to make, renew and maintain local improvements by special assesments or taxation, of contiguous property, or of property specially benefited thereby, without exception on account of use or ownership.

SECTION 4. The property and business of manufacturing corporations shall not be taxed in any other manner, or at any other rate than like property and business of individuals.

SECTION 5. No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, or to repel invasion, suppress insurrection or defend the State in war, or to pay existing debt; and the debt created to supply deficiencies in revenue shall never exceed in the aggregate, at any one time, one million of dollars.

SECTION 6. All laws authorizing the borrowing of money, shall specify the purpose for which the money is intended, and the money so borrowed shall be used for the purpose specified, and no other.

SECTION 7. Neither the State, nor any county, city, borough, township or other municipality shall loan its credit or appropriate money to or assume the debt of, or become a shareholder, or joint owner in or with any private corporation, or any company or person whatever.

SECTION 8. No municipal corporation shall become indebted, in any manner or for any purpose, to an amount (including indebtedness existing at the adoption of this Constitution) in the aggregate exceeding the following per cent. on the value of the taxable property therein, to be ascertained by the last assessment for county taxes, prior to the incurring such indebtedness, to wit: Counties, two per cent.; cities and boroughs, six per cent.; school districts, two per cent., and townships one per cent.

SECTION 9. All contracts by which indebtedness beyond such limits would be incurred by any municipal corporation shall be void. Any municipal corporation incurring any indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest, and also the principal thereof, within twenty years,

SECTION 10. To provide for the payment of the present State debt, and any additional debt contracted as aforesaid, the Legislature shall continue and maintain the sinking fund sufficient to pay the accruing interest on such debt, and annually to reduce the principle thereof, by a sum not less than two hundred and fifty thousand dollars. The said sinking fund may be increased from time to time, by assigning to it any part of the taxes or other revenues of State, not required for the ordinary and current expenses of government, and

unless in case of war, invasion or insurrection, no part of the said sinking fund shall be used or applied otherwise than in extinguishment of the public debt, until the amount of such debt is reduced below the sum of five million dollars.

SECTION 11. The moneys of the State over and above the necessary reserve, which shall be as small as possible, consistent with the public demands, shall be used in the payment of the debt of the State, either directly or through the sinking fund; and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything except the bonds of the United States or of the State.

SECTION 12. All moneys of the State shall, as far as possible, be kept at interest for the benefit of the State in, or in loans upon, the security of the bonds of the United States or of the State; and the Legislature shall provide means for the publication, at least once in every three months, of a statement showing the amount of all such moneys, where the same are deposited or loaned, and on what security.

The PRESIDENT. This article has now been read the first time.

Mr. WRIGHT. I renew my motion, that when this Convention adjourns to-day, it be to meet on the fifteenth of April.

Mr. D. W. PATTERSON. Mr. Chairman: I offer the following amendment: That when this Convention adjourns to-morrow, it adjourns to meet on Wednesday, ninth of April next.

I merely wish to say that the long adjournment was carried the other day, as I understood, to accommodate some five gentlemen in the Convention, on account of their court sitting, and I find that it will be inconvenient for about five times that number, as their courts commence on the sixteenth, and therefore the time that is extended to the five gentlemen has inflicted an inconvenience on five times that number. But besides that, sir, this is very pleasant weather indeed—excellent weather to work in, and why should we adjourn for so long a time and run our sessions into the summer months and the warm weather? Gentlemen who have business on the first of April can generally get through the absolutely important business in eight or ten days, and it seems to me a great folly to adjourn for the accommodation of some gentlemen, and thus protract the session into the warm months.

I do hope that the Convention will come back to the decision rendered some days ago, to meet here on the eighth of April. We certainly ought to get to work by that time. Under that long adjournment to the sixteenth, the gentlemen who advocated it have not had the business of this Convention at heart sufficiently to induce them to remain here to-day and to-morrow to work.

The gemtlemen who advocated most warmly the adjourment for the longer term are not in the Convention to-day. Instead of endeavoring to make up for that long intermission by working to-day and to-morrow with a full Convention, and with all our energies, they do not even think it worth while to remain here for the two remaining days.

For these reasons I hope that we will come back to the short adjournment. It will accommodate a much larger number of the members of the Convention, and give us two weeks more work which will be done, too, in pleasant weather, and we will thus avoid going into the very warm and sultry weather, which I think, from all appearance now, we will certainly have to do if we do not work a little more industriously than we seem willing to do at present.

Mr. CORSON. Mr. Presinent: Can this be done in this way, when we have already settled, by a resolution, that we will adjourn to a certain time. It seems be the opinion of some us that the only way to get out of that would be to move to reconsider that vote and reverse it because, it having passed into the domain of law, it cannot be reversed in this way, by a resolution that will cut it out by the roots when one-half of the members are absent—members who have gone home, perhaps acting on the understanding that the Convention had adopted this rule and stick to it. I make that point of order, therefore, that a motion of this kind cannot undo the action of the Convention.

The PRESIDENT. The Chair is of the opinion that the order of adjournment is a mere order of the Convention.

Mr. HUNSICKER. Mr. Chairman: I move to postpone the whole subject for the present.

The motion was agreed to, there being, on a division, forty-seven in the affirmative, and twenty-six in the negative.

MINORITY REPORT ON DECLARATION OF RIGHTS.

Mr. NEWLIN presented a minority report of the Committee on Declaration of Rights, which was read, as follows:

The undersigned, not expressing any opinion in relation to the amendments proposed by the Committee on the Declaration of Rights, dissents from so much of the report as recommends the adoption of sections six and seven of Article IX., of the present Constitution, without change. The defects in the administration of justice, under the present jury system, and the unsatisfactory state of the press law, require radical remedies, which should be provided in the fundamental law. It is submitted that these sections should be amended, so as to read as follows:

SECTION 6. That the right of trial by jury shall remain inviolate, but may be waived by the parties in all civil proceedings, in the manner to be prescribed by law. In civil proceedings, three-fourths of a jury may find a verdict, after such length of deliberation as the Legislature may require.

SECTION 7. Strike out the last sentence, and insert in lieu thereof: "And in all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense, and the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases."

TRIAL BY JURY.

It will be observed that it is proposed simply to allow the parties to waive a trial, and leave the law and the facts to the court, if they so desire.

The details are left to the Legislature.

THE LAW IN OTHER STATES.

In Arkansas, Minnesota and Wisconsin jury trial may be waived by the parties, in all cases, in the manner prescribed by law.

In New York, Vermont, Maryland, Michigan, North Carolina, Texas, California, Florida and Nevada jury trial may be waived in civil cases.

OBJECTIONS ANSWERED.

It will be urged that this would throw too much responsibility upon the courts, and that, therefore, the system would not work well. To this it is answered that in equity and orphans' court proceedings the court, now, without the aid of a jury, dispose of all questions of law and fact, and that in point of magnitude the interests thus adjudicated far exceed those which are settled by jury trials. It simply substitutes the judge as the arbitrator instead of a layman. Again, it is intended that in civil cases, if the jury cannot agree, three-fourths may find a verdict. Requiring the jury to deliberate a certain length of time—say six hours, the period to be fixed by the Legislature—will prevent a majority acting with undue haste, and will secure a reasonable consideration of the views of the minority. In criminal cases a unanimous jury is required in all cases, for the reason that the government, being a party, in times of public excitement might press for unjust convictions and obtain them.

The principle proposed is a novel one with us, and the supposed antiquity of jury trials, as we understand them, will be urged against any change.

HISTORY OF TRIAL BY JURY.

It is commonly, but most erroneously, supposed that trial by jury, as now constituted, is of very remote antiquity, some tracing it to the time of Alfred the Great, whilst by many it is supposed to have been in use amongst the Scandinavian nations, and that its origin is lost in the mist of ages.

In reality, juries, properly so called, were wholly unknown alike to the Scandinavians, the Teutonic and the Gothic nations. The requirement of unanimity in juries is generally supposed to have the same remote origin as the jury itself. It is an undeniable fact, however, that our present jury is not only purely English, but it has no greater antiquity than about the middle of the sixteenth century.

As the very reverse of this proposition is the usually received doctrine, a brief history of trial by jury is here given:

Anciently, in Norway, there was a court composed of thirty-six members, whose literal appellation was "law-amendmentmen." They were presided over by a "law-man." In that rude age the "lawman" could recite all the laws. He at first had no voice in the deliberations; afterwards he was given the casting vote, the decisions being by a majority. This was in no sense a jury, but was a court passing on questions both of law and fact.

The Swedish laws required twelve jurors, and seven found a verdict. They decided both law and facts.

In Denmark the number varied from twelve to fifteen, acting by a majority, and they composed a court for law and facts. The Bishop, with the best eight men of the district, might reverse their finding. Where a majority of "best men" reversed a unanimous verdict, the jurors forfeited their property!

In Iceland, in criminal cases, the number varied according to the magnitude of the offense—from five to nine, and twelve. This was a regular court, adjudicating both the law and the facts by a majority of voices.

In ancient Germany the number was usually twelve, deciding both laws and facts by a majority merely.

Amongst the Anglo-Saxons jury trials were certainly wholly unknown. There was a court for law and facts composed of twelve persons. The laws of Ethelred ordained—"let that stand which eight of them say."

Sometimes the number reaced twenty-four, and they heard evidence, and to a certain extent resembled grand juries.

After the Norman conquest very great changes took place. The facts were now decided not by a jury to hear and determine the weight due to evidence, but by a jury of witnesses who, themselves, furnished all, or near all, the evidence upon which their verdict was based. Now it is a disqualification for a juror to have formed an opinion, and it would be improper for a jury to act on the personal knowledge of its own members. At that time if a jury admitted in court that they knew nothing of the case, they were immediately discharged and another jury empanelled, composed of men who did know all about the matter in advance. In other words the facts were tried by a jury of witnesses. A few instances will show the remarkable character of these tribunals so unproperly called juries.

In the time of William the Conquer, a great suit was pending between the King and Bishop Gandulf. The whole county was summoned, and a judgment given which was alleged to be false. Then twelve knights were chosen, and again a corrupt judgment was charged. The knights confessed to this, and their verdict was set aside by a court composed of the great barons.

In the year 1121 there is a case recorded in which the jury was composed of sixteen witnesses, and again, in 1153, in a case of much notoriety, a whole county was summoned.

In the reign of Henry II (1154 to 1189) a case occurred which not only shows conclusively that jury trials, as we understand them, were wholly unknown, but that even the jury of witnesses was without any regularity as to numbers or proceedings. This was a dispute between the Abbot of Abbingdon and the town of Wallingford, as to the right of the former to hold a market in the town. The whole county was summoned, and twenty-four "eldermen" were chosen as juror-witnesses. They gave judgment for the Abbot. The town alleged corruption, and a new trial was had, each side choosing jurors until twenty-four were obtained; the Earl of Leicester had been appointed by the King to preside at the trial. This second jury disagreed. The Earl, however, had, when a boy, seen a market held there by the Abbot, and he so reported to the King, and the Abbot was adjudged to have the market. Trial by witnesses was common after this time.

It has been erroneously supposed—even by some text writers, notably by Blackstone—that jury trial was secured, or at least confirmed, by a provision in *Magna Carta* having regard to "*judicium parium*," or the trial or judgment by one's peers. This phrase occurs in the laws of Henry I (1100–1135,) and was borrowed from the capitularies of Louis IX, of France, in which country jury trials were not known until the Revolution. It was nothing more than the trial of questions of title by a feudal tribunal composed of the lord and his suitors in the baronial court. The suitors were the tenants of the lord, and in this way the "peers" of the one whose title was in dispute. But they were not jurors in any sense of the word. They sat as assessors or assistants to the lord, and with him formed a court which decided all questions, both of law and facts. They also acted as witnesses. The majority ruled.

UNANIMITY IN JURIES.

The requirement of the unanimous finding of twelve jurors arose in this way: The jurors were simply witnesses, and no verdict could be given unless twelve agreed upon the same statement of facts. There might be more than twelve, and the excess might be of a different opinion When less than twelve agreed the jury was "afforced," *i. e.* additional witness-jurors were added until twelve were found who could agree. If they were obstinate they were starved into a verdict.

In the reign of Henry III, 1216–1272, in the case of the Abbot of Kirkstrede *v.* De Eyncourt, the jury stood eleven for the Abbot and one for De Eyncourt, and judgment was given for the Abbot. Not unfrequently a contumacious minority was fined and committed to jail.

In the reign of Edward III, 1327–1377, unanimity seems to have been required,

and the court in one instance is reported as saying: "The judges of assise ought to carry the jury about with them in a cart until they agreed." In Scotland unanimity was not required.

In 1830 a royal commission, composed of the greatest legal minds in England, recommended that verdicts should be founded by the concurrence of nine out of twelve jurors. So much for the unanimity rule.

ASSISE OF HENRY II.

The assise of Henry II first gave regularity to these "witness-juries." The statute has not come down to us, but its provisions are well known. A writ issued to the sheriff to summon four knights, who in their turn summoned "twelve lawful knights who were most cognizant of the facts." The knights might be objected to for the same reasons, and in the same manner as is now customary with witnesses. When chosen they were summoned by writ "to appear in court and *testify* on oath the rights of the parties." When the knights chosen did not know who was the rightful owner (they originally being used only in real actions) and they so testified in court, they were discharged and others were selected who were acquainted with the facts. If the jurors were not unanimous, additional ones were chosen until twelve agreed in favor of one side or the other. This was called "afforcing the assise."

Sometimes evidence was laid before the "recognitors," as they were called, but, as they found according to their own knowledge, they generally paid no attention to the evidence.

Jocelin de Brakelonde's Chronicle, *circa.* 1195, gives instances in which six knights only were chosen; in some other cases six were selected. A jury of eight settled questions of minority of heirs.

Glanville puts a *query* in case less than twelve knights could be found who knew anything of the facts of the case.

Bracton, *circa.* 1250, and Fleta, *circa.* 1285, gives full accounts of the juries in those days, which were the same as above stated, both as to the jurors being witnesses, merely, and in relation to "afforcing the assise," in order to obtain the concurrence of twelve witnesses named in deeds, were originally summoned on the jury, but about the time of Edward III, they had become separated, and were heard before the jury, which, however, might still act on its own knowledge, and disregard the testimony of these witnesses.

Temp. Henry IV., 1400-1413. By this time evidence was produced before the jury, as now, in all cases, but the jurors still acted on their own personal knowledge, too, and were summoned from amongst those who were supposed to know the facts.

There is a case reported in *Plowden's Com. p.* 12, *Reniger vs. Fogossa,* (4th Edw. VI,) in which the Recorder of London says: "But here the issue is to be tried by twelve men, in which case witnesses are not necessary, for, in many cases, an inquest shall give a precise verdict, although there are not witnesses or no evidence given them, * * * * * * * for when the witnesses for the trial of fact are joined to the inquest, if they cannot agree with the jurors, the verdict of the twelve shall be taken, and the witnesses shall be rejected."

In the year 1498 there was a suit between the Bishop of Norwich and the Earl of Kent, in which a jury had been separated by a tempest, "while the parties were showing their evidence;" and one question raised for the opinion of the court was whether, when the jury came together again, they were competent to proceed with the case, and to give a verdict. The objection pressed was that the jury had separated before the evidence was given; to which it was answered, that "the giving of the evidence was wholly immaterial, and made the matter neither better nor worse; that evidence was only given to inform the consciences of the jury respecting the rights of the parties; but that if neither party choose to give evidence, still the jury would be bound to deliver a verdict."

Indeed, prior to the sixteenth century, it is believed that there is an entire absence of all mention of evidence or witnesses, as contra-distinguished from jurors, in treaties, reports, records and statutes. Before the passage of the statute of 5 Eliz., ch. 9, (1562,) there was no positive law compelling the attendance of witnesses or punishing them for false testimony or non-attendance, nor any process against them. In *Somers vs. Mosely,* 2 Crompton & Meeson, p. 485, Mr. Baron Baley says that he had been unable to find any precedents of the common *supœna ad testificandum* of an earlier date than the reign of Elizabeth, and he conjectures that this process may have originated with the above-mentioned statute. It does not

appear in the Register of Writs and Process until the reign of James I.

In the trial of Reading, 7 *State Trials*, 267, 1679, a juror was objected to as intimate with the prosecutor. Sir Francis North, Ld. Ch. J., said: "And do you challenge a juryman because he is supposed to know something of the matter? For that reason the juries are called from the neighborhood, because they should not be wholly strangers to the fact."

In Bushell's case, 1670, *Vaughan's Rep.* 147, it was said that the jury being returned from the vicinage where the cause of action arose, the law supposed them to have sufficient knowledge to try the matter in issue, "and so they must, though no evidence were given on either side in court."

CONCLUSION.

The change from juries composed of witnesses to juries empanelled to hear witnesses and decide upon their testimony was very gradual, and was not affected by any positive alteration of the statutes, but was the growth of time. From the mass of evidence here briefly detailed, it is fair to claim that the change did not begin until almost the middle of the sixteenth century, and that jury trials as they now exist were not fully established until even a later period. Certainly the origin of the unanimity rule—simply requiring twelve to agree, and reaching that number by "afforcing" the jury—is not such as to give it any great merit. Again, its being exclusively English, and all other tribunals and public bodies being governed by a majority, furnish ample reasons for abrogating what Hallam in his Middle Ages speaks of as that "preposterous relic of barbarism, the requirement of unanimity."

THE PRESS LAW.

The amendment proposed to the seventh section is to strike out the concluding sentence of the present section and insert as follows: And in all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense, and the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

THE LAW IN OTHER STATES.

In most of the States the truth can only be given in evidence in criminal cases, but in Illinois, Florida, Nevada, Kansas, Rhode Island and West Virginia the change here advocated, of permitting the truth to be given in evidence in all cases, both civil and criminal, has been made in the organic law.

The proposed amendments throw the doors wide open to the truth at all times and in all places, and both the public and the individual are amply protected by requiring that it shall be no defense unless the jury shall find that the publication was made "with good motives and for justifiable ends." No license is given here to publish mere private scandal, no matter how true it may be, and there is no danger of juries ever going out of their way to aid newspapers in such publications by finding their motive "good," and their end "justifiable." It is impossible to specify in detail, or even in general phraseology, exactly what truths ought to be made public. The framers of the present Constitution, whilst seeking to shield the individual, have left the general public unprotected. There are numberless cases where, under our present libel law, "the greater the truth the greater the libel," the press could give invaluable aid to the cause of good government and sound public principles, but for the law which gave rise to this odious maxim. Open the columns of the daily press upon all evil-doers whose wrongful acts are a public injury, and only those will suffer who ought to feel the public indignation.

With the frailties of individuals the community has no concern, and were the proposed amendment adopted the veil of secresy would still as inviolably shield them from the public gaze as now. But wherever the interests of the whole people require the truth to be disclosed, it should not only be the privilege but the duty of the press to proclaim it openly and without fear, and the law which inflicts penalties on it for so doing is contrary to all sound reason, and subversive of the best interests of society.

JAMES W. M. NEWLIN.

FREE TRADE IN MONEY.

Mr. J. PRICE WETHERILL. Mr. President: I offer the following memorial from the Philadelphia board of trade in reference to the rate of interest. I ask that it shall be printed in the Journals.

The PRESIDENT. The communication will be read.

The CLERK read as follows:

ROOMS OF BOARD OF TRADE,
March 19, 1873.

WHEREAS, The propriety of establishing the principle of free trade in money

has at all times been maintained and advocated by this board, and is a necessity which becomes more apparent from each day's experience.

And whereas, The use of two currencies in trade, one of which is constantly changing in value, renders any price fixed by law obsolete and inoperative; therefore,

Resolved, That the Convention, now in session, be respectfully requested to incorporate such a provision in the revised Constitution of the State, as will, for the future, remove all restrictions and penalties, and allow individuals in any capacity as parties to a contract, the right to pay and receive such rates for the use of money as they may agree upon.

Attest: GEORGE L. BUZBY,
Secretary.

Mr. BUCKALEW. Mr. President: I offer the following order in reference to the distribution of the various reports of the committees, which have been ordered to be printed:

"Ordered that the Clerk of the Convention forward one copy of each of the reports made from the committees this day, to members of the Convention as soon as they shall be printed."

The question being taken, the order was concurred in.

IMPEACHMENT AND REMOVAL FROM OFFICE.

Mr. BIDDLE. I move that the Convention resolve itself in committee of the whole on the report of the Committee on Impeachment and Removal from Office.

The motion was agreed to.

IN COMMITTEE OF THE WHOLE.

The Convention then resolved itself in committeee of the whole, and proceeded to the consideration of the article, Mr. Mann in the chair.

The CHAIRMAN. The committee of the whole has under consideration the article reported by the Committee on Impeachment and Removal from Office. The first section will be read.

The CLERK read as follows:

SECTION 1. The House of Representatives shall have the sole power of impeaching.

The first section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 2. All impeachments shall be tried by the Senate; when sitting for that purpose, the Senators shall be upon oath or affirmation; no person shall be convicted without the concurrence of two-thirds of the members present.

The second section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 3. The Governor and all other civil officers under this Commonwealth, shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, trust or profit under this Commonwealth; the party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

The third section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 4. All officers shall hold their offices only on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime.

Appointed officers may be removed at the pleasure of the power by which they are appointed. Elected officers, other than Governor, Leiutenant Governor, members of the General Assembly and judges of courts of records, shall be removed by the Governor for reasonaale cause on the address of two-thirds of the Senate.

Mr. DARLINGTON. I call for a division of the question.

Mr. CHAIRMAN. The first division will be read.

The CLERK read as follows:

"All officers shall hold their offices only on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime."

The first division of the section was agreed to.

The CHAIRMAN. The second division of the section will be read:

The CLERK read as follows:

"Appointed officers may be removed at the pleasure of the power by which they are appointed. Elected officers, other than Governor, Lieutenant Governor, members of the General Assembly, and judges of the court of record, shall be removed by the Governor for reasonable

cause on the address of two-thirds of the Senate."

Mr. DARLINGTON. Mr. Chairman: I merely rise for the purpose of making an inquiry. This section comtemplates a removal of officers upon the address of two-thirds of one body of the Legislature. Is that what is intended? I suppose it is. Now, sir, I believe the mode of removal by address contemplates generally a vote of each branch of the Legislature. I think such is the provision in the present Constitution in regard to the removal of some other officers, either on impeachment, conviction, or upon the address of two-thirds of both branches of the Legislature.

Mr. BIDDLE. Mr. Chairman: I would say that this matter received the very deliberate consideration of the committee. It is quite true in regard to judges the State Constitution does require, and properly requires, that they should be removed on the address of two-thirds of each branch of the Legislature. It was thought, however, that there was a very large number of elected officers whose fault would consist rather in incompetency than in anything else. The faults likely to be attributed to them are, of course, very difficult to define, and it was thought best not to throw too much difficulty in the way of their removal. It was discussed first whether the right of address should be given to the House of Representatives, the more popular body, or the Senate, and it was finally thought that it would be better to leave it to the Senate, which is the body elected for the longer term of years, and a smaller body, and which would, therefore, presumably, be better able to give more consideration to such applications.

Mr. MACVEAGH. Mr. Chairman: If the gentleman from Philadelphia will permit a question, I will ask him whether the word "shall," where it last occurs, should be there instead of "may?"

Mr. BIDDLE. Mr. Chairman: That was deliberately done. We all know in regard to the removal of judges that in the old Constitution of 1790, the word "may" was used, and a very dintinguished Governor on a certain occasion, when an address was made to him to remove judges under that, said that "may sometimes means won't," and would not remove them. The Constitution of 1838, in view of that very action, changed the word in article five, section two, to "shall" in regard to the judges. The Committee on Impeachment and Removal from Office thought that it was desirable that the mandate should be a positive one. What we did in that respect was done knowingly and deliberately, that on the address of two-thirds of the Senate, the smaller body of the State Legislature, and supposed to be the conservative body, which could readily inquire into the subject, the Governor should be compelled to remove inefficient officers.

Mr. MACVEAGH. Mr. Chairman: I feel reluctant to trespass upon the committee, for probably a majority of it will adopt the section as it stands. But I confess that it seems to me like a very dangerous power, and one that it certainly is unwise to pass in its present form. Under this organic law there may come times of popular excitement, times of unjust prejudice, when the whole power of changing the elective officers of this State will rest in two-thirds of your Senate, without any trial, without any hearing, without any opportunity for defense virtually; two-thirds of the Senate may remove another class of officers throughout the Commonwealth, and this, it seems to me, is a very dangerous power to be vested in the Senate without there be some grave necessity for it.

It may not be so. I may be mistaken in this view of it, but I am entirely unable to vote to put it in the power of two-thirds of the Senate to turn out the officers who have been elected by the people. It is not unusual for one political party to have two-thirds of the Senate. You cannot tell that the political power of the Senate will always be as evenly balanced as it has been heretofore, and it seems to me that to allow a mere numerical majority of two-thirds of that body to say that certain persons who have been elected and commissioned to hold these offices shall vacate them, that they shall be turned out without any trial or judgment in any court of law, or without making it even obligatory upon the Governor to sanction the procedure, but requiring that he shall obey the two-thirds of the Senate is putting a dangerous power in their hands.

Mr. DALLAS. Mr. Chairman: I find that the same difficulty which has occurred to the mind of the gentleman from Dauphin (Mr. MacVeagh) has occurred to me, but I would not remedy it by changing the word "shall" into the word "may," because the Governor would probably be of the same political party as the two-thirds of the Senate. That would not provide

the best means of removing the difficulty of which the gentleman has spoken. I do think, however, that two-thirds of the Senate may frequeutly be of one political party, and may, in times of great poliitcal excitement, remove, for mere political motives, a large number of the elective officers of the Commonwealth.

It would be better if we should require three-fourths instead of two-thirds, and I move to amend the section, by striking out "two-thirds," and inserting "three-fourths."

Mr. MACVEAGH. Mr. Chairman: That will be entirely applicable to my view.

Mr. DARLINGTON. Mr. Chairman: I feel very reluctant to consent to a change so fundamental as this section proposes, to turn out any or all of the officers that the people elect, upon the judgment of the two-thirds of the Senate, without giving the representatives of the people a chance of saying a word about it. We are to assume, in the first place, that the people will elect competent officers and honest men. We must assume that. There may be cases where men will become incompetent or become criminal after election, and when this should be ascertained by a careful inquiry, not by one House alone, but by both, and two-thirds unite in saying that an officer thus elected by the people is no longer worthy to hold the office, then give the power to remove. But the danger, it seems to me, of subjecting any officer elected by the people to remove for caprice, if you please, for the body that may say he must be removed, may do it from caprice; or to say that any officer shall be removed by one portion of any other body without some safe check upon the body that can remove, is confiding a power which, it seems to me, is more important than you have ever confided to them before. Other officers of a higher grade are not to be removed, except upon impeachment or address of both Houses of the Legislature, two-thirds of each House consenting, and I think we will run no risk if we make that apply as well to this section. Before we require the removal of any officer, require that two-thirds of each House shall concur, or if this committee of the whole concurs, three-fourths. I would be satified that two-thirds of each House should concur.

Another remark; 1 would rather trust the majority of each House concurrring, than two-thirds of one.

Mr. ARMSTRONG. Mr. Chairman: The section under consideration is one of exceedingly great importance, and it is by no means clear what the interpretation of the first two lines of this clause would be judicially. There are numerous officers of the State who will be appointed by and with the consent and approval of the Senate, or perhaps of two-thirds of the Senate. But this is a restraining power upon appointments, and it by no means follows that the Senate is a part of the appointing power. The Constitution places limitations upon the rights of the Governor in his discretion to appoint, but he is nevertheless the recognized appointing power, and I very much question whether the Senate can be called in any sense a part of that appointing power. If this view should prove to be correct, and I presume that nothing short of a decision of the courts upon the question will finally determine it, then it might be that the appointed officers might be removed at the pleasure of the power by which they were appointed, which would place it entirely in the sole discretion of the Governor. I would regard this as certainly apart from what the Convention intends, and dangerous in the highest degree.

I am reluctant at this time to vote upon this clause. I do not comprehend its entire scope. It is a question of so much importance that I regard it as worthy of much greater deliberation than we can give it in the few minutes that are left of this session.

I will, therefore, move that the committee rise, report progress and ask leave to sit again, that there may be a full opportunity for clear investigation of the force and effect of this section.

IN CONVENTION.

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

Mr. MANN, chairman of the committee of the whole, reported that the committee of the whole had had under consideration the report of the Committee on Impeachment and Removal from Office, and had instructed him to report progress and ask leave to sit again.

On the question, shall the committee of the whole have leave to sit again, it was determined in the affirmative.

On the question, when shall the committee of the whole have leave to sit again, to-morrow was named and agreed upon.

Mr. LAMBERTON. Mr. President: I move that the Convention do now adjourn.

This was agreed to, and the Convention, at two o'clock and thirty minutes P. M., adjourned until ten A. M. to-morrow.

SEVENTY-SEVENTH DAY.

FRIDAY, *March* 28, 1873.

The Convention met at ten o'clock A. M., Hon. William M. Meredith, President, in the chair.

The Journal of yesterday was read and approved.

RECOGNITION OF GOD.

Mr. PATTON presented a memorial from citizens of Bradford and Sullivan counties, requesting the insertion of a clause in the Constitution recognizing the sovereignty of God and the christian religion.

Mr. HALL presented a similar memorial from one hundred and twenty-five citizens of Clearfield county.

Mr. LAMBERTON presented a similar memorial from citizens of Dauphin county.

Mr. J. N. PURVIANCE presented a similar memorial from citizens of Butler county.

Mr. DE FRANCE presented a similar memorial from citizens of Mercer county.

Mr. SHARPE presented a similar memorial from citizens of Franklin county.

Mr. LEAR presented a similar memorial from citizens of Bucks county.

Mr. HUNSICKER presented a similar memorial from citizens of Montgomery county.

Mr. CLARK presented a similar memorial from citizens of Indiana county.

Mr. H. G. SMITH presented a similar memorial from citizens of Lancaster county.

These were all laid on the table.

THE RATE OF INTEREST.

Mr. BANNAN presented a petition from citizens of Schuylkill county against an advancement of the rates of interest.

PROHIBITION.

Mr. HALL presented a petition from citizens of Clearfield county, asking for a clause in the Constitution prohibiting the manufacture and sale of intoxicating liquor.

THE CARE OF THE HALL DURING THE RECESS.

Mr. ADDICKS. Mr. President: I offer the following resolution:

Resolved, That during the recess of the Convention the Committee on House shall take entire charge of the Hall and the property therein; and they are hereby authorized, at their discretion, to engage such employees as may be required for the above duty.

Mr. ADDICKS. Mr. President: The necessity for the first clause of that resolution is very obvious. The second clause should be adopted by the Convention inasmuch as all of our employees come from the country, or very nearly all, and they are only paid by the day during the session of the Convention. We will, therefore, if this resolution be not adopted, be left without any assistance at all to keep the property in order.

Mr. BUCKALEW. Mr. President: I move to amend the resolution, by adding the words, "not exceeding three in number."

Mr. BUCKALEW. Mr. President: It will require some little provision of this kind to properly care for the property of the Hall during the recess, as many of our employees will return to their homes. The Committee on the House should be empowered to secure the requisite help, but if some restrictions be not imposed, the committee will be over-run with applications for employment.

Mr. BOYD. Mr. President: I move to lay the whole subject on the table.

The motion was not agreed to.

Mr. KAINE. Mr. President: Some of the members of the Committee on House say that they will not need more than two, and they are perfectly willing that they should be limited to three.

Mr. HUNSICKER. Mr. President: I hope that the amendment will not prevail. I think that something is due to the members of the committee. They have not yet abused any of the powers conferred upon them, and I think it is rather a gratuitous insult to them for the Convention to limit them as to the number of persons they shall employ. I would leave it to their discretion to employ as many assistants as they deem necessary to preserve the property of the Convention.

Mr. ADDICKS. Mr. President: I trust that the amendment will not prevail. I believe that the Committee on House have as much honesty and as much discretion as any other committee of this body. We do not desire to be extravagant in the expenditure of money, and will be perfectly prepared to meet any applicants for these valuable positions. For the due preservation and safety of this property which has been left in our charge, we shall require more than three employees. We shall certainly require one night watchman and one day watchman. One of the women who have been engaged here will be required to keep the house in order, and perhaps we may require one or two more assistants. I trust the matter will be left to our discretion.

Mr. TURRELL. Mr. President: I think that we find that this committee has discharged its duty faithfully and carefully, and I think that we should repose in them this confidence. To pass a resolution of this kind would seem to me a reflection upon their ability and honor.

The question being upon Mr. Buckalew's amendment, the yeas and nays were required by Mr. Buckalew and Mr. Lilly, and were as follow, viz:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Black, Charles A., Brown, Buckalew, Cassidy, Cochran, Darlington, Elliott, Fell, Gilpin, Hall, Hemphill, Lilly, M'Culloch, Mott, Palmer, G. W., Palmer, H. W., Patton, Purviance, John N., Rooke, Runk, Russell, Smith, Henry W., Walker and Woodward—28.

NAYS.

Messrs. Addicks, Baker, Bannan, Beebe, Biddle, Bowman, Boyd, Brodhead, Broomall, Carter, Clark, Craig, Curtin, Davis, De France, Dodd, Edwards, Ellis, Gibson, Green, Guthrie, Hanna, Hay, Heverin, Horton, Hunsicker, Kaine, Knight, Lamberton, Lear, Long, MacConnell, Mann, Mantor, Minor, Newlin, Niles, Patterson, D. W., Porter, Reed, Andrew, Reynolds, James L., Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Stanton, Temple, Turrell, Wetherill, J. M., Wright and Meredith, *President*—51.

So the amendment was rejected.

ABSENT OR NOT VOTING.—Messrs. Ainey, Andrews, Baer, Bailey. (Huntingdon,) Barclay, Bardsley, Bartholomew, Black, J. S., Campbell, Carey, Church, Collins, Corbett, Corson, Cronmiller, Curry, Cuyler, Dallas, Dunning, Ewing, Finney, Fulton, Funck, Gowen, Harvey, Hazzard, Howard, Landis, Lawrence, Littleton, M'Allister, M'Camant, M'Clean, M'Murray, MacVeagh, Metzger, Mitchell, Parsons, Patterson, T. H. B., Pughe, Purman, Purviance, Samuel A., Read, John R., Reynolds, S. H., Ross, Stewart, Struthers, Van Reed, Wetherill, Jno. Price, Wherry, White, David N., White, Harry, White, J. W. F. and Worrell—54.

The PRESIDENT. The question recurs upon the resolution.

Mr. HAY. Mr. President: I desire to suggest to the mover of that resolution, that he change the form of it so as to make the word "engage" read "designate," so that such employees of the Convention who are here from the country, and desire to remain in the city, may receive their daily wages for their work. I move to substitute the word "designate" for the word "engage."

The amendment was agreed to.

The PRESIDENT. The question is upon the resolution as amended.

It was agreed to.

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

Resolved, That the matter of the size of the volumes of the Debates be and is hereby referred to the Committee on Printing and Binding, to be arranged as their discretion shall suggest.

Mr. LILLY. Mr. President: The reason I offer that resolution is that some time ago I offered an amendment to a pending resolution that fixed the size of volums of Debates at one thousand pages. Several of the members of the Committee on Printing have come to me and stated that it was entirely wrong that it should be so, that it made the volums too large. The first volume contains about eight hundred pages, and it will be expedient to have the volumes of uniform size. At their suggestion, I offer this resolution, leaving it to them entirely to fix the size of the volumes of Debates. As it is a matter which falls under their supervision, I am perfectly willing to leave it to their discretion.

Mr. NEWLIN. Mr. President: There is a necessity for the passage of a resolution of this kind. The effect of the passage of the former resolution without consultation on the part of the mover with any member of the Committee on Printing shows the difficulty that occurs when

gentlemen who are not on particular committees undertake to interfere with the duties of those committees. After the first volume of the Debates was printed, and the number of pages fixed at eight hundred, and after the second volume had begun to be published and numbered by pages, this resolution was offered in the Convention, and without any consultation with the members of the Committee on Printing was passed. I do not believe that a member of the committee knew of the passage of it. It is utterly impossible, after the second volume has begun, to make that volume one thousand pages, when the first one has only been made eight hundred. The volumes should be uniform in size, and I hope, therefore, that this resolution will pass.

Mr. WM. H. SMITH. Mr. President: I move to strike out all after the word "resolved," and insert: "The volume of Debates shall consist of eight hundred pages."

Mr. LILLY. Mr. President: If that meets the approbation of the Committee on Printing, I will accept it as an amendment.

Mr. NEWLIN. Mr. President: It is impossible for any one to say what will meet the approbation of a particular committee, unless that committee has met. For my own part, I would say—and I believe the mover of this amendment is a member of the Committee on Printing—that the amendment is a very proper one, provided, we are not confined *exactly* to eight hundred pages. We make now something now like forty pages a day. Of course, it will not be proper to separate the proceedings of any single day. If this resolution shall pass in its present shape, we would be obliged to have in each volume *exactly* eight hundred pages, and that may throw the volume of one day's debates into another day. Now, I think that the best disposition that can be made of this subject is to lay the whole matter on the table, and I move so to do. That will leave the matter in the discretion of the Committee on Printing, where it ought to be.

Mr. WILLIAM H. SMITH. Mr. President: It will not leave it in the discretion of the Committee on Printing. A resolution was passed, making the volume consist of one thousand pages, and if that were allowed to remain in force, it would not operate so as to leave this matter in the discretion of the Committee on Printing. If in order, I would ask to amend my own amendment, by adding the word "about" before the words "eight hundred."

The PRESIDENT. The word "about" will be inserted, if there is no objection.

Mr. NEWLIN. Mr. President: That amendment will be satisfactory to the Committee on Printing, I have no doubt.

The question being on the amendment of Mr. W. H. Smith, it was agreed to.

The question recurring on the resolution as amended, it was agreed to.

CHANGE OF RULE TWENTY-NINE.

Mr. NEWLIN presented the following resolution, which was laid over for one day under the rules:

Resolved, That rule twenty-nine be amended by adding a standing committee of fourteen, to be be called the Executive Committee.

IMPEACHMENT AND REMOVAL FROM OFFICE.

Mr. MINOR. Mr. President: I move that the Convention do now resolve itself into committee of the whole for the consideration of the article reported by the Committee on Impeachment and Removal from Office.

It was agreed to.

IN COMMITTEE OF THE WHOLE.

The Convention then resolved itself into committee of the whole, Mr. Boyd in the chair, for the further consideration of the article reported by the Committee on Impeachment and Removal from Office.

The CHAIRMAN. The committee of the whole have had referred to it, the article reported by the Committee on Impeachment and Removal from Office. When the committee last rose, the fourth section was under consideration. An amendment had been offered by the gentleman from Philadelphia (Mr. Dallas.) The Clerk will read the amendment.

The CLERK read:

To strike out the words, "two-thirds," in the eighth line of the last section, and insert in lieu thereof, the words, "three-fourths."

Mr. DARLINGTON. Mr. Chairman: If it is now in order, I move to strike out all after the word "appointed," in fifth line and insert ——

The CHAIRMAN. It is not now in order.

The question being on the amendment offered by Mr. Dallas, it was agreed to.

Mr. DARLINGTON. If now in order, Mr. Chairman, I move to strike out the word "appointed," in the fifth line, and insert, "all officers elected by the people, except Governor, Lieutenant Governor, members of the General Assembly, and members

of courts of record shall be removed by the Governor for reasonable cause, on the address of two-thirds of each branch of the Legislature."

In offering this amendment, I will merely observe that it will be perceived by the committee that it is in harmony with the provision in the existing Constitution with regard to the removal of judges. The Constitution now provides that all civil officers shall be impeached and removed from office for misbehavior or infamous crime. A provision also exists, and it is proper that it should exist, for the removal of officers who shall be found incompetent, or whose continuance in office would be prejudicial to the public interest, although they may not be convicted of any infamous crime or misdemeanor within the meaning of the Constitution. All civil officers may be impeached. The term is well understood.

The House of Representatives shall have the sole power of impeaching and the Senate shall try, and it shall acquit or condemn. But for other offenses, not necessary to resort to impeachment in order to cure, it has always been a provision of the Constitution that they may be removed by the Governor upon the address of two-thirds of each branch of the General Assembly. It was so with regard to justices of the peace so long as they were appointed by the Governor, and, indeed, I believe it was the only mode in practice and, perhaps, the only mode provided of the removal of these officers. While we provide that the Governor and Lieutenant Governor and all judicial offiers are liable to impeachment and removal, and necessarily so, yet there are a vast number of officers to whom it seems proper to apply a more speedy remedy; yet it should not be applied without due consideration, nor without the check which the judgement of the House of Assembly shall have upon the other. All officers who are elected by the people are thus to be treated. They may be impeached, it is true, but it may happen that it may become necessary to remove an officer more speedily than trial by impeachment may accomplish. Take for instance your office of State Treasurer, who will be elected by the people. Immediately upon his election he may be discovered to be totally unfit for the office, or he may have designs upon the treasury, by the removal of its funds, and for which his security may be inadequate or insufficient as a remedy, and it may be important that he should be removed, and promptly; but I would not give it to the Senate alone to remove him. I would say that whenever the representatives of the people in each branch of the Legislature, two-thirds concurring, shall require the Governor to remove an officer it shall be his duty to remove him promptly, without waiting for the tedious, troublesome and expensive method of impeachment. The safety of the public interest may require prompt action. We are bound to suppose that extreme cases may arise. So with regard to your Auditor General; he has vast power. He is to be elected by the people. He may pass an account through his office, which may take millions of dollars from the Treasury. It should be in the power of the representatives of the people and the executive to remove him promptly, and if anything serious should be wrong.

Thus I would make every officer removable, whether elected by the people or appointed. If appointed by the Governor, with the advice and consent of the Senate, for without such advice of the Senate I apprehend an officer would be liable to removal at the mere pleasure of the Governor at all times, and although appointed for a term years, yet according to the universal practice of Governors, I suppose in all the States where such a provision exists, an officer may be remeovd because he holds his office only upon condition that he shall well behave himself. If appointed, therefore, for a term of years, with the consent of two-thirds of the Senate he would nevertheless be subject to removal by the appointing power.

I apprehend this practice is recognized by the general government, and will very likely prevail in this State in all similar cases wherein the Governor has the appointing power. It is impossible, however, to remove an officer who is elected without a provision of this kind. I would therefore give the appointing power the right of removal, but I would not give to the appointing power the right to remove an elected officer. An officer elected by the people should only be removed in some proper and judicious way; and I therefore prefer the provision I have suggested, which is in entire accord with the one suggested by the committee, save that we differ as to the number of the Houses of the Legislature that are to recommend the removal of an officer who has committed an offense, or has misused his office. I think it would be entirely unsafe

to entrust this question of removal to the discretion of either House of the Legislature, because in times of high political excitement one branch might possess a majority in favor of removal, and the other branch might possess a majority decidedly opposed to the removal of a certain official.

Mr. H. W. PALMER. Mr. President: I move to amend the section by striking out the words "three-fourths," and inserting "two-thirds," and to add the following words to the section: "But no elected officer shall be removed without due notice, and an opportunity to be heard in his own defence."

The CHAIRMAN. The Chair will hold that the amendment of the gentleman is not in order at this time.

Mr. H. W. PALMER. Mr. Chairman: I offer it as a substitute for the amendment offered by the gentleman from Chester (Mr. Darlington.)

The CHAIRMAN. The Chair will state that the committee decided to retain the words, "three-fourths," in the section.

Mr. H. W. PALMER. Mr. Chairman: My motion was to strike out those words.

The CHAIRMAN. The Chair exceedingly regrets to inform the gentleman that his motion was not in order.

Mr. LAMBERTON. Mr. Chairman: I move to amend the amendment by inserting after the word "cause," the words, "after a full hearing."

Mr. DARLINGTON. I accept the amendment.

Mr. TURRELL. I would suggest to the gentleman from Dauphin (Mr. Lamberton) that he had better add the words, "due notice and full hearing," to his amendment.

Mr. LAMBERTON. I am perfectly willing.

Mr. DARLINGTON. I will accept the suggestion.

Mr. HUNSICKER. Mr. Chairman: If these suggestions cover my idea, I am in favor of the amendment, but I would like to hear it read as it now stands.

The CLERK read as follows:

"All officers elected by the people except Governor and Lieutenant Governor, members of the General Assembly, and judges of the courts of record, shall be removed by the Governor for reasonable cause after due notice and full hearing, on the address of two-thirds of each branch of the Legislature."

Mr. HUNSICKER. Mr. Chairman: I desire to say in a brief manner I desire to preserve the right to trial and that I do not desire to lodge in any person, however respectable or conservative, the right of removal without cause, and without giving the accused a fair and full hearing and an impartial trial, but I am afraid this amendment will produce a very objectionable result. I think a two-thirds or a three-fourths vote of each House will produce very cumbersome machinery, and I would prefer that a derelict official should be removed after a full and fair hearing, by a vote of the Senate or the House alone. I think it would be absurd to stop the whole business of legislation in the event of an impeachment of an ordinary official, by requiring a vote of both Houses to secure a removal from office. I cannot, therefore, vote for either the section or the amendment, and I trust, therefore, the amendment will be voted down, and that an amendment will be offered which will meet with all the views of our members.

Mr. H. W. PALMER. Mr. Chairman: I desire to amend the section, by striking out the words, "each branch of the Legislature," and inserting the word "Senate."

The amendment was agreed to.

Mr. ARMSTRONG. Mr. Chairman: I desire to amend the section, by inserting after the word "officer," the words, "other than judges of any court of record."

Mr. DARLINGTON. We did not propose to touch the judges of courts of record here at all.

Mr. ARMSTRONG. Mr. Chairman: I would further remark, that under certain circumstances there will have to be judges appointed to fill vacancies; so, in any event, the amendment I have proposed is eminently proper.

Mr. BIDDLE. Mr. Chairman: The amendment offered by the gentleman Lycoming (Mr. Armstrong) is in entire harmony with the views of the Committee upon Impeachment and Removal from Office, and if I had the right, which I have not, I would accept it. It is intended, as you will see by the reading of this section, to exclude from its operations.

The CHAIRMAN. The gentleman from Philadelphia will allow the Chair to state that the amendmant offered by the gentleman from Lycoming precedes the amendment now pending, and it will be in order as the amendment to the amendment. The amendment will be read for information.

The CLERK read as follows.

To insert after the word "appointed," the words, "other than judges of courts of record."

Mr. BIDDLE. Do I understand from the Chair that that amendment is in order?

The CHAIRMAN. Yes, sir.

Mr. BIDDLE. Then I wish to say a word or two about it. Of course, I have no power to accept this amendment or, so far as I am concerned, I would. It was not the intention of this committee by this section to touch judicial officers at all. We found in the existing Constitution ample provision to reach their case, and when the section was drawn, it was not contemplated that judicial officers might be appointed. By the report of the Committee on Judiciary, we find a recommendation to that effect; and without discussing the propriety of that here, which would be out of place, I think it eminently proper that a provision to cover that possible case, certainly a case which may exist where there is an appointment during a vacant term, that the language proposed by the amendment of the gentleman from Lycoming should be inserted. If, when our labors come to be ultimately re-considered and revised, there is no occasion for it, it may be left out. But there is a propriety in having it in here now, and I trust that the committee will adopt it.

The CHAIRMAN. The question is upon the amendment to the amendment, offered by the gentleman from Lycoming.

The amendment to the amendment was agreed to.

The CHAIRMAN. The question recurs upon the section as amended.

Mr. BIDDLE. Mr. Chairman: I would now like to have the whole of the fourth section read, as it is amended and as it is proposed to amend it.

The CLERK read as follows:

It is proposed to strike out all after the word "appointed," and insert so as to make the section read as follows:

"All officers shall hold their offices only on condition that they behave themselves well while in office; and shall be removed on conviction of misbehavior in office or of any infamous crime. Appointed officers, other than judges of courts of record, may be removed at the pleasure of the power by which they were appointed. Elected officers, other than Governor, Lieutenant Governor, members of the General Assembly and judges of the courts of record shall be removed by the Governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the Senate."

Mr. ARMSTRONG. Mr. Chairman: I think the words, "other than judges of any court of record," that the committee have just voted into the section, should be inserted after the word "officers," and not after the word "appointed." It would make the sentence read better.

Mr. BIDDLE. Yes; that will do.

Mr. DARLINGTON. Mr. Chairman: Do I understand that an amendment was adopted, to strike out a majority of each House and make it a majority of the Senate?

The CHAIRMAN. Yes, sir.

Mr. DARLINGTON. Mr Chairman: I did not hear three votes on either side.

The CHAIRMAN. There were exactly three members voting. Two voted for the amendment, and one voted against it, [laughter,] and the Chair decided it carried. He heard no objection to that decision. [Renewed laughter.]

Mr. DARLINGTON: Then I trust, Mr. Chairman, that this section will be voted down in its present shape altogether, to give an opportunity of putting one in proper shape, for I am satisfied that this committee of the whole do not intend to adopt any amendment by a vote of two on one side and one on the other.

The CHAIRMAN. That is what the committee did, [laughter,] and the Chair, of course, decided that the majority prevailed. [Great laughter.]

Mr. CURTIN. Mr. Chairman: Allow me to ask, if the Convention adopt this section of the article on impeachment and removal from office, do you intend to give the Governor any power to suspend any of the officers of the State temporarily, as for instance the Auditor General or the State Treasurer, or any other officer?

Mr. BIDDLE. Mr. Chairman: I will answer the gentleman from Centre, by saying, speaking for the Committee on Impeachment and Removal from Office, that it was not the intention of that committee to give to the Executive any power of suspending any officer.

Mr. BROOMALL. Mr. Chairman: I have some doubts about the propriety of putting in the word "hearing," as it stands in the proposition now proposed to be adopted, "after a full hearing." I think the phrase had better be, "after due notice and an opportunity to be heard."

It might happen that the accused will say nothing, and then, according to the terms of the proposition, you never could remove him.

Mr. DARLINGTON. Mr. Chairman: Do I understand it to be the decision of the Chair that the committee of the whole has amended that amendment by a vote of two on one side and one on the other, so as to strike out a majority of each House and insert two-thirds of the Senate?

Mr. TURRELL. Mr. Chairman: I rise to a point of order,

Mr. DARLINGTON. I am asking a question, and decline to be interrupted.

Mr. TURRELL. Mr. Chairman: I insist upon my right to raise a question of order.

Mr. DARLINGTON. Not until I ask my question.

The CHAIRMAN. The point of order will be made.

Mr. TURRELL. My question of order is: That the gentleman from Chester is dicussing a decision of the Chair, which has been announced and passed upon, and that it is not now before the House.

The CHAIRMAN. Let there be no appeal from the decision of the Chair. [Laughter.]

Mr. DARLINGTON. Mr. Chairman: I ask whether that was so decided?

The CHAIRMAN. The Chair will state for the gratification of the gentleman from Chester, for the third time, [laughter,] that it was so decided. There was no objection to the decision, and the decision was correct. [Laughter.]

Mr. DARLINGTON. Then I withdraw my amendment.

The CHAIRMAN. The gentleman cannot do that now.

Mr. DARLINGTON. I ask unanimous leave to withdraw it.

The CHAIRMAN. That cannot be done at this time. A vote has been taken upon it, and it cannot be withdrawn.

The question is on the section as amended.

The section, as amended, was agreed to.

Mr. DARLINGTON. Mr. Chairman: There was not a majority of a quorum voting for that proposition. I call for a division.

The CHAIRMAN. The question has been decided, and the call comes too late.

Mr. MEREDITH. Is the article finished?

The CHAIRMAN. It is finished.

Mr. ARMSTRONG. Mr. Chairman: Before the committee rises I desire to call attention to the word, "impeaching," in the fourth section. I think that word ought to be "impeachment." Although the word "impeaching" is that now used in the Constitution, it strikes me that the proper grammatical expression would be "impeachment."

I would move to amend the fourth section, by striking out the word "impeaching," and inserting "impeachment."

Mr. CURTIN. That could be done by common consent.

Mr. ARMSTRONG. Mr. Chairman: I ask unanimous consent to have the change made.

The CHAIRMAN. The gentleman from Lycoming asks unanimous consent to make a verbal correction. Shall common consent be given?

Mr. DARLINGTON. No. [Laughter.]

The CHAIRMAN. The Chair decides that it may be done anyhow, and it is so done. [Great laughter.]

The committee, having finished the article, rose, and the President resumed his Chair.

IN CONVENTION.

Mr. BOYD, chairman of the committee of the whole, reported that that committee had considered the article reported by the Committee on Impeachment and Removal from Office.

The PRESIDENT. The amended article will be read.

The CLERK read as follows:

ARTICLE XII.

OF IMPEACHMENT AND REMOVAL FROM OFFICE.

SECTION 1. The House of Representatives shall have the sole power of impeachment.

SECTION 2. All impeachments shall be tried by the Senate; when sitting for that purpose the Senators shall be upon oath or affirmation; no person shall be convicted without the concurrence of two-thirds of the members present.

SECTION 3. The Governor and all other civil officers under this Commonwealth shall be liable to impeachment for any misdemeanor in office, but judgement in such cases shall not extend further than to removal from office and disqualification to hold any office of honor, trust or profit under this Commonwealth; the party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

SECTION 4. All officers shall hold their offices only on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehaivor in office or of any infamous crime.

Appointed officers, other than judges of courts of record, may be removed at the pleasure of the power by which they are appointed. All officers elected by the people, except Governor, Lieutenant Governor, members of the General Assembly and judges of the courts of record shall be removed by the Governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the Senate.

Mr. HAY. Mr. President: If it is in order, I desire to move a re-consideration of the vote taken this morning, by which was adopted the amendment to the resolution proposed by the chairman of the Committee on House (Mr. Addicks.) I make this motion understanding that the amendment is not satisfactory to the committee and to other gentlemen of the Convention. I desire also to state that at the time the amendment was offered, I presumed that it would be entirely satisfactory to the Committee on House; that it met their views exactly, and would obviate objection which existed in the Convention to the adoption of the resolution as proposed.

The PRESIDENT. It will require leave of the House to move a re-consideration. Shall the gentleman have leave?

Leave was unanimously given.

Mr. HAY. Mr. President: I now move to re-consider the vote on the amendment.

The motion was agreed to and the amendment was re-considered.

The PRESIDENT. The question is on the amendment.

The amendment was rejected.

The PRESIDENT. The question is on the resolution.

Mr. TEMPLE. Mr. President: What is the question?

The CLERK read as follows:

Resolved, That during the recess of the Convention the Committee on House shall take entire charge of the Hall and the property therein. And they are hereby authorized, at their discretion, to engage such employees as may be required for the above duty.

The resolution was agreed to.

Mr. TEMPLE. Mr. President: I move the Convention do now adjourn.

The yeas and nays were required by Mr. Darlington and Mr. Hemphill, and were as follow, viz:

YEAS.

Messrs. Baker, Cassidy, Cochran, Craig, Cuyler, Davis, Ellis, Fell, Hemphill, Heverin, Lamberton, Littleton, Newlin, Porter, Read, John R., Sharpe, Temple, Wetherill, J. M. and Woodward—19.

NAYS.

Messrs. Alricks, Armstrong, Bannan, Barclay, Biddle, Black, Charles A., Boyd, Brodhead, Broomall, Buckalew, Campbell, Carter, Clark, Corson, Curtin, Darlington, Dodd, Edwards, Elliott, Gibson, Gilpin, Guthrie, Hanna, Hay, Horton, Hunsicker, Knight, Lear, Lilly, Long, Minor, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Reynolds, James L., Runk, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Turrell, Wetherill, Jno. Price, Wright and Meredith, *President*—44.

So the motion was not agreed to.

ABSENT OR NOT VOTING.—Messrs. Achenbach, Addicks, Ainey, Andrews, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Brown, Carey, Church, Collins, Corbett, Cronmiller, Curry, Dallas, De France, Dunning, Ewing, Finney, Fulton, Funck, Gowen, Green, Hall, Harvey, Hazzard, Howard, Kaine, Landis, Lawrence, MacConnell, M'Allister, M'Camant, M'Clean, M'Culloch, M'Murray, MacVeagh, Mann, Mantor, Metzger, Mitchell, Mott, Parsons, Patterson, T. H. B., Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, S. H., Rooke, Ross, Russell, Stanton, Stewart, Struthers, Van Reed, Walker, Wherry, White, David N., White, Harry, White, J. W. F. and Worrell—68.

Mr. DARLINGTON. Mr. President: I move the Convention now resolve itself into a committee of the whole, for the purpose of considering the report of the Committee on County, Township and Borough Organization.

Mr. HEMPHILL. I rise to a point of order. There is not a quorum present.

The PRESIDENT. The Chair has no knowledge that there is not a quorum present.

Mr. HEMPHILL. There was not a quorum voting.

The PRESIDENT. When the yeas and nays are called, and a quorum does not

answer to their names, it does not follow that there is not a quorum present.

The question is upon the motion of the gentleman from Chester (Mr. Darlington.)

The yeas and nays were required by Mr. Temple and Mr. Buckalew, and were as follow, viz:

YEAS.

Messrs. Ainey, Baker, Biddle, Black, Chas. A., Boyd, Brodhead, Broomall, Cassidy, Clark, Corson, Craig, Curtin, Darlington, Dodd, Edwards, Gibson, Hanna, Horton, Hunsicker, Lear, Lilly, Long, Niles, Patterson, D. W., Purviance, Jno. N., Read, Jno. R., Simpson, Smith, H. G., Smith, Henry W., Stanton and Meredith, *President*—33.

NAYS.

Messrs. Armstrong, Bannan, Buckalew, Campbell, Carter, Cochran, Davis, Fell, Gilpin, Guthrie, Hay, Hemphill, Heverin, Kaine, Knight, Lamberton, Littleton, Newlin, Palmer, G.W., Palmer, H. W., Porter, Runk, Temple, Turrell, Wetherill, J. M., Wetherill, Jno. Price, Woodward and Wright—28.

So the motion was agreed to.

ABSENT OR NOT VOTING.—Messrs. Achenbach, Addicks, Alricks, Andrews, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Brown, Carey, Church, Colins, Corbett, Cronmiller, Curry, Cuyler, Dallas, De France, Dunning, Elliott, Ellis, Ewing, Finney, Fulton, Funck, Gowen, Green, Hall, Harvey, Hazzard, Howard, Landis, Lawrence, MacConnell, M'Allister, M'Camant, M'Clean, M'Culloch, M'Murray, MacVeagh, Mann, Mantor, Metzger, Minor, Mitchell, Mott, Parsons, Patterson, T. H. B., Patton Pughe, Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Jas. L., Reynolds, S. H., Rooke, Ross, Russell, Sharpe, Smith, William H., Stewart, Struthers, Van Reed, Walker, Wherry, White, David N., White, Harry, White J. W. F. and Worrell—72

Mr. CUYLER. (Before the vote was announced.) Mr. President: I desire to change my vote, for the reason that the chairman of the committee is not present.

The PRESIDENT. Did the gentleman vote under a misapprehension.

Mr. CUYLER. No, sir.

The PRESIDENT. Then the gentleman cannot change his vote.

Mr. COCHRAN. Mr. President: I move a call of the House.

The PRESIDENT. It cannot be done, the Convention having resolved to go into a committee of the whole.

Mr. JOHN R. READ. Mr. President: I move to reconsider the vote just taken.

The motion was agreed to, there being, on a division, thirty-four in the affirmative, and twenty-two in the negative.

Mr. TEMPLE. Mr. President: I move that we do now adjourn.

Upon this motion, the yeas and nays were required by Mr. Temple and Mr. J. M. Wetherill, and were as follow, viz:

YEAS.

Messrs. Armstrong, Baker, Buckalew, Clark, Cochran, Craig, Davis, Elliott, Fell, Hanna, Hemphill, Heverin, Kaine, Knight, Lamberton, Littleton, Newlin, Palmer, G. W., Patton, Porter, Read, Jno. R., Rusk, Sharpe, Temple, Wetherill, J. M., Woodward and Wright—27.

NAYS.

Messrs. Ainey, Alricks, Bannan, Barclay, Biddle, Black, Charles A., Boyd, Brodhead, Broomall, Carter, Cassidy, Corson, Curtin, Cuyler, Darlington, Dodd, Edwards, Gibson, Gilpin, Guthrie, Horton, Hunsicker, Lear, Lilly, Long, Niles, Palmer, H. W., Patterson, D. W., Reynolds, James L., Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stanton, Turrell, Wetherill, Jno. Price and Meredith, *President*—36.

So the motion was rejected.

ABSENT OR NOT VOTING.—Messrs. Achenbach, Addicks, Andrews, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Brown, Campbell, Carey, Church, Collins, Corbett, Cronmiller, Curry, Dallas, De France, Dunning, Ellis, Ewing, Finney, Fulton, Funck, Gowen, Green, Hall, Harvey, Hay, Hazzard, Howard, Landis, Lawrence, Mitchell, MacConnell, M'Allister, M'Camant, M'Clean, M'Culloch, M'Murray, MacVeagh, Mann, Mantor, Metzger, Minor, Mott, Parsons, Patterson, T. H. B., Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, S. H., Rooke, Ross, Russell, Stewart, Struthers, Van Reed, Walker, Wherry, White, David N., White, Harry, White, J. W. F. and Worrell—70.

Mr. COCHRAN. Mr. President: I move a call of the House.

Mr. H. W. PALMER. Mr. President: I move that the Convention do now resolve itself into committee of the whole, for the

consideration of the article reported by the Committee on Agriculture, Mining, Manufactures and Commerce.

The PRESIDENT. It is not in order at this time. Did some gentleman move a call of the House?

Mr. COCHRAN. I did.

A call of the House was then made, and sixty-five members were found to be present.

Mr. HEMPHILL. Mr. President: I move a call of the roll.

The roll was then called, and the following members answered to their names:

Messrs. Ainey, Alricks, Armstrong, Baker, Bannan, Biddle, Boyd, Brodhead, Broomall, Buckalew, Carey, Carter, Cassidy, Clark, Cochran, Corson, Craig, Curtin, Cuyler, Dallas, Darlington, De France, Dodd, Edwards, Elliott, Ellis, Fell, Gibson, Gilpin, Guthrie, Hanna, Hay, Hemphill, Heverin, Horton, Hunsicker, Kaine, Knight, Lamberton, Lear, Lilly, Littleton, Long, Newlin, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Porter, Read, John R., Reynolds, James L., Runk, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stanton, Temple, Turrell, Wetherill, J. M., Wetherill, Jno. Price, Woodward, Wright and Meredith, *President*—66.

NOT PRESENT.—Messrs. Achenbach, Addicks, Andrews, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Bardsley, Bartholomew, Beebe, Black, Charles A., Black, J. S., Bowman, Brown, Campbell, Church, Collins, Corbett, Cronmiller, Curry, Davis, Dunning, Ewing, Finney, Fulton, Funck, Gowen, Green, Hall, Harvey, Hazzard, Howard, Landis, Lawrence, MacConnell, M'Allister, M'Camant, M'Clean, M'Culloch, M'Murray, MacVeagh, Mann, Mantor, Metzger, Minor, Mitchell, Mott, Parsons, Patterson, T. H. B., Pughe, Purman, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Reynolds, S. H., Rooke, Ross, Russell, Stewart, Struthers, Van Reed, Walker, Wherry, White, David N., White, Harry, White, J. W. F. and Worrell—67.

Mr. WRIGHT. Mr. President: I move that the Convention do now adjourn for want of a quorum.

Agreed to.

The Convention then, at twelve o'clock, noon, adjourned to Tuesday, the fifteenth of April, at twelve o'clock M.

SEVENTY-EIGHTH DAY.

TUESDAY, *April* 15, 1873.

The Convention re-assembled at noon, Hon. William M. Meredith, President, in the chair.

PRAYER.

Rev. JAMES W. CURRY offered prayer, as follows:

Almighty Father! We praise Thee this morning for the health and strength we enjoy. We thank Thee for the beautiful bright sun above us, with a clear sky. We thank Thee for the cheerful hearts we have in meeting together after our brief separation. Would it please Thee to inspire our hearts with gratitude to Thee, Thou God, who hast been so kind in preserving our health and our lives. Would it please Thee now to impart unto each one of us wisdom from on High, so that we may be qualified for the duties for which we have assembled ourselves together. Do Thou enable us to perform those duties with fidelity to God and to the constituency we represent. Do Thou help us in all things to be honest with ourselves and honest with our God. We ask Thee, oh Lord, to forgive us all wherein we have erred, wherein we have sinned, wherein we have failed to please Thee. Do Thou grant, in the opening of our session this day, to baptize us with the Holy Ghost, and prepare us for all the duties of coming time. Let Thy blessing be with us, and let Thy spirit guide us, and ultimately save us all, in Jesus Christ. Amen.

JOURNAL.

The Journal of the proceedings of Friday, March twenty-eighth, was read and approved.

PETITIONS AND MEMORIALS.

The PRESIDENT presented a petition of citizens of Northumberland county, praying for an acknowledgment of Almighty God in the Constitution of the State, which was laid on the table.

Mr. D. N. WHITE presented a memorial of six thousand five hundred and twenty-two citizens of Allegheny county, and other counties in western Pennsylvania, praying for the adoption of an amendment to the Constitution prohibiting the sale of intoxicating liquors as a beverage, to be submitted at the same time that the other amendments are submitted, which was read and laid on the table.

Mr. HAY presented a petition from citizens of the county of Allegheny, engaged in the business of ale and lager beer brewing, praying that in the event of the submission of an amendment to the Constitution prohibiting the manufacture of vinous, malt and spirituous liquors, and its adoption by the people, provision be made that the General Assembly shall, by general law, provide for the payment, out of the State Treasury, to the owners of all real and personal property used in or about said breweries, and properly connected therewith, the just value thereof at the time of the adoption of the Constitution, as damages for the loss of their business, and for the destruction of their property, which was read and laid on the table.

Mr. BRODHEAD presented a memorial of members of the bar of Northampton county, remonstrating against the circuit court system proposed by the majority of the Committee on the Judiciary, and favoring the plan reported by Mr. Kaine, as a minority of said committee, which was read and laid on the table.

Mr. MACCONNELL presented the proceedings of a meeting of the members of the bar of Pittsburg, remonstrating against the circuit court system, proposed by the majority of the Committee on the Judiciary, and favoring the plan of Mr. S. A. Purviance, which was read and laid on the table.

DAILY SESSIONS OF THE CONVENTION.

Mr. WRIGHT submitted the following resolution, which was twice read and considered:

Resolved, That the sessions of the Convention shall, on and after to-morrow, be as follows: Meet at ten o'clock A. M., and adjourn at one o'clock P. M.; meet at four o'clock P. M., and adjourn at six o'clock P. M.

Mr. MACVEAGH. I move to amend the resolution, by inserting nine o'clock in the place of ten o'clock. ["That is right."]

Mr. LILLY. I move further to amend by striking out four and inserting two o'clock.

["No; no; say three o'clock."]

The PRESIDENT. The question is on the amendment of the gentleman from Dauphin (Mr. MacVeagh.)

Mr. H. W. SMITH. I offer the following amendment to the amendment: Strike out all after the word "resolved" and insert, "that on and after to-morrow this Convention will meet at nine o'clock A. M. and adjourn at one P. M., and meet again at three o'clock P. M. and adjourn at six P. M., and that the Convention hold no meetings on Saturdays.

The PRESIDENT. This is not an amendment to the pending amendment. The question is on the amendment offered by the gentleman from Dauphin, (Mr. MacVeagh,) to strike out ten o'clock, and insert nine o'clock.

The amendment to the amendment was rejected; ayes, twenty-seven, less than a majority of a quorum.

Mr. DARLINGTON. I move to strike out ten o'clock, and insert half-past nine o'clock. ["No." "No."]

The amendment to the amendment was rejected; ayes, thirty-three, less than a majority of a quorum.

Mr. LANDIS. I move to strike out "four o'clock," and insert "three o'clock."

The amendment to the amendment was rejected; ayes, thirty, less than a majority of a quorum.

The PRESIDENT. The question now is on the resolution.

Mr. STANTON. I move to except Saturdays, by adding the words: "And that no sessions be held on Saturdays."

The PRESIDENT. It is moved to amend the resolution by providing that no sessions be held on Saturdays.

The question being on the amendment of Mr. Stanton, the yeas and nays were required by Mr. Niles and Mr. Darlington, and were as follow, viz:

YEAS.

Messrs. Addicks, Andrews, Baker, Biddle, Brodhead, Broomall, Buckalew, Cassidy, Corson, Curry, Curtin, Dallas, Funck, Gibson, Hanna, Heverin, Horton, Hunsicker, Lear, Lilly, Littleton, Long, MacVeagh, Newlin, Palmer, G. W., Patterson, D. W., Pughe, Read, John R., Rooke, Ross, Simpson, Smith, Henry W., Stanton, Temple, Wetherill, J. M., Wetherill, J. Price, White, J. W. F., Woodward, Worrell, and Meredith, *President*—40.

NAYS.

Messrs. Ainey, Baily, (Perry,) Barclay, Boyd, Brown, Campbell, Carey, Carter, Cochran, Collins, Craig, Darlington, De France, Dodd, Edwards, Guthrie, Hay, Knight, Landis, Lawrence, MacConnell, M'Clean, M'Culloch, Mann, Mantor, Niles, Runk, Russell, Struthers, Walker, White, David N. and Wright—32.

So the question was determined in the affirmative.

ABSENT OR NOT VOTING.—Messrs. Achenbach, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Beebe, Black, Charles A., Black, J. S., Bowman, Church, Clark, Corbett, Cronmiller, Cuyler, Davis, Dunning, Elliott, Ellis, Ewing, Fell, Finney, Fulton, Gilpin, Gowen, Green, Hall, Harvey, Hazzard, Hemphill, Howard, Kaine, Lamberton, M'Allister, M'Camant, M'Murray, Metzger, Minor, Mitchell, Mott, Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Purviance Sam'l A., Reed, Andrew, Reynolds, James L., Reynolds, S. H., Sharpe, Smith, H. G., Smith, Wm. H., Stewart, Turrell, Van Reed, Wherry and White, Harry—61.

Mr. KNIGHT. I move to amend by striking out "six o'clock" and inserting "seven o'clock." We shall then meet at ten and adjourn at one, and meet at four and adjourn at seven, giving us six hours session each day——

Mr. BUCKALEW. Mr. President: I desire to see the clause which fixes the hour of adjournment in the afternoon stricken out, so that the Convention will have the control of that subject at all times. We shall find, in the transaction of our business, very often that by sitting fifteen or twenty minutes longer than the fixed time, after six o'clock, for example, we shall get done with a subject, whereas, if it goes over to the next day, we may consume an entire session in disposing of it. By striking out the clause which fixes the hour of adjournment in the afternoon, the Convention, having control of its own business, can adjourn whenever there is any necessity for it, and it will not be forced to adjourn when it does not desire to do so.

Mr. MACVEAGH. Mr. President: I trust the gentleman from Philadelphia

(Mr. Knight) will see his way clear to alter his amendment. I think it would meet the views of the House to make the three hours' session in the afternoon from three to six, because that leaves only two hours interval between the adjournment of the Convention in the morning and its re-assembling in the afternoon. The resolution, as it now stands, makes the interval three hours, at a period of the day when none of us have anything to do. Many of us do not even dine in the middle of the day, and if we did we could not spend three hours in that act.

The amendment was rejected, the ayes being twenty-eight, less than a majority of a quorum.

Mr. BUCKALEW. I move to amend, by striking out that part of the resolution which fixes the hour of adjournment in the afternoon.

The amendment was agreed to, there being, on a division, ayes fifty-two, noes twenty-two.

Mr. BROOMALL. I move to amend, by striking out "one o'clock" and inserting "two o'clock."

The amendment was rejected.

Mr. SIMPSON. I move to amend, by striking out "four o'clock" and inserting "three o'clock," as the hour of meeting in the afternoon.

The amenement was agreed to, there being, on a division, ayes, forty-three, noes twenty-four.

The PRESIDENT. The question is on the resolution as amended, providing that the daily meetings be from ten o'clock A. M. to one o'clock P. M., and from three o'clock P. M. to such hour as the Convention may determine daily, and that no session be held on Saturday.

The resolution as amended was agreed to, there being, on a division, ayes forty-six, noes twenty-four.

LEAVES OF ABSENCE.

Mr. HAY. Mr. President: I ask leave for Mr. William H. Smith, of Allegheny, for a few days from to-day.

Leave was granted.

Mr. BRODHEAD asked and obtained leave of absence for himself for a few days.

YEAS AND NAYS CALL.

The PRESIDENT. The Chair wishes to state to the Convention that on the thirteenth of January a resolution was adopted which the Clerk will read. It practically makes an order of the House.

The CLERK read as follows:

"*Resolved*, That when the yeas and nays are called on any question, the Clerk shall be required to enter upon the Journal the names of all the members of the Convention, as well those who vote as those who are absent and who do not vote."

The PRESIDENT. Under that resolution the Clerk has been in the habit of entering on the Journal, under one head, the "absent and not voting," so that it is impossible to distinguish on the record whether there is a quorum of members present or not on certain occasions. The Chair, unless it is objected to, will construe this order to require a separate entry of those who are absent, and a separate entry of those who do not vote. As members are bound to vote who are present, unless excused by the House, unless that excuse be asked for and obtained, all who do not vote will be recorded as absent.

MISPRINTS IN THE JOURNAL.

Mr. DALLAS. Mr. President: I rise to what I suppose to be a question of privilege. I desire to ask members to turn to page 430 of the Journal, for the purpose of correcting misprints in the minority report, presented by myself, from the Committee on Judiciary. In the sixth section of the minority report, at the foot of page 430, in the first line of this sixth section, the Printer has the word "districts" for the word "distinct," and in the last line of the sixth section the word "member" for "number."

RAILROADS AND CANALS.

Mr. JOS. BAILY. Mr. President: In accordance with notice given before we adjourned, I now offer a minority report from the Committee on Railroads and Canals.

The PRESIDENT. The minority report will be read.

The CLERK read as follows:

The undersigned, a minority of the Committee on Railroads and Canals, approves of many of the provisions reported by the majority, which, if adopted by the Convention, will operate greatly in the interest of the people and of the stockholders of corporations. But, as a whole, the report does not present a comprehensive system of railroad and canal organization, by which the power of dangerous and growing monopolies can be checked, and at the same time establish a plan of transportation affording equal, if not

greater facilities to the people, and divested of all power to aggrandize their rights. Here lies the difficulty. If no other system can be devised than the one now in operation, by which a very small number of corporations regulate the transportation of the country—controlling enormous capital, absorbing all the small corporations, when it suits their interest to do so, establishing internal corporations within themselves for transportation, manufacturing, mining and general business purposes, owned in great measure by the officers of the principal corporations, greatly to the injury of the general stockholders, purchasing and holding in perpetuity very extensive tracts of mineral and other lands, rapidly acquiring control over the elections of the people and all the deparments of the government, then the people may prepare for a hopeless state of absolute dependence on the caprice of the person who may be so fortunate as to have control of these vast corporations. The people may comply with the forms of elections, but their public servants, when elected, will only be permitted to register the mandates of these monarchs of monopoly. Money is power, and the accumulation of vast sums, either in the hands of natural or artificial persons, has always operated to the detriment of the rights of the people.

As long as primogeniture and entail are prohibited, the accumulation and influence of wealth, in the hands of natural persons, is greatly shorn of its dangerous power. But a system is growing up amongst us, enormous in its proportions, wielding a control of vast money capital, which no natural person, owing to the shortness of human life, can ever attain. The Legislature, forgetting its duty to the people, has conferred unlimited powers on some of these corporations, to purchase and hold, in perpetuity, lands in quantity, only limited by their ability to buy. The corporation now owning, by purchase, the franchise of the "Laurel Run improvement company," has the undoubted right to purchase and hold and transmit, in perpetual existence, every acre of land in the State of Pennsylvania, and convert the whole population into a dependent tenantry. All that can prevent it is sufficient means to buy and a willingness of the people to sell. But it must be recollected that this power to buy increases continually; and finally, this company may become so strong that, Ahad and Jezebel-like, ingenuity may devise a plan to compel the people to sell. Most likely the punishment that befel these ancient tyrants will overtake their modern prototypes.

The power conferred on corporations to purchase or lease the franchise and property, and to purchase shares in the capital stock of every other corporation, is fraught with great danger to the safety of our political institutions.

In the exercise of this power, the larger corporations can and do secure control over the weaker, whenever it is their interest. If they cannot purchase or lease the franchise, they resort to the expedient of purchasing a majority of the shares of stock, elect their own creatures for directors and then absorb the franchise by a contract with these willing tools.

This is the system that has foisted upon the people these overshadowing monopolies. Is it wise or safe to continue it, when a plan of transportation, affording equal facilities in cheapness, rapidity and safety, can be devised, entirely shorn of the power to monopolize.

The undersigned is satisfied such a system can be established.

In his opinion, corporations should be deprived of the power to purchase or lease the franchise, bonds or other indebtedness, or shares in the capital stock of each other. This would leave each corporation free to pursue the purpose for which it was created, and remove the fear of being absorbed by larger and more fortunate ones.

Railroad and canal corporations or companies should be limited to the business of common carriers, and should be prohibited from purchasing or leasing real estate, except for the mere purpose of constructing and maintaining their lines of improvement. Power should be granted to each railroad or canal company to intersect or connect its works with any other accessable railroad or canal companies works, and to pass its cars or boats, loaded or empty, or passengers or freight not loaded, over any other railroad or canal without discriminations in charges or hindrance, or delay in their movement. The same rights should be conferred on individual transporters. Each railroad company should maintain and control the motive power over its line, and in case of necessity, use the motive power of other companies. A system of tolls, and charges as near uniform as possible, should be established throughout the State.

Authority should be lodged with some officer of government to hear and determine complaints against corporations for neglect or refusal to fulfil their lawful and constitutional obligations, with power to enforce his decisions by proper fines and penalties.

If such a system of transportation as indicated above was established, somewhat similar in its movements to the postal system of the United States, the undersigned believes it would afford greater facilities for the more rapid and cheap transmission, of persons and property than the present one, owned and controlled by a few corporations. What is to prevent a net work of railroads and canals, acting together as a unit in the movement of passengers and freight at uniform rates, but entirely independent of each other in the management of their internal affairs, from succeeding and furnishing to the people of Pennsylvania an economical, safe and expedient plan of transportation, divested of all power to concentrate in the hands of one or two great monopolies?

The right to form intersections and to pass cars at mutual and uniform rates over each other's roads would remove the necessity of rival companies building parallel roads, thereby avoiding large and useless expenditures of money, and the amount invested in rolling stock can be relatively reduced.

The prohibition to purchase or lease the franchise, shares in the capital stock, bonds, or other indebtedness of each other, would work a complete deprivation of the power to monopolize, and a prohibition to purchase or hold lands would, at once, crush the detestable power of perpetuities growing up amongst us.

These privileges and immunities have been bestowed, with a lavish hand, by the Legislature on corporations within a very few years, and are calculated to awaken feelings of distrust against the recipients of such enormous sovereign powers. If permitted to accumulate in the same rate of progress, for a few more years, the whole fabric of government will be undermined.

The Convention owes it to the people to provide a remedy against any further grants of such powers, and for the gradual withdrawal of all such grants now in the hands of artificial persons.

It is believed that capital enough will always be found in Pennsylvania to build all the railroads and canals required to accommodate every portion of the State, as the necessity for their construction arises. Many projects of the kind have been prematurely undertaken, resulting in disaster to stockholders and all concerned. Resort to loans at very high rates of interest, or to the credit of some large corporation, seems to prevail. Large sums have thus been expended in works of doubtful propriety, diverting capital from more useful and necessary investments.

Although the railroad and canal system of Pennsylvania, at this time, presents a vast combination of capital and business operations, yet it is, comparatively, in its infancy.

Many members of this Convention, now in the prime of life, will live to see the population of the State increase to the number of ten million or more, and all the business operations of such a large community will increase in the same or a greater ratio, requiring means of transportation greatly in excess of that which now exists.

How necessary then to devise, in advance of such an increase of population and business, a plan of transportation, efficient in rapidity and cheapness of movement, and entirely divested of power to do harm.

The following sections are offered for the consideration of the Convention, and if adopted, it is believed, will have the effect of working the desired reforms.

JOSEPH BAILY.

SECTION —. No railroad or canal corporation shall have the right to invest in, or purchase or hold shares in the capital stock, bonds or other indebtedness of any other railroad, canal or other corporation, either in its corporate name, or the name of its officers, or through the intervention of trustees or other agents holding the same for its use.

SECTION —. No railroad or canal corporation shall have the right to invest in, purchase, hold or lease the franchise and property, or other estate, of any other railroad, canal or other corporation, either in its corporate name, the name of its officers, or through the intervention of trustees, or other agents holding the same for its use.

SECTION —. Railroad or canal corporations shall have the right to intersect their lines of improvement, by proper connections, with the works of any other accessible railroad or canal company, and shall have the right to pass cars or boats, loaded or empty, or passenger and freight, not loaded, over each other's railroads or

canals, free from discriminations in rates of passenger and freight tariffs, and without delay or hindrance in their movements. Individual transporters shall have the same rights of passage.

SECTION —. A system of tolls and charges, for passengers and freight, as near uniform as possible throughout the State, shall be established from time to time; and the Legislature shall enact general laws for the regulation of railroad, canal and other transportation companies, under the provisions of this Constitution, and enforce the same by adequate penalties; and shall confer on the Secretary of Internal Affairs such supervisory powers over said corporations as may be necessary for the public good.

The minority report was laid on the table, and ordered to be printed.

THE JUDICIARY COMMITTEE.

Mr. WOODWARD. I beg leave to offer from the Judiciary Committee a statement of my own views, in the form of an article of the Constitution.

The PRESIDENT. The gentleman from Philadelphia asks leave to present a minority report from the Committee on the Judiciary. Shall he have leave? ("Yes.")

The minority report will be read.

The CLERK read as follows:

ARTICLE V.

OF THE JUDICIARY.

SECTION 1. The judicial power of this Commonwealth shall be vested in a Supreme Court, in circuit courts, in courts of common pleas and district courts, in courts of oyer and terminer and general jail delivery, in courts of quarter sessions of the peace, in orphan's courts, in justices of the peace, and in such other courts as the Legislature may from time to time establish.

SECTION 2. The judges of all the above named courts of record, and of such other courts of record as the Legislature may establish, shall be appointed by the Governor, by and with the advice and consent of the Senate. They shall be men of good moral character, learned in the law, who have attained the age of thirty years, and who have had at least five years practice in some of the courts of record of this Commonwealth. The said judges shall appoint their clerks for their respective courts and enact adequate security for a faithful discharge of duties, and all necessary criers and tipstaves; but it shall not be competent for the Legislature to impose upon said judges the choice or election of any other officers, commissioners, inspectors, superintendents, or other agents, whether civil, municipal or corporate, nor to assign to said judges or any of them any extra judicial duties whatever; and said judges shall hold no other office, whether federal, State, municipal or corporate; nor receive any fees, rewards, perquisites, emoluments, or traveling expenses, whilst holding and exercising the office of judge of any of the aforesaid courts. The General Assembly may for cause entered upon their journals, upon due notice and opportunity of defence, remove from office any judge, upon concurrence of three-fourths of all the members elected to each House. Associate judges, not learned in the law, shall be continued upon the bench of the common pleas until the expiration of their respective commissions, and thereafter the said office shall be and remain abolished.

OF THE JUDGES OF THE SUPREME COURT.

SECTION 3. The judges of the Supreme Court, until otherwise ordered by law, shall consist of five; shall hold their offices for the term of fifteen years, if they shall so long behave themselves well; the oldest in commission shall be the chief justice of said court, and three of their number shall be necessary to constitute a quorum. They shall be paid a salary to be fixed by law, which shall be larger than the salary of any other judicial officer of the State, and which shall not be diminished by taxation or otherwise during their continuance in office. They shall be justices of oyer and terminer, with the powers of committing magistrates in every county of the Commonwealth, and one or more of their number may be empowered by law to hold courts of oyer and terminer in any county, and to try civil issues which they may order in any cause depending before them; but the court of *nisi prius* as now established by law is abolished. The original jurisdiction of the Supreme Court shall not be extended by the Legislature to any cases except *habeas corpus*, *quo warranto*, *mandamus*, and revenue cases in which the Commonwealth is a party in interest; and the court may exercise its original jurisdiction in such cases by one of its number, but shall sit in banc for the hearing of causes that come up by writs of error or appeal, at such one place as the Legislature may fix

by law, and the judges of said court shall reside at the place so fixed, but may, for adequate reasons, adjourn its sessions for a single term, or less than a term, to any other suitable and convenient place. The jurisdiction and process of this court shall extend throughout the State.

OF THE CIRCUIT COURTS.

SECTION 4. The Legislature shall, at its first session after this Constitution takes effect, erect the several counties of the State into a convenient number of circuits, not exceeding twelve, each circuit to consist of contiguous or adjacent counties, and to be as nearly equal in population and legal business as may be possible, and for each of said circuits the Governor shall, by and with the advice and consent of the Senate, appoint a circuit judge, and the said circuit judge shall, during his term of office, reside within the circuit for which he was appointed, shall hold his office for the term of twelve years, if he shall so long behave well, and shall receive a salary, to be fixed by law, at less than the salary of a judge of the Supreme Court, but more than the salary of a judge of the court of common pleas or district court, but which salary shall not be diminished by taxation or otherwise, during his continuance in office.

The circuit court in each circuit shall consist of the said circuit judge, as its presiding officer, and of all the law judges within the circuit. They shall arrange for holding as many terms of court in banc each year as the business may require. The terms of the court in banc shall be held in any county of the circuit, as the court may appoint, and shall be held by any five of the judges of the circuit as they may agree among themselves, and of the number holding a term in banc, three shall be a quorum. If the circuit judge is unable, for any cause, to preside at a term in banc, the judge whose commission is oldest of those holding the term, shall preside.

The said circuit court shall have no original but only an appellate jurisdiction. All civil causes in law or equity, decided in the courts of common pleas or the districts courts, or in any other courts of civil jurisdiction that may be created by law, shall be removable, by way of appeal, into the proper circuit court under such regulations as may be prescribed by law, and the evidence upon which the inferior court rendered its decree or judgment shall be fully certified, if required by either party, into the circuit court, by the judge who rendered the decree or judgment, and thereupon the circuit court shall, after due hearing and consideration, affirm, modify or reverse the said decree or judgment. If a new trial be awarded as part of the judgment of the circuit court, the same may be had before the judge who tried the cause or before the circuit judge in the same county, or any other county of the circuit as the court may appoint, and the same cause may come again before the circuit court for review, and when a final judgment or decree shall be entered by the circuit court the same shall conclude the rights of all parties to the record, unless the said circuit court or one of the judges who sat at the hearing shall allow a writ of error to remove the cause into the Supreme Court, and if such allowance be made, a writ of error shall issue out of the Supreme Court to the said circuit court and be proceeded in as in other cases.

Whenever the Supreme Court in any case shall award a writ of *venire facias de novo*, the new trial shall be had in the court where the cause originated, and shall be again removable into and reviewable by the circuit court as in other cases, with right to a second writ of error, if allowed, as aforesaid. In no case shall a judge of the circuit court take part in the decision of a cause tried before him in the common pleas or district court, though he may sit at the argument as an assessor. The circuit judge, besides performing the duties of president of the circuit court, may hold special courts, criminal or civil, in any county of his circuit, under such regulations as may be prescribed by law. And all motions for new trial, and in arrest of judgment in criminal cases tried in the court of oyer and terminer shall be removable by way of appeal into the circuit court, under such regulations as may be prescribed by law; and the judgment of the circuit court in such cases shall be conclusive and final.

The circuit court shall be a court of record, and have a seal such as the Legislature may prescribe; and the lien of its decrees and judgments shall be regulated by law.

OF THE COURTS OF COMMON PLEAS AND DISTRICT COURTS.

SECTION 5. The courts of common pleas and districts courts shall remain as now established, until otherwise ordered

by law. The judicial districts shall be re-arranged by the Legislature, so as to equalize the labors of the law judges as nearly as may be, and to bring the law judges of the several districts within the proper circuits, and if any additional judges shall be provided for by law, they shall be appointed in the manner herein prescribed. The jurisdictions of the courts of common pleas and of the district courts shall remain as they now are, except in counties where the jurisdictions of the orphans' courts may be vested in courts of probate. The judges of the district courts shall be appointed for the term of ten years, and shall have the same jurisdiction in equity cases as may belong, for the time being, to the courts of common pleas. The judges of the courts of common pleas shall be appointed for the term of ten years, and shall be justices of oyer and terminer, and of the courts of quarter sessions of the peace, with the powers of committing magistrates.

OF PROBATE COURTS.

SECTION 6. In counties whose population shall exceed one hundred thousand, the Legislature may establish courts of probate, to consist of one or more judges, who shall be learned in the law, appointed in the manner hereinbefore provided for other judges, whose term of office shall be ten years, if they so long behave themselves well, and whose salaries shall be fixed by law.

The said courts of probate when established, shall exercise all the jurisdictions and powers now vested in the Orphans' court, the register's court, and the register for probate of wills and granting letters of administration, and thereupon the jurisdiction of the common pleas in orphans' court proceedings, shall cease and determine, and the register's court and the office of register of wills and granting letters of administration, shall be abolished.

SECTION 7. The several courts of probate shall appoint all necessary clerks, to be paid a salary fixed by law; shall have a seal, and be a court of record, but all auditing of accounts, filed in said courts, shall be performed by the judges and clerks thereof, without expense to parties, except where all parties in interest on a pending proceeding shall nominate an auditor whom the court may in its discretion appoint, and in such case the auditor's fees shall be paid by the parties.

All proceedings of said courts of probate shall be removable into the Supreme Court for review by appeal or certiorari, as the Supreme Court may prescribe.

The minority report was laid on the table, and ordered to be printed.

EXPLANATION—SUBMISSION OF AMENDMENTS.

Mr. BUCKALEW. I desire to make an explanation, by leave of the Convention, on a matter which I deem of importance.

By unanimous consent leave was granted.

Mr. BUCKALEW. I desire to make an explanation in regard to a bill relating to this Convention, which recently passed both Houses of the Legislature, but which did not become a law, because it was not transmitted to the Governor.

The bill provides that the Convention should make provision for ascertaining the result of any vote or votes upon amendments proposed by it, and for proclaiming the acceptance or rejection of such amendments by the people, by proclamation of the Governor of the State.

This bill was introduced in the Senate by General White, a member of this Convention, and was passed unanimously. It was also passed in the House of Representatives by over a two-thirds vote, against opposition. It was subsequently by a trick—an intentional trick—withheld from the Comparing Committee, a motion for a re-consideration being noted by the Clerk, the members of the Legislature being generally in ignorance of it, and therefore adjourning without a final disposition of that motion.

In the Convention act it was provided that the returns of the votes of the people upon amendments submitted by this Convention should be made as in the case of the election of the Governor, so that if that regulation be followed the returns of an election, whether held this summer specially, or held at the ordinary time in the fall, would be sent, under cover, to the Secretary of the Commonwealth, directed to the Speaker of the Senate, and would remain there, under seal, until some time after the Legislature should organize, when they would be transmitted to the Speaker of the Senate, and by him, after some time, be carried into a joint convention of the two Houses, to be there opened and announced, after which the Governor would make proclamation of the result.

Now, sir, this bill, passed by so decided an expression of opinion in both Houses of the Legislature, simply provided that this Convention should, by ordinance or

otherwise, provide that the returns of the election, when made, should be ascertained in some proper manner, and that the Governor should announce the result by proclamation. Probably the Convention would have chosen, under it, to provide that the Governor, the Secretary of the Commonwealth and the Attorney or Auditor General should open the returns, and that the Governor should announce them. This proposed act, in the opinion of many gentlemen in the Convention, I suppose, would be considered but declaratory of what the Convention might at all events do, under the idea that the Legislature cannot circumscribe or limit the exercise of its powers by this body; but, unquestionably, if provision be made by us for a prompt acsertainment of the result of the election and official proclamation by the Governor, we shall do it somewhat in disregard of the Convention statute and irrespective altogether of its provisions. It was therefore, but reasonable and expedient that the Legislature should, by such a statute as that proposed, relieve us from the difficulty of debate upon this point and render everything properly clear.

Sir, I am told that it has been stated in some newspapers of the Commonwealth, that this bill was intended to authorize this Convention to put its amendments in force without a vote of the people. All I have to say is that those statements are entirely false—are without the slighest foundation. This bill did not relate to that subject in any way, nor did it relate to any question connected with voting by the people upon our amendments. It was confined to the single question of the returns.

A single remark further, and I will conclude. The debate which took place in the House of Representatives indicated, and indicated clearly, certain elements of hostility to any work of this Convention; and this misrepresentation of the character and objects of the bill of which I have spoken is but a part of that general system of hostility, and denunciation, and abuse with which the work of the Convention will be met; and the sooner gentlemen here understand that they will have a vigorous contest with powerful interests in this State upon the acceptance of any amendments whatever, the better, and the more likely we shall be to do our work so that it will be accepted by the people.

Mr. DARLINGTON. Will the gentleman from Columbia allow me to ask him a single question?

The PRESIDENT. Debate is not in order. There is no question before the Convention. Does the Convention grant the gentleman from Chester leave to ask a question? ["Yes."]

Leave was granted.

Mr. DARLINGTON. I beg leave to make an inquiry of the gentleman from Columbia. I ask if he does not consider that it is true, in the first place, that this Convention may decide for itself whether it will submit its amendments to the people or not. I do not mean to say that it is not expedient for it to submit them, but I wish to know whether, in the gentleman's opinion, the Convention has not entire control over this subject, and may direct the mode. In the next place, I ask whether it would not be expedient that that mode should be devised in a reasonable time, and pointed out by the Convention?

Mr. BUCKALEW. I must ask leave to answer the gentleman from Chester.

Leave was granted.

Mr. BUCKALEW. I beg leave to say that I understand most members of the Convention propose to follow the act of Assembly in that particular, and submit our amendments. Therefore, debate upon our power to disregard the act is quite superfluous and unnecessary.

REPORT ON AGRICULTURE.

Mr. SIMPSON. I move that the House resolve itself into committee of the whole on the report of the Committee on Agriculture, the special order.

The motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Cuyler in the chair.

The CHAIRMAN. The committee of the whole has before it the report of the Committee on Agriculture, being report No. 11 on the files.

Mr. J. M. WETHERILL. Some members of the Committee on Agriculture state that they did not know what the motion was when the question was put. The chairman of the Committee on Agriculture is not present, and it is very much against their will, so far as I understand, that we proceed further with the report of that committee to-day. I therefore move that the committee rise before proceeding further.

The CHAIRMAN. It is moved that the committee rise and ask leave to sit again,

in consequence of the absence of the chairman of the Committee on Agriculture.

The motion was agreed to, there being, on a division, ayes forty-seven, noes twenty-three.

The committee accordingly rose, and the President having resumed the chair, the chairman of the committee of the whole reported that the committee had had under consideration the report of the Committee on Agriculture and instructed him to report progress and ask leave to sit again.

On the question, shall the committee of the whole have leave to sit again? It was determined in the affirmative.

On the question, when shall the committee of the whole have leave to sit again, Tuesday, April 23, was named and agreed upon.

FORMATION OF NEW COUNTIES.

Mr. SIMPTON. I move that the House resolve itself into committee of the whole on the article reported by the Committee on Counties, Townships and Boroughs, being report No. 14.

The motion was agreed to, there being, on a division, ayes forty-two, noes twenty-two.

The Convention accordingly resolved itself into committee of the whole, Mr. Lilly in the chair.

The CHAIRMAN. The committee of the whole have had referred to it report No. 14, on counties and townships. The first section has been in committee before and has been read.

Mr. LAWRENCE. The Chair is mistaken; the article has not been reported.

The CHAIRMAN. The first section will again be reported.

The CLERK read as follows:

SECTION 1. The Legislature shall have power to erect new counties. No new county shall have an area of less than three hundred square miles or a population of less than eighteen thousand, and no county shall be reduced to a less area than four hundred square miles. No new county shall be erected until the same shall be approved by three-fifths of the vote cast by the electors embraced within each of the sections of the counties taken to form the new county.

Mr. NILES. It seems to me that is a mistake. The question is, I think, on the amendment I had the honor to offer.

The CHAIRMAN. Will the gentleman please indicate his amendment?

Mr. NILES. It is at the Clerk's desk, I suppose.

The CHAIRMAN. The amendment will be read.

The CLERK read as follows:

"No new county shall be formed or established by the General Assembly which shall reduce the county or counties, or either of them from which it shall be taken, to less contents than four hundred square miles, nor shall any county be formed of less contents, nor shall any county be formed or established containing a less population than eighteen thousand inhabitants, nor shall any line thereof pass within less than ten miles of the county seat of the county or counties proposed to be divided.

"SECTION —. No county shall be divided or have any part stricken therefrom, without submitting the question to a vote of the people of the county, nor unless a majority of the legal voters of the county voting on the question shall vote for the same.

"SECTION —. There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition for such division, and no territory shall be added to any county without the consent of the majority of the voters of the county to which it is proposed to be added. But the portion so stricken off and added to another county, or formed in whole or in part into a new county, shall be holden for and obliged to pay its proportion of the indebtedness of the county from which it has been taken."

The CHAIRMAN. The question will be upon the whole amendment as read.

Mr. BUCKALEW. I ask for a division of the question.

The CHAIRMAN. The question then is on the first section of the amendment to the first section of the report.

Mr. DARLINGTON. I understand the question now to be on the report of the committee, with the amendment offered by the gentleman from Tioga (Mr. Niles.) I move to amend the amendment, by striking out the whole of it, and inserting the following in lieu thereof:

"No new county shall be established, containing less than four hundred square miles and twenty thousand population, nor without the assent of three-fifths of the electors voting thereon; nor shall any portion of an existing county be separated therefrom, either to form a new county or otherwise, without like consent of the electors of such portion, No

county shall be reduced to less than four hundred square miles."

The CHAIRMAN. The question is on the amendment to the amendment.

Mr. LAWRENCE. I remarked, Mr. Chairman, on a former occasion, that I had no desire to waste the time of the Convention in attempting to sustain the report of the committee, for, personally, I had but little feeling about it. But if gentlemen will examine the report, (and I presume most members have given it just attention already,) they will find, I think, that it makes it entirely possible, at some future day, in parts of this Commonwealth, to erect a new county or counties. The majority of your committee believe, and I think a majority of this Convention and of the people of this State believe, that under the present Constitution, it is utterly impossible to form a new county, unless it is on the principle of territory, which your committee believed was not the proper principle. You can find a territory where there would be six hundred square miles, probably, at least four hundred, in many parts of the State, and yet you would not find a population of more than four or six, or, possibly, at the extreme limit, ten thousand. But you can find, in many portions of the State, a population probably of from fifteen to eighteen or twenty thousand, where you could not get more, probably, than three hundred square miles to erect into a new county.

If it is the determination of this Convention to prevent the formation of new counties in all time to come, they should adopt the amendment of my friend from Chester, (Mr. Darlington,) or the one proposed by my friend from Tioga, (Mr. Niles,) because either would prevent the formation of new counties in the very parts of the State where the population is most dense, and where new counties are most needed, if they are needed at all. Now, sir, I am not an advocate of any extreme position on this question. I do not think it proper to obliterate and cut up the old counties of the State, except where it becomes necessary. And on the other extreme, I do not think it improper to make new counties if the population is dense enough to require it, or if their interests demand it. So that, as a member of the Committee on Counties, Townships and Boroughs, I am disposed to steer between the two points of difficulty. Not to make the counties too small in territory, but to make it possible to form a new county in the future where it is demanded.

In the general argument before this Convention adjourned on the twenty-eighth of last month, the subject of new counties was somewhat discussed in the abstract. There are gentlemen here who took occasion to speak, as if they were in the Legislature, in favor of one or more new counties in their own particular districts; that is to say, the importance and the necessity of a new county, for instance, by dividing Luzerne, a gentleman from the western part of the State, not now in his seat, (Mr. Hazzard,) took occasion to make an argument in favor of a new county in his portion of the State. Both of those gentlemen were arguing an abstract question which would be properly discussed before the Legislature, but not before this Convention. Then my good friend on the left, the delegate at large living in the city of Philadelphia, (Mr. Woodward,) took occasion to make an argument against new counties, a very logical and clear statement as he made it.

As Chairman of the Committee on Counties, Townships and Boroughs, I believe this position and these arguments were all out of place. We do not propose in this report to form new counties. We do not propose to defeat the formation of any new county in the future. We only propose to put in the Constitution an article in such a shape, that at some future day, if it becomes necessaay by reason of the density of the population, by reason of the distance of the people from the county seat, or otherwise, that the Legisature, in its wisdom, may form a new county. I said before, and I repeat now, because there are some gentlemen here now who were not present then, that the limitation in the present Constitution grew out of the establishment of the county of Montour, in this State. I was in the Senate at that time with my friend on my left, (Mr. Buckalew,) and I know very well the feeling that he had on that subject. He drew up an amendment, which is now found in your Constitution, requiring four hundred square miles, limiting the population to be taken from any county, and requiring a popular vote to form the proposed new county. Now, I say again, that under that limitation you cannot form a new county anywhere in the State, unless you do it *on the principle of territory*.

Some gentleman said the other day that there are no counties in the State, but two or three, with less area than three hundred square miles. Let me say to you that there are a number of counties in the State having a less area than this Committee on Counties, Townships and Boroughs propose that new counties may have. I have a list, carefully prepared, and there are many that have a less area than that proposed by the gentleman from Chester, (Mr. Darlington,) namely, four hundred square miles.

The county of Mifflin has three hundred and seventy square miles.

The county of Lehigh has three hundred and sixty-four.

The county of Union has only two hundred and fifty-eight.

The county of Juniata has three hundred and fifty-one.

The county of Lawrence, one of the most flourishing little counties in the State, taken a few years ago from the counties of Beaver and Mercer, has three hundred and fifty-eight square miles. The county of Delaware—one hundred and seventy-seven square miles; Montour one hundred and forty-eight; Snyder, two hundred and ninety-three. I might refer to this county of Lawrence as an argument in favor of new counties, if it were necessary, because I recollect very well that, in 1849, in the Senate of Pennsylvania, and in the House of Representatives before that, in 1847, there was a most bitter contest about the formation of this very county. One of the members from Mercer and one of the members from Beaver desired it, but the other members opposed it, and after a severe struggle in the House and in the Senate, the bill passed. Now Lawrence county is one of the richest counties in proportion to its territory in the State; has a number of iron establishments within its borders; is increasing in population, and there is not a man probably in the district which was taken from Mercer and Beaver who would hesitate for a moment to say that it was right in the Legislature to form that county.

So I recollect very well when the county of Blair was formed, for I was in the Legislature then, and the youngest member of the House of Representatives, what a severe struggle there was over the passage of that act. The member from Huntingdon county opposed it, and the members from the other county favored it. Blair county was made in opposition to the wishes of Huntingdon county, and yet, to-day, I believe that nobody will say that it was wrong, because Blair is a populous county, and except in the extreme mountainous region filling up rapidly. There are other portions of the State now in the same condition that the people were at that time in Altoona, and along the borders of that county. I can point you to a spot in this State where there are several thousand people living, who are required to go twenty to twenty-five miles over rough roads to court, five or six times every year, if they are called there at all, and they frequently have business there. So I believe we ought to be governed by population more than by territory in the formation of new counties.

We have declared in this article, reported by this Committee on Counties, Townships and Boroughs, that the population required shall be eighteen thousand. Some of the committee thought it should be twenty thousand; others thought it should be twelve thousand or fifteen thousand; but eighteen thousand is the limit in the report. I hope that this report will be sustained. My friend from Chester recollects very well that when the county of Delaware was taken off Chester as a new county it had only one hundred and seventy-seven square miles, being less than two-thirds of what we now propose to require of every county! Well, now, does he suppose to-day that the people of the county of Delaware would be willing to go back and be annexed to the county of Chester? I presume not; and the same rule would apply to one-half of the counties of the State that have been made in the last thirty-five or forty years.

I would not now, Mr. Chairman, desire to cut up the old counties of Chester, and Bucks, and Montgomery, and Lancaster, and Berks, unless it was absolutely necessary to accommodate the people. But I do not think that we ought to suffer here from the excitement that has passed over the State in the last few weeks in reference to the proposed new county of Minnequa, sought to be established at the instance of one or two men, as I understand, who have property there or, as it was said by one of my friends, have "corner lots" there or personal interests to be served by it.

I do not think that that county ought to be formed, because, as I understand it, there is no population there. If these gentlemen had come before the Legislature

and said, "there is a population there of fourteen thousand, fifteen thousand, eighteen thousand or twenty thousand people," the Legislature would not have hesitated to give them a new county, because there was territory enough probably; but that bill was forced through the Legislature, as I understand, at least it is so charged, by improper means and improper influnces. I know nothing about the truth of that charge; but I say that this excitement, which has affected my friend from Tioga, (Mr. Niles,) and which we have seen in the Legislature of the State, ought not to affect us here. It is not the question to be considered. The only question is, shall we put an amendment in the Constitution, such as the one I have described, permitting the people, in some future period, to form new counties where they become absolutely necessary, and only when so necessary.

I want this committee of the whole to understand that there are not more than three or four locations that I know of in the State where you can find a present population of eighteen thousand people who ought to be formed into a new county. But while that is so, if you do find some territory along a river, (generally rivers are the lines between counties, especially in the west,) where there are eighteen thousand men called to travel twenty and twenty-five miles to court, having to attend court from time to time, and having three hundred square miles of area of good rich country, filling up rapidly, I would say, give them an opportunity at least to have a new county at some future period.

I say that the amendment of my friend from Chester will deprive, in those very cases, these very persons to whom I refer of the possibility of getting a new county, because they would not have the requisite four hundred square miles of territory. Then another reason why the plan submitted by him would deprive them of that opportunity is, that it would be impossible to get a vote of the people consenting to the erection of another county in the manner he proposes. Do you suppose that if there is a new county proposed to be formed from parts of Lancaster and Berks, and it is left to the whole population of these counties, they would ever agree to it? Not once in a generation would they agree to form a new county where the whole people of the counties from which it is proposed to form the new county would have to give a vote of three-fifths of all the votes in its favor. We propose, in this amendment reported by the Committee on Counties, Townships and Boroughs, to require a three-fifths vote in the parts to be taken from the old counties, separately. For instance, if you make a new county, taking parts of three different counties, we require a three-fifths vote in every section which it is proposed to take away, not a three-fifths vote of all the counties from which it is proposed to make the new county.

These, in brief, are the positions occupied by the Committee on Counties, Townships and Boroughs. I know how my friend from Chester feels on this question, and I appreciate his feelings. He loves old Chester; he has been reared in old Chester. We are all proud of old Chester county. Why, sir, it is almost a little Commonwealth within itself, as one of my friends from Luzerne said the other day of that county. We do not want to take away any of the territory of old Chester; for we are not making new counties here; we are only providing that at some future period, when my friend and I shall have been buried "beneath the sods of the valley," and possibly forgotten, when the population of the United States, instead of being forty millions shall be one hundred and fifty millions, when our population in Pennsylvania of three million active, intelligent people shall be doubled, our children, or our children's children, may have it within their power to make a new county where the condition of things then existing shall have developed a necessity for it.

I have stated the reasons which actuated the committee, and I do not intend to waste time in discussing the report and shall say no more unless it be necessary to answer the questions of my friends on the other side.

Mr. DARLINGTON. Mr. Chairman: It is scarcely necessary, I suppose, to remind the committee that prior to 1857 there never was supposed to be any limitation upon the power of the Legislature to erect new counties whenever they should think it right to do so; and I suppose it was the abuse of that power, by erecting new counties for private ends, that led to the amendment of 1857, of which my friend from Columbia (Mr. Buckalew) was the author. For myself I should be entirely satisfied with the provision of the Constitution as it stands. The proposition in the amendment agreed to in 1857 is that no new county shall be

established, cutting off from other counties more than a certain proportion without the consent of the county from which it is taken, as well as of the new county; but the power of the Legislature to erect new counties has never been doubted.

Now, the proposition of the committee, in the first paragraph of the first section, is a grant of power to the Legislature to erect new counties. That is wholly unnecessary, and should be stricken out. All that the Constitution should do, or can properly do, is to restrain and limit the power of the Legislature in the erection of new counties. It is with that view that the amendment of the gentleman from Tioga, as well as the amendment to the amendment, presented by myself, is framed.

I propose, instead of three hundred square miles, which the committee recommend, to make it four hundred. I do this, because I think it is a mean between the two extremes. Four hundred square miles, if rectangular, will be found to be just twenty miles a side, and in a county of that size, no man would live more than thirteen or fourteen or fifteen miles from the county-seat, if it were located about the center. That would be, I submit, a sufficiently small extent of territory to form a new county. Nor should it be formed of less than, I say, twenty thousand population, (which is less than you have in the city of Lancaster, less than you have in the city of Reading,) for the whole county. It strikes me, if we set limits to it at all, they should not be less than twenty thousand population and twenty miles square; that is, four hundred square miles.

What else does this amendment propose? Not that the vote of the old county should be adhered to, for the advocates for new counties urge that that would deny them the privilege altogether; but what I propose, as a medium, is to allow the question to be decided by three-fifths of the voters voting thereon, within the bounds of the new county, and this is substantially the provision of the committee. In other words, the proposition that I have submitted is but a modification of the proposition of the committee: four hundred square miles instead of three hundred; twenty thousand population instead of eighteen thousand, each of the propositions retaining the vote of three-fifths of those voting thereon.

Then, again, as to a county which may be divided by cutting off a part of it to be added to another, which may be done by the Legislature, I provide that they shall not take off a portion of one county and add it to another county, for any purpose, without the consent of three-fifths of the voters so proposed to be changed. This applies to the case of a change of county lines. If you wish to cut off a portion of Berks county, and attach it to Chester, (which I should be very much pleased to see if Berks were of the right politics,) I would not like to have it done without the vote of three-fifths of the voters voting thereon, in the district proposed to be transferred. So much of Berks county as wanted to annex themselves to Chester should do it by a vote of three-fifths of their people; and so, *vice versa*, if any part of our county should wish to attach themselves to Berks or any other county, I would require that three-fifths of the part that wished to go away, to vote for it before they should control the people who would thereby be carried out to Berks.

Mr. H. W. SMITH. We do not want to take you. [Laughter.]

Mr. DARLINGTON. I do not think Berks wants to be attached to Chester, and I am sure Chester does not want to be attached to Berks. We are both attached to our homes, and prefer to remain as we are.

It is for this committee to decide which of these various propositions they prefer. For my part, if the committee decide to vote down my proposition, as well as that of the gentleman from Tioga, I hope some one will move to reinstate the provision of the gentleman from Columbia, in the present Constitution, and I will vote for that.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Chester.

Mr. DARLINGTON. I ask that it be read.

The CHAIRMAN. The amendment will be read.

The CLERK read as follows:

"No new county shall be established containing less than four hundred square miles, and less than twenty thousand population, nor without the assent of three-fifths of the electors voting thereon; nor shall any portion of an existing county be separated therefrom, either to form a new county or otherwise, without like consent of the electors in such portion. No county shall be reduced to less than four hundred square miles."

Mr. NILES. Mr. Chairman: I am very sorry that this question should be pressed to a vote to-day, because, as every delegate knows, this is one of the questions that the country delegates have very much interest in, and very many of them are not here to-day; but if it must come to a vote, I desire to detain the Convention for a moment to add one or two ideas to those which I endeavored to present the other day.

In the remarks of the chairman of the Committee on Counties, Townships and Boroughs he has given us the true construction of this report; he has presented it fairly to us; and I hope that the vote of this Convention will be given squarely upon the proposition presented by the difference between his report and my amendment, so that this Convention will plainly say to the people of Pennsylvania, by their votes, whether on this question we propose that every man living in a county shall have a voice and a vote in reference to the destruction of the county under which he may have been born and lived.

The report of the committee is a very specious one; it is drawn very finely; I have no sort of fault to find with that; and there is no delegate on this floor with whom I should be more glad to agree on this question than my friend from Washington (Mr. Lawrence.) But, sir, what is this question? The article reported does not propose to submit it to the vote of a single county that is proposed to be dismembered. What have we been doing here since January last? We have said that the powers of the Legislature upon all the great questions should be crippled; that we would take from the Legislature many of the great powers which they have hitherto held, and which they have used for bad purposes, and give those powers to the people. We said that the other day when in committee of the whole; on a very large vote, by a very large majority, we declared that the Legislature should pass no local or special bill creating or authorizing the erection of new counties.

Now we propose to go back of that to-day, by the report of this committee, and say that we will not submit this question to the people, that we will not regulate it by general law, but that when eighteen thousand of a population, located upon any three hundred square miles of the Commonwealth, see fit of their own accord to ask the creation of a new county, we will allow it to them, and will not submit it to the vote of a single one of the counties that it may be proposed to dismember.

The report of the committee and the substitute offered by myself, raise the question squarely that I desire to have met, and I am sorry that the vote is to be pressed to-day. But I desire the issue to be raised as to whether, upon this vital question, in which every man and woman and child in the State have an interest, we will say to the people, "you shall vote upon it, you shall decide it in accordance with your own convictions of right and duty," or whether the Legislature shall carve new counties out with the aid of the interested parties, and those only.

Mr. Chairman, the report of the committee restricts the formation of counties to three hundred square miles. It does not prevent them being larger than that. As I understand, they may take six hundred square miles; they may take five hundred or four hundred, but they shall not have less than three hundred. Now, suppose you go to Chester county or any of the counties of the State that have seven hundred, or eight hundred, or a thousand square miles, and the Legislature finds eighteen thousand people upon five hundred square miles, why sir, half may go off and create a new county, or a third may without asking a single one living outside of the proposed new line in reference to it. Therein is where I say this report is at fault. It only submits the question to those who have a direct and personal interest in the result. The case is like that presented by our southern friends in 1860 and 1861, when they desired to go, when they voted upon that question and said "let us go in peace," but we said that they should not go, that the people of the whole union had an interest in the result of the question.

Mr. Chairman, it has been said by the chairman of this committee to-day that if either of the amendments pending be adopted, the formation of counties for all future time is a question that will never occur. I take it that that is not a fair statement of the case.

Mr. LAWRENCE. The gentleman will not misrepresent me. I know he does not intend to do it.

Mr. NILES. Certainly not.

Mr. LAWRENCE. I said, except on the question of territory, new counties would never be made if either amendment should prevail.

Mr. NILES. I take it that it is not fair to say, that because we propose to submit

this question to the people, the people will never in the future agree on new counties. We leave other questions to the people, and is it any worse to leave this question to the people, and has the distinguished delegate any more right to say that the people will not decide this question fairly, than any other? I undertake to say that when the people of the counties interested in their dismemberment come to see that their commercial wants have outgrown present organization, then they will vote to give the needed relief, as in any other case; and for that reason I hope the report of the committee will not prevail.

This is all I desire to say in reference to it. The question is raised squarely between my proposition and the report of the committee, whether we will abandon the old land mark of 1857, which has prevented the creation of small and insignficant counties all over the Commonwealth. Now the question is, whether we will abandon that, whether we will give back to the Legislature power to create counties wheresoever they please, without a word from the people who are most directly and personally interested in the result.

I should be very sorry to have the vote taken to-day. But very few of the country delegates, who are interested in this question, are here; but if the delegates that are present desire a vote, I hope they may vote understandingly. The report of the committee leaves this question, vital to the people of Pennsylvania, only to those who are interested in it; no man is to vote unless he lives within the proposed new county; and my proposition raises squarely the point that no old county shall be destroyed without that question being submitted to the voters of every county in the new district.

Mr. MANTOR. Mr. Chairman: The question which is before the House was made the special order for to-morrow. I believe it was the understanding when we adjourned, two weeks ago, that it should be taken up to-morrow. While I am not in the habit of asking favors of men, I am always willing to grant them; but I desire to ask this afternoon a favor of this House, and that is that they will vote with me when I make a motion that the committee shall rise and ask leave to sit to-morrow on this question. I feel a good deal of interest in this matter, and to-morrow, not now, I shall seek to express my views in relation to it. I am aware that many of the country members are not here. My own colleagues, (Messrs. Minor and Church,) who have as much interest in this matter as I have, are not here, and I am desirous that they may be here when it is considered. Other members, whom I know are away, ought to be here when it is acted on. I move you now, sir, that the committee rise, report progress and ask leave to sit again.

Mr. KNIGHT. I second the motion, particularly as I think there is no quorum present.

The CHAIRMAN. It is moved and seconded that the committee do now rise, report progress and ask leave to sit again.

The motion was agreed to.

The PRESIDENT having resumed the char, the chairman of the committee of the whole (Mr. Lilly) reported that the committee had had under consideration the report, No. 14, of the Committee on Counties, Townships and Boroughs, and directed him to report progress and ask leave to sit again.

Leave was granted.

The PRESIDENT. At what time? ("To-morrow.") To-morrow is named, and no other day being named, the committee has leave to sit again to-morrow.

Mr. RUSSELL. I move that the House do now adjourn.

The motion was agreed to, and at two o'clock and four minutes P. M., the Convention adjourned until to-morrow at ten o'clock A. M.

SEVENTY-NINTH DAY.

WEDNESDAY, *April* 16, 1873.

The Convention met at ten o'clock A. M., Hon. Wm. M. Meredith, President, in the Chair.

Rev. J. W. CURRY offered up the following

PRAYER.

We come before Thee this morning, Oh Lord, with praise and thanksgiving. We rejoice that Thou hast revealed unto us the truth in Thy Word, that Jesus Christ suffered, the just for the unjust, that he might bring us to God; that He descended into the grave; the morning of the third day He rose again; He ascended unto the Father, where He ever liveth to make intercession for us.

We give glory and honor to Thy Holy Name this morning that we, as a nation, can look unto God, the fountain of all goodness, and claim Jesus Christ as our Redeemer and as our risen Lord. We are glad that Thou hast revealed in Thy Word the truth that He is the Savior of all men, that all who look unto Him may be saved.

Would it please Thee this morning to inspire our hearts with gratitude to Thee, and while we remain in the world may we strive day by day to consecrate ourselves afresh to the service of Him who has done so much for us?

We invoke Thy blesing this morning, Heavenly Father, upon this Convention. We entreat Thee to let Thy Holy Spirit be in our hearts. Direct us in all our deliberations, and when life with its cares hath passed by, bring us all to enjoy the benefit of the resurrection of Jesus Christ, Thy Son. Amen.

JOURNAL.

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

PETITIONS AND MEMORIALS.

The PRESIDENT presented a memorial requesting the insertion of a clause in the Constitution prohibiting the manufacture and sale of intoxicating drinks.

Mr. LAWRENCE presented thirteen petitions, numerously signed by citizens of Beaver county, on the same subject.

Mr. MANTOR presented a petition to the same effect from citizens of Crawford county.

The petitions were ordered to lie on the table.

PRINTING OF MINORITY REPORTS.

The PRESIDENT. The Chair requests the attention of the House to the resolutions on the subject of printing the minority reports from the Committee on Judiciary, and the Committee on Railroads and Canals, passed on the twenty-seventh of March, which the Clerk will read.

The CLERK read from the Journal of March 27th, as follows:

"Mr. JNO. N. PURVIANCE offered the following resolution, which was twice read, viz:

"*Resolved*, That one thousand copies of the report of the Judicary Committee be prented for the use of the members of the Convention.

"On the question,

"Will the Convention agree to the resolution?

"A motion was made by Mr. Dallas,

"To amend the same, by inserting after the word 'Committee,' the words, 'together with the minority reports from the same committee.'

"On the question,

"Will the Convention agree so to amend?

"A motion was made by Mr. Darlington,

"To amend the amendment, by inserting after the word 'printed,' the words, 'in Journal form.'

"Which was agreed to.

"The amendmedt as amended, and resolution as amended, were then agreed to.

"On leave given,

"Mr. Niles offered the following resolution, which was twice read, viz:

"*Resolved*, That five hundred copies of the report of the Committee on Railroads be printed in Journal form, for the use of the Convention.

"On the question,

"Will the Convention agree to the resolution?

"A motion was made by Mr. Joseph Baily.

"To amend the same, by inserting after the word 'railroads,' the words, 'together with the minorty reports from the same committee'

"Which was agreed to.

"The resolution as amended was then agreed to."

The PRESIDENT. Under this resolution the Chair directed the minority reports from the Committee on the Judiciary and the Committee on Railroads and Canals which were presented yesterday, to be printed. He simply states this now as a matter of information to the House, in order that if his course is not approved of, the House may take some further order upon it.

Mr. NEWLIN. Mr. President: I desire to ask information from the Chair. I understood the President to say that under the order made by the Convention upon the day of adjournment, in March, a number of copies of the minority reports had been ordered to be printed, according to the number specified in the resolution adopted on that day. That would be one thousand copies of the minority report of the Committee on the Judiciary, and five hundred of the Committee on Railroads—am I right?

The PRESIDENT. Yes, sir.

Mr. H. W. SMITH. Mr. President: I suppose that includes the minority reports made yesterday by the gentleman from Perry (Mr. Joseph Baily) and the gentleman from Philadelphia (Mr. Woodward.)

The PRESIDENT. The order was given to print them.

NEW COUNTIES.

The PRESIDENT. A committee of the whole had leave yesterday to sit again to-day. Is it desired that that committee shall sit to-day?

Mr. DARLINGTON. Mr. President: I move that the Convention resolve itself into the committee of the whole for the further consideration of the article reported by the Committee on Counties, Townships and Boroughs.

IN COMMITTEE OF THE WHOLE.

This motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Lilly in the chair.

The CHAIRMAN. The first section of the report of the Committee on Counties, Townships and Boroughs, having been read, a motion was made by the gentleman from Tioga (Mr. Niles) to amend, and a motion was made by the gentleman from Chester (Mr. Darlington) to amend the amendment. The question before the committee of the whole is the amendment to the amendment.

Mr. LAWRENCE. Let it be read.

Mr. DARLINGTON. Mr. Chairman: Before proceeding, I wish to say that, on examination, I find that there is little difference between the amendment of the gentleman from Tioga and that offered by myself; and in order to permit this question to come more squarely before the House, I propose to withdraw my amendment, and to move to amend his amendment by striking out the words "eighteen thousand," and inserting "twenty thousand."

The CHAIRMAN. The amendment submitted by the gentleman from Chester is withdrawn, and a motion is made by him to amend the amendment of the gentleman from Tioga, by striking out "eighteen thousand" and inserting "twenty thousand."

Mr. NILES, I accept that amendment, for the purpose of simplifying the question.

The CHAIRMAN. A division of the question has been called by the gentleman from Columbia, (Mr. Buckalew,) and the question is on the first section of the amendment, which will be read:

The CLERK read as follows:

"No new county shall be formed or established by the General Assembly which shall reduce the county or counties, or either of them, from which it shall be taken, to less contents than four hundred square miles. Nor shall any county be formed of less contents; nor shall any county be formed or established containing a less population than twenty thousand inhabitants; nor shall any line thereof pass within less than ten miles of any county-seat of the county or counties proposed to be divided.

Mr. NILES. I simply desire to state to the Convention that this proposition of mine may be found on page one hundred and thirty-four of the Journal.

Mr. MANTOR. Mr. Chairman: This section as reported from the Committee on Counties, Townships and Boroughs may not interest all the members of this Convention in the same way; there are many localities in this State, where there never has been any attempt to dismember a county, that is, to take any part of its ter-

ritory to aid in the formation of a new county. But, sir, we should seek first of all things, in discussing a question of this character, to *divest ourselves of all that selfish interest which we might under some other circumstances be justifiable* in fostering, and maintaining the interests of our localities. But we are trying to correct some of the abuses in our own State government and laws, and therefore I will try, so far as I am concerned, to look at this matter in a just and equitable light.

I find some things in the report of this committee of which I approve, and some things which I very much disapprove. The first thing which I disapprove in the report is this; it reads: "No new county shall have an area of less than three hundred square miles." If the report had been four hundred square miles, so far as the area of territory were concerned, I would feel quite well satisfied. In forming counties, in territories and new States, it is always an object to form large counties. This is done because a well settled large domain is preferable to a small domain. The expenses of a large county are never as great as those of a small county in proportion. The expenses of the erection of court houses, jails and poor houses are equally large, whether the territory be great or small; and this being the fact, any one of us would prefer to reside and be a tax-payer in a large county, for we should have more taxable property and more tax-payers to bear the burthen of a county debt. This is the reason that I would be in favor of providing that all new counties should have an area of not less than four hundred square miles.

Another objection I find in the report is this, and I consider it a very serious objection, and one that does not deal out exact justice to all the tax-payers and parties concerned:

"No new county shall be erected until the same shall be approved by three-fifths of the votes cast by the electors embraced within each of the sections of the counties taken to form the new county."

The objection to this part of the section in my way of thinking, is that it does not allow another party who holds an interest to have any voice or vote in the matter; merely says that only those who live on the domain may determine for themselves, that is, three-fifths may secede and set up for themselves when they can control three hundred square miles. Contrast this speculative idea with that section offered by the gentleman from Tioga (Mr. Niles) and tell me which you think gives out exact justice to all concerned. That proposition reads:

"No county shall be divided or have any part stricken therefrom without submitting the question to a vote of the people of the county."

Not the people of a section of the county disfranchising all who do not reside on the domain or territory that is to cut off and form some new county, but that all the qualified voters shall have a voice in this matter, and say if they will or will not yield to the dismemberment of the county in which they reside.

One other proposition in this report must strike all who study it as rather peculiar, and more so when we take two points offered in this report and add them together, namely: First, that no new county can be formed without having a population of eighteen thousand, and second, that proposition requiring a three-fifths vote to come from that part of the county to be set off to form a new county.

This requiring eighteen thousand population might be just under some circumstances, but I fail to understand why this exact number of eighteen or twenty thousand should be fixed. I suppose that if a new county is to be formed it is to accommodate some class of business men or business generally, and I believe that, with the facilities we have in the way of speedy transportation by rail, we are not traveling anything like the distance our fathers had to travel to reach the county seat. This, however, is no reason why there may not be an occasional necessity for erecting new counties.

I notice that section second would demand that in case any portion of the old county was taken, so much of it would have to continue to pay tribute until all old indebtedness of the old county should be wiped out. I suppose this much of the report is put in to give the old county some guarantee that she is not to be much of a loser, financially; but what of the new county and her prospects if all the tax, so far as this is concerned, is to go into the treasury of the old county. That is the amount of money that may be raised to pay interest on its county debt. There may possibly be no serious objections to this, but I think it a point worthy of consideration. Now, sir, I would not wish to inconvenience any class of persons. I would if I could make "life's day" a general holiday. I would have all

men ride instead of walking, but society is not so organized; neither can it be. The formation of new counties should be based on one proposition only, and that should be in order to *accommodate a large business interest* that is brought out by a large and increasing population. No new county should be formed in this State unless it was to meet just such a case as this.

I could name a section in this State, near where I reside, where it would be just and proper to have a new county, where the people have to travel many miles by rail to reach their county seats; and yet I know that to divide such counties without letting the voters of the county have a voice in the matter, would be an injustice. I have no selfish ends in the passage of this amendment, I wish only to deal fairly with all parties concerned.

We cannot afford, in revising this Constitution, to let our personal convenience and interests have much weight. It will not do, there are so many interests at stake, and those interests are diversified.

I am of the opinion that if this article, as reported by the committee, should pass and become a part of the organic law, there would be no end to attempts made to form new counties. There is always a kind of morbid idea with large towns that they should be a *shire town*. Why is this so? Because the citizens of such town can have an opportunity to make something off the people; but another reason is apparent, and that is the interest of property holders, the selling of "corner lots"—the enlargement of a town, because it is to be a county seat.

We have quite enough counties in this Commonwealth; but if you pass this section, I venture the prediction that, within two years after its adoption, many, very many of the noble old counties in this State will find that some speculating genius will be on hand near the corners of some of those counties, and will be laying out a Minnequa junior, and proposing to sell "corner lots," at from five hundred to two thousand dollars each; and you and your constituency, who are so unfortunate as not to be a resident on the coveted soil, can lay back and feel the mortification of having your county thus pass away without any voice in the matter.

Every man who represents a people, takes pride in his authority to represent a large people or population; he will take pride in speaking of that people, and of the territory on which they live and are building up their farms, &c. Now, is there a man on this floor who is willing to have his county cut to pieces, and he have no voice in it? Then, if not, vote against this report of this committee, and then, to give exact and equal justice to all parties concerned, vote for the amendment of the gentleman from Tioga (——,) and wherever and whenever a new county is to be formed, and there is an apparent justice in the case, I have so much faith in these people as to believe that they, like myself, would concede to the wishes and interests of those who would desire a county seat, and would give them every advantage, even by giving it their approval, by giving it their votes.

In conclusion, I would say that I am in favor of the broadest charity to all business communities. I would not deprive any man or set of men, or any community, of its just business rights. I would not knowingly deprive any people in any section of this State, of what is due to them. I only desire that, in aiding in the revision of this Constitution, that all the people all over the State, may have a fair race on the course of life.

Mr. DODD. Mr. Chairman: It is our duty in forming a Constitution, to take effectual measures to prevent corrupt legislation. I know there are some here who say they are sick of the talk about legislative corruption. Let them take physic, then, for the talk will probably not stop on account of the weak condition of their stomachs. I shall not talk of legislative corruption further than is necessary in pursuance of my duty. We are legislating here for our rulers. The very existence of a Constitution presupposes that our representatives may abuse their trusts. It is our duty, in framing a Constitution, to provide against such a contingency as well as human wisdom can provide. If men were angels, laws would not be needed; but being men, no one, from the king on his throne, to the citizen in his cottage, can be free from their obligations. "Laws," says Junius, "are intended not to trust to what men will do, but to guard against what they may do." And so Constitutions are made, not in reliance upon the virtues of our rulers, but to protect the people against their vices.

Now, sir, we effectually closed one door against legislative corruption when we adopted that section of the report of the Committee on Legislation, which provides

that no new county shall be formed by special law. It was a wise and just provision. It imposed upon the Legislature the duty of framing a general law in relation to the formation of new counties, which should embrace all portions of the Commonwealth alike, instead of permitting their creation in such instance, by a special job, whenever the citizens of some ambitious town, or some wealthy speculators in town lots, could raise the necessary funds to secure legislative action for their particular benefit. It is unnecessary to speak to members of this Convention of the evils of special legislation. Our action heretofore shows we are all well acquainted with them, and have determined to destroy them root and branch. We have decided to prevent such legislation in many specific cases, and in all cases where a general law can be made applicable. There have been no dissenting voices on this subject.

But the committee whose report is before us, has acted in utter disregard of this guiding principle. We are asked to annul the provision already adopted upon this subjeet, to turn our backs upon the principle which heretofore we have never lost sight of, and say the Legislature may erect new counties by special laws. Why shall we do this? Is it because the matter is of so little importance that it makes no difference to the people? Why, sir, there are few matters before us in which the people take a deeper interest. The county is only second in importance to the State itself; a division of the county is only less important to the citizens than a division of the Commonwealth itself would be. Are we asked to permit this special legislation, because there is here no temptation and no opportunity for corruption and for injustice? Why, sir, there has heretofore been no one thing in which money and improper influence has been more freely used to secure legislative action than in the creation of new counties, the creation of private corporations alone excepted. Every town of importance has the ambition to become a county seat. Every land owner in or about such a town deems it for his interest to secure such a result. Almost every inhabitant within a certain radius favors the scheme from motives of personal convenience. Application is made to the Legislature, money is freely used, members are corrupted, and the people of the interested section are kept, year after year, in a state of suspense and turmoil, which operates injuriously upon the interests of the counties affected. There has not been a winter for years, in which some new county job has not been before the Legislature. I hope we will not stop special legislation in small matters, and permit it in great. If we allow it in erecting new counties and changing county seats, we permit it in two of the very worst cases, and may as well open the whole pandora-box at once.

I have another objection to the report of this committee. It provides that no county shall be reduced to less than four hundred square miles, but new counties may be created containing three hundred square miles. Will any one tell me why there should be this difference? Is there any reason why new counties should be smaller than old ones? The chairman of the committee says this was the result of a compromise. I should judge so, and, like most compromises, it is radically defective. Three hundred square miles is entirely too small an area for counties. I have been on a farm in Illinois embracing one hundred and forty-four square miles. Two such farms would comprise a county such as this committee would permit. Three hundred miles is too small an area, and so is four hundred. If we are to be governed in this matter by areas, I shall not vote for less than five hundred square miles. I am governed in this by the size of my own county, which contains a little more than five hundred square miles, and which I know is small enough, in fact too small, for many important purposes.

I shall not dwell upon the advantages of large counties. That subject has been elucidated here far better than I can do it. Our counties in Pennsylvania were originally so formed that a sub-division of them was necessary.

That sub-division has gone on until it has ceased to be a necessity. In looking over the map, I find but two or three counties, at most, which under any circumstances should be divided. The rest are small enough. The majority are too small, and do not contain sufficient population and wealth to erect proper county buildings for the courts, the safe keeping of records, the custody and well-being of prisoners, and the comfort of the poor. Contrast, for instance, the county buildings of Allegheny, Lycoming, or Lancaster, the court houses, jails, poor-houses, work-houses, &c., with those of the smaller and poorer counties.

In a large number of the counties of this State the court houses are a nuisance, there is no security whatever for the public records, the jails are a disgrace to civilization, and the poor, for want of proper accommodation, are sold by the overseers to the lowest bidder. As population and wealth increases in these counties this state of things will be remedied, provided it is not prevented by further sub-division. The large and more populous counties have the same advantages in this respect that a large city has over a small borough. Every one knows the advantage of a large city. The Legislature is annually called upon to make them larger by annexing surrounding territory and adjacent towns. Such action is judicious. But suppose the Legislature would conclude that Philadelphia was already too large, and undertake to make several smaller cities out of it. The learned and eloquent gentlemen here from Philadelphia would overwhelm the Legislature with reasons against such action. And almost every reason they could bring forward would apply as well against the subdivision of counties.

Besides, if any one thing has been clearly demonstrated here, it is that every county should, where possible, be a separate legislative and judicial district. If we abolish associate judges, as proposed, it becomes almost a necessity that every county should have a president judge. And yet, to provide one judge for every county of eighteen thousand inhabitants and three hundred square miles would be to belittle that office, and make it about equal in importance to that of justice of the peace.

Now, while I hold that it is impolitic to create a new county by special law, or embracing less than five hundred square miles, and containing less than twenty-five thousand inhabitants, I hold, further, that justice, the best interests of the Commonwealth and the protection of the people of the several counties, call upon us to establish, in the Constitution, this principle—that no county shall lose any portion of its territory without the consent of a majority of its electors. It is a singular and anomalous principle, sought to be established by the report of this committee, that a portion of a county may secede, three-fifths of the voters of the seceding pertion consenting thereto. Why, sir, have the inhabitants of the territory from which the secession takes place no right to be heard in relation thereto? Have they no interests at stake, no territorial pride, no love for their county, that their mouths should be closed on so important a subject? If a county may be sub-divided in this manner, why shall not the same principle be applied to boroughs, cities, to the Commonwealth itself? Nay, what right had we to object to our erring sisters departing in peace? If this principle is correct, we had no right to be heard on the subject; it was their will alone which should have decided the matter. But we thought differently then, and if we were not heard on the subject through our ballots, we were heard through our bullets with some effect.

Philadelphia is a large city—I think, sometimes, entirely too large. Its magnitude, at times, oppresses me like a nightmare, and I often go beyond its miles of brick walls into the country, which never seems too large, in order to throw off the oppression which the mere magnitude of the city casts upon me. It seems to be too large, also, for proper self-government. At least it has more trouble in this respect than any county. Let us be consistent. If a portion of a county may separate when three-fifths of the electors of that portion desire it, let any portion of the cities have the same power. If Manayunk or Richmond think they can get along better as separate municipalities, let them go in peace, and let the mouths of all other portions of the city be stopped.

Pennsylvania is a great State. It is a long distance from Green, or Erie, or Pike county to Harrisburg. Perhaps some of the inhabitants of those distant counties may die without ever beholding the great capital of their State, and the magnificent State House in which their legislators annually assemble. But they have heard bad reports of that capital, and I have no doubt many of them would deem it much more convenient to erect smaller States, with capitals nearer to them. It would also increase the price of town lots in certain localities. Why should they not have that power? Pennsylvania would form many States as large as Delaware, and many more of us then would stand a chance to become United States Senators without being forced to move to South Carolina for that purpose.

But our minds revolt at the idea of such a division of our State. We are proud of its magnitude, proud of its wealth, proud of its resources, proud of its commerce, proud of its rank as almost the first State

in the Union, and look forward with pride to the but short time which must elapse until it ranks as the leader and head of the galaxy of States. I confess to a feeling of the most grateful pride as I read, the other day, what the census of 1870 discloses, that while the mining product of the Union for that year was valued at one hundred and fifty-two millions of dollars, Pennsylvania produced seventy-six millions, or one-half of the whole. And I confess to a further feeling of pride when I read that of this amount, my own county, Venango, produced fifteen millions, or one-tenth in value of the mining product of this vast Union, including the coal of Pennsylvania, the iron and copper of Lake Superior and the silver and gold of the Pacific slope.

I am proud of my State and proud of my county, and yet it has been spoken of here as a grievous fault that members of this Convention were attached to their counties and would oppose the formation of new counties. If it is a fault I admit I am to blame, for I am attached to the county in which I was born and still live. I have seen with regret almost one-third of its territory taken from it within a few years, and I would not willingly part with an inch of the small territory now left; I do not believe I am to blame for this. I believe that man is no patriot who does not love his own city or county. The county is the foundation of our political organization. Around it, as a nucleus, is formed the State and the union of States. And as we love and cherish the State and the Union, and would permit neither one or the other to be divided, unless an urgent necessity should demand the sacrifice, so also should we protect our county, and should demand the right to express our views at the ballot-box upon any proposed division of it.

But, says the chairman of the committee, if the people of the whole county may be heard on this question no new county can ever be formed. Is that true, indeed? Then it must be the majority of the people of each county, and, as a consequence, the majority of the people of the State are opposed to the formation of new counties, and the chairman, believing that fact, deliberately proposes a report which shall counteract and destroy the will of the majority of the people in a matter which is sacred and dear to them. How may this be answered to the people? What will they think of a refusal to allow them to be heard on the subject of a division of their several counties, for the reason that it is believed they are opposed to such division? I believe, with the chairman, that the majority of the people of each county are opposed to its division. I believe, further, that no necessity exists for such division, and I am here to defend and carry out the will of the people in this matter because it is just, and because it is their will, and because they have the right to be heard on this subject.

It was well said by the chairman of the Committee on Counties, Townships and Boroughs that it was not our business to inquire whether Minnequa or any other county scheme was right or wrong, but simply to declare the organic principles on which all counties should be formed. And it strikes me as a very plain principle which we should not hesitate to adopt, that the people of each county should decide whether any portion of its territory be taken to form new counties. This prevents legislative jobbing and outrageous schemes against public right for private purposes, and leaves the whole matter where it properly belongs, in the hands of a majority of the people, and does not prevent the creation of new counties unless the majority of the people are opposed to their creation, and in that case who will maintain here that they should be created?

Mr. MINOR. Mr. Chairman: I am under the necessity of differing somewhat from my colleague, and also from the gentleman who last addressed the committee, who is almost a colleage, being from the adjoining county. Now, sir, I may say at the outset that I believe the rule which should govern the question now before us, should be one which would be fair to-day and fair in all future time, fair by existing counties and also fair by those places where the accumulation of business and population demands new civil arrangements. I admit that counties should not, for frivolous reasons, be torn to pieces. At the same time I claim that population and business should not, for frivolous reasons, be compelled to suffer materially for a want of new arrangements that may be necessary, as this great State and its various parts shall progress.

The first consideration that I will call to the attention of the committee is, the way in which this subject stands in the other States of the Union, so that we may gather light from their experience as em-

bodied in their Constitutions. These Constitutions are divided into three classes, and it is not necessary for me to refer to them individually, and I will not do so. There are, out of the thirty-seven States we now have, but four besides our own that contain a limitation similar to that which we have had since 1857. It seems, then, that in the experience of the States of this country, only four besides our own, have ever seen fit to impose any limitation like that under which we now labor. Those four are, Illinois, which, I think, has inserted the provision only recently; Minnesota, Ohio and Wisconsin. Then, if we take the example of other States as any guide to ourselves, we find that the larger majority leave this question entirely to the Legislature, fixing limitations only as to the area and as to the population. But so far as requiring the vote of the county is concerned, or even the vote of any body besides the Legislature is concerned, it is not required in the majority of States to the extent now proposed. I repeat, then, that the Legislature has substantially entire control, without the restriction now claimed, excepting as to area and population, and a few others not affecting this question.

By the vote of the county, I mean the entire county, a part of which it may be proposed to take away. Then there are two States that have a different rule; Maryland and Tennessee, and these States submit the question to a vote of the part to be affected, introducing a principle similar to that which is proposed to be introduced here by the report of the Committee on Counties, Townships and Boroughs, those States believing that those who are to bear the burdens should pass upon the question whether the burdens shall be borne. Now I desire that this fact may not be lost sight of, that the voice of a large majority of this Union is that there is no occasion for the restriction of the limitation of the vote of the entire county, but only as to population and as to area. Favoring restriction as to these, I will go on.

I think then, sir, that this ought to have weight with us, and very great weight. Without dwelling longer on that, I dismiss it, not to be forgotten, but simply in order not to take up more time in its discussion, I pass to another consideration.

Now, sir, if there is any one thing that lies at the bottom of the government of our entire republican theory, more than any other, it is the idea of development; and in order to development, that there should be the opportunity for development, and that no unjust restrictions should be placed upon it. Hence, sir, when we organize our territories, as soon as they begin to fill up with population and business, they are sub-divided into smaller territories. When they increase in population still further, we put them into more territories or States, often making several States out of a single territory. When States are first formed, the counties are large, but as population still increases the policy is to sub-divide still further, so that without unjust restrictions you may give full and fair opportunity of development. That is the theory upon which all our States have acted, and this is the just principle we have recognized and acted upon it. This State originally had but three counties, and the sixty-six it now has are the outgrowth of this principle of progress and development, and shall we forever forbid its further application? Now, bearing that in mind, I pass to the special condition of our own State. Here I think the position, and the facts bear me out, that there is not in this entire Union a State to which this principle is more applicable than to our own. I repeat it. There is no other one State where, from the nature and condition of its resources, the opportunity for development, and convenient arrangements of a civil nature, are as necessary and important as here. We are a great mining State, and right here I would accept the statements given by the gentleman who preceded me, (Mr. Dodd, of Venango,) that we have something like one-tenth of the entire mineral productions of this country at the present day. To all his facts and all his figures I agree, and right there I find one of the most solid arguments why the report of the Committee on Counties, Townships and Boroughs, rather than the amendment, should prevail.

Now, let me allude to a single fact. Look into the report of the Geologist of the State, the last volume of which was published only in 1857, I think, and what does he say as to a single section of this State? Mapping out a large portion of this State in the northwestern part, he there makes the remark, in substance, that in that entire country there is no mineral wealth of any account, and therefore he may confine himself simply to a description of the general character of the rocks and surface. It seems to him it is nearly

worthless, so far as any mineral product is concerned. Yet, what is true to-day? Why, sir, this very year, and each year for the last three or four years, that spot which he pronounced barren of wealth, is adding to this State yearly, over twenty million dollars. That, then, is to be borne in mind, adding from twenty to twenty-five millions of dollars of the raw material, actual wealth, every year, and going on and increasing, and that only from a small section of the State.

Then again, sir, you look at our coal interests and our iron interests. They are but in their infancy, and will you, by an iron rule, declare that there shall be, in substance, no more counties, by allowing the whole county to vote upon it? Will you say that this progress shall be stopped? Why, sir, population and area both should be considered, and what we want is a fair rule as to both.

Take Philadelphia. Philadelphia county has, I believe, but one hundred and twenty-six square miles. Who knows how many other Philadelphias may yet grow up in this State? Who knows what Pittsburgs may yet grow up in this State, and if they grow up and need a separate county, shall we say they are to have four hundred square miles, and be subject to a vote of the balance of the county? Now, sir, we know that we may go into the desert counties, comparatively desert counties, and there is untold wealth yet to be developed. It requires men, it requires capital, and they are coming along. They are going to build up cities and counties. There are cities and townships to-day of ten thousand and twelve thousand inhabitants in this State, that a dozen years ago did not number hardly as many hundreds, and such cities are springing up every day. During the last decade our population has increased over half a million, and it is going to increase yet more in the future, and this increase will be in the line of new developments in this State, just as it has been in the past. So I say, sir, that it is absolutely unjust to the productive interests of this State, to tie down population, and tie down wealth, by not giving the facilities needed on the administration of justice and other general civil affairs.

I do not like to allude to my own neighborhood, sir, and I simply do it as an illustration. But there we are compelled to go between fifty and sixty miles, if we go by rail, to get to the county seat. Population is growing up and population changes, and I say let us have a fair rule, so that we will not be torn to pieces improperly, but whenever the business progresses, and the population increases, so that the present arrangements are a burden, let them be changed. Now, sir, it may suit us more in our own section of the county to have our judicial business transacted, our civil affairs so far as the county is concerned—and these grow more important year after year—to have our county limits changed, and to have a new county, and a new county seat at our own homes. It is a burden upon us. At this point I will take the opportunity of answering the objections that have been made in regard to that. It is said: Why will you take away from others, why will you take away from the balance of the county that which belongs to it? Why, sir, there is another objection to be answered. Will you permit a part of the county which is snugly ensconced in its home and its wealth to compel another to bear burdens which they will not lift even with one of their fingers? That is the question, and it seems to me that when we take a population of eighteen or twenty thousand, and when we take an area of three hundred or three hundred and fifty square miles, that there we get a reasonable rule. Perhaps three hundred and fifty square miles would not be out of the way, but I say that to go beyond that, and to call for a vote of the entire county, is entirely wrong. I want members to bear this in mind, that this is placing upon others a burden, and an unjust burden, to compel them to go down to the county seat at a long distance from their homes. My friend who preceded me (Mr. Dodd) may find it very convenient to be there, and for him it is a nice place. But we of our section have to travel quite a distance to get there, and it is a burden to us to have to do that to transact our law business. I wish to say that wherever in this State our increasing population shall demand it, there let us apply a rule that shall give that increasing population an opportunity for a new county.

But I desire to return for a moment to our important particular interests. Our interests are but slightly agricultural. I repeat, we are a mining State. You will look to the oil interests to which I have alluded; you will look to the iron interests, and you will look to the coal interests, and see how great they are and will be in the future. England is, to-day, look-

ing at this State as to coal. Thousands and thousands of her men are coming here. Her capitalists, workmen and others are filling up our mountains and our valleys, and are we going to stifle this progress? That is the question. Are you to stifle progress by saying to these men who are to build up cities in this State: "If you develop our mineral wealth, and bring in capital and workmen, demanding new business arrangements, and you ask for them, we will make an iron rule, of arbitrary rule, simply arbitrary, and place it in the hands of others to prevent your progress." This is a question of interest to this committee. It is better for us, wherever business progresses, wherever population increases, to give new facilities for the transaction of business. Then we will go on, because, if needed, they can have their business protected by the formation of new counties upon reasonable terms.

I do not desire to enlarge upon these points, but I call the attention of the Convention to them.

One or two more observations; a great deal has been said here about corner lots and speculations, and things of that kind. For myself, I lay these things entirely aside. Men residing at a county seat may not want to reduce the value of a corner lot. Men desiring a new county seat may want to increase the value of a corner lot, but I take it that that has nothing to do with the question before us. We are not asking for anything based upon a mere speculation, nothing of the kind. But we do say that wherever eighteen thousand or twenty thousand people are aggregated within a limit of three hundred or four hundred square miles, it is right and fair that they should have the opportunity of transacting their business without going to an unreasonable distance, and incurring unreasonable expenses. This is fair for every county. It is fair by the present business, and will be just by the future business of the State, and I hope the committee of the whole will not yield to such talk as this about corner lots, and Minnequa, and speculations, or anything of that kind.

Then another consideration. It is said that the whole county should vote. Now, sir, practically, that is a matter of prohibition, actual prohibition. I have endeavored to show why there should be no prohibition. The report of the committee says that three-fifths of the part of the county should vote for the erection of a new county. What part is to be affected? Who is to bear the burden of new buildings? The part to be affected, and if the people are willing to take upon themselves that burden when their own business requires it, shall another man object? Is he taking away from another that which he gave? If the farmers, in a given area, and the merchants, and the manufacturers, are willing to take upon themselves additional burdens on account of their increased business, and for the sake of better facilities, does that rob anybody else? It is simply a division that the growth of business requires, and hence I say, if you get your area of territory, and if you get your limit of population, and you provide, in addition, for a vote of the population of the entire county, you simply nullify whatever else you have given. There is the turning point in my mind in this whole thing. Now, the amendment to the report of the Committee on Counties, Townships and Boroughs says that the vote of all the county shall be necessary before any part of it shall be incorporated into a new county. What will be its effect? Why, new counties are generally cut out of parts of old counties, and hence it will be a question, not between the inhabitants of any one county alone, but of all the counties affected. You bring to bear the interests of a whole county against the smaller part of it; and this is a fact which I want to press upon the Convention.

It is not a just statement to say that a majority should rule in a case like this. The smaller part of one county is taken off, the smaller part of another county, and perhaps of another, to form a new one, and hence you place the interests of the smaller part of a county against the interests of the larger part, where the administration of justice and the civil affairs and business interests of the smaller parts may require that they, together, be cut loose from the old counties. The vote of the larger part of the county would be enough to defeat and debar the smaller from this right, and for that reason this rule should not be applied. The way gentlemen put it is not a fair statement of the case. It would simply apply to make the larger part control the smaller, and nullify any power you may create for the formation of new counties. They may be attached to the county, and it may be convenient to the larger part to have the lines remain unchanged, and it will only enable the majority to pre-

vent any part being taken off, no matter how important may be the necessity for which a division is proposed, embracing all the small parts put together; and hence I say that while it is not robbing a county which may lose a part of its territory, in one sense, it is simply giving benefits to others when they ought to have them.

I will not enlarge upon this; but I do feel that in the growth of the State it is of the utmost importance that we should invite business, that we should invite population, that we should invite capital; and in order to do that we should give the reasonable facilities for the transaction of judicial and civil business, that the report of the Committee on Counties, Townships and Boroughs will authorize, while the amendment of the gentleman from Tioga will not.

Mr. DARLINGTON. Mr. Chairman: I do not desire to detain the committee a single instant. I do not consider that this is a question entirely for the people of the new county. The people of the old county, which it is proposed to divide, are interested pecuniarily, for every inhabitant taken off reduces the number of the old, and casts the burden of government upon a fewer number. Whether they are interested to the same extent as those within the bounds of the new county, is another question; but they have a right to be consulted as well as those within the bounds of the new county.

Now, it may not be amiss to refer the members of the committee to the fact that we have already provided that no new county shall be erected except by general law. That is a wise provision, so that there shall be no special legislation on the subject; but this is equally wise, to provide that in its general legislation the Legislature shall keep within the limits we prescribe, that they shall not, even by general law, authorize counties to be formed with no population, or with very small population, or with very small territory. There must be a reasonable amount of territory, and a reasonable amount of population, to entitle the community within it to ask for a new county, and to compel the counties from which the territory is taken to submit to it. This is necessarily arbitrary. There is no reason why nineteen thousand nine hundred and ninety-nine should not be as well entitled to it as twenty thousand, but we should fix some limit, and any limit is necessarily arbitrary. Is it right, is it a proper limit? Ought there to be a new county organized without at least twenty thousand population? We know very well that, along the northern line of this State, there are some six or eight counties with a population ranging from between four and five thousand to between seven and eight thousand, never increasing beyond that yet—half a dozen counties in the great State of Pennsylvania with less population than the borough of West Chester. It takes four or five of these counties to make a population equal to the city of Reading, or the city of Lancaster. Is it wise to have these small localities turned into counties?

These are the considerations, and I do not mean to urge them further, which influence me to vote for the proposition of the gentleman from Tioga, fixing the limits below which the Legislature shall not go—four hundred square miles and twenty thousand population. Whenever these two things combine, then, under general law, they may be formed into a separate county, and not before.

The CHAIRMAN. The question is on the first section of the amendment offered by the gentleman from Tioga.

Mr. NILES. I desire that it may be read for information. Others have come in since it was read before.

The amendment was read.

The amendment was agreed to.

Mr. NILES. There were three sections in my proposition, but they were divided.

The CHAIRMAN. The next section of the gentleman's amendment will be read.

The CLERK read as follows:

"No county shall be divided or have any part stricken therefrom without submitting the question to a vote of the people of the county, nor unless a majority of the legal voters of the county voting on the question, shall vote for the same."

The CHAIRMAN. The question is on this branch of the amendment.

Mr. LAMBERTON. Mr. Chairman: It was doubtless my fault that I did not understand the application of the argument on the subject of special legislation made by the gentleman from Venango (Mr. Dodd) to the report of the committee. By an examination of the article reported by the committee it will be seen that the general grant of power is given to the Legislature to erect new counties, and this is not in antagonism with the article reported by the Committee on Legislation, which provides that the Legislature shall not pass any special law erecting new

counties. This, however, has already been discussed by the delegate from Chester. But now there comes up a very important question for the consideration of this committee; and it is well that we should understand somewhat the difficulties that surrounded the Committee on Counties, Townships and Boroughs in reaching the conclusions embodied in the article reported by them. That committee reflected, in the main, the sentiments of this Convention; and when they entered upon the discharge of their duties their attention was of course, at the outset, directed to the twelfth article of our Constitution, the amendment of 1857, which prescribes that:

"No county shall be divided by a line cutting off over one-tenth of its population, either to form a new county or otherwise, without the express assent of such county by the vote of the electors thereof; nor shall any county be established containing less than four hundred square miles."

The operation of that amendment to the Constitution was, in the judgment of the committee, or at least of a majority thereof, an effectual obstacle to the formation of any new county whatever.

So regarding our present organic law, and endeavoring to divest ourselves of local interest arising from our own residence in or near the county seat, we endeavored to form, and report for the consideration of this Convention, such an article as, whilst it would throw around the formation of new counties every safeguard, imposing duties where duties belong, requiring those who were directly interested to bear the burdens, yet, at the same time, should not continue what we regarded as a barrier existing in our present law against the formation of any new county whatever.

Now let me turn the attention of this committee to the operation of the amendment of 1857, as shown by the history of this Commonwealth. It is known to every gentleman present that in the organization of the province of Pennsylvania there were three counties in 1682—Bucks, Chester and Philadelphia. At the time of the Revolution these three had grown to eleven. When the Federal Constitution was formed there were eighteen counties in our State. It has been well said by the delegate from Philadelphia (Judge Woodward) that a county is formed in order to promote the conveniences and to provide for the necessities of the people, but especially that justice may be speedily and promptly administered; and this is the great principle underlying the formation of every county within this Commonwealth. Thus, as has been said with regard to *Magna Charta*, it brought the trial of issues home to the very doors of the freeholders. In the year 1800 there were ten counties added to the number of counties of the State, and now, if this committee will mark the steady gradual progress in the number of the counties to meet the necessities of an increasing population, and that justice might be surely administered, it will be seen that in no ten years of our history, from 1800 down to the present time, were there so few counties formed as since the adoption of the amendment of 1857. It will also be seen that while, since 1850, there has been an increase in the population of Pennsylvania of more than fifty per cent., there has been no commensurate or proportional increase in the number of the counties.

From 1800 up to and including 1810, there were nine counties added; to 1820, six counties; to 1830, one county; to 1840, four counties; to 1850, nine counties; to 1860, two counties; and from that day to the present, under the prohibitory operation of the twelfth article of our Constitution, there has not been one other county established; and there is no other reason, I respectfully submit, which can be given for this failure to meet the wants and the necessities of the largely increased population of our State, save and except only that which I have mentioned.

In 1850 the population of Pennsylvania was 2,311,786, with sixty-three counties organized. In 1860, our population had swollen to 2,906,215, with three counties added to the number; but two of them, before 1857, and one, the county of Cameron, organized under the act of 1860, and it not taking one-tenth of the population of either of the counties out of which it was erected. I may be mistaken in this, but such is my impression; for although made subject to the twelfth article of the Constitution, by the Act of Assembly creating that county, I think no vote was required by the electors of Clinton, Elk, M'Kean and Potter, out of which Cameron was carved.

Then you have had, during the sixteen years from 1857 until now, no new county formed, although, as I have shown you, our population has grown from 2,311,000, in 1850, to 3,500,000, in 1870, an increase of 1,200,000.

Again, it will be seen by the article, as reported, that the two grand and fundamental elements in the organization of every county are recognized by the committee. The first, that of population; the second, that of territory. This committee this morning has required that each new county shall embrace an area of at least four hundred square miles, and also a population of twenty thousand. Looking to a required population of eighteen thousand I have examined the tables giving the populations of the several counties in 1850 and 1870. Those counties which, in 1870, showed a population of less than eighteen thousand, were the following: Cameron, Elk, Forest, Fulton, Juniata, M'Kean, Montour, Pike, Potter, Snyder, Sullivan, Union and Wyoming—thirteen. In 1850 the following counties had not so large a population: Cambria, Carbon, Clearfield, Clinton, Columbia, Jefferson, Mifflin and Warren; and yet we hear no complaint from any delegate upon this floor, nor have I heard it elsewhere, that any undue or oppressive burdens were thrown upon the counties which I have just named, by being erected into separate organizations.

I respectfully submit to the committee, in the engrafting of the amendment of 1857 upon our organic law, as a part of our fundamental law, there was a fundamental error committed.

It has been shown this morning, and I need not repeat that argument, how those who are directly and immediately interested in the sections of the counties proposed to be formed into a new county are the proper ones to vote in the erection of such a county.

We have heard this morning, too, the application of a fancied analogy existing between the secession of the State and the secession of the part of a county. There is no more likeness between the two than there is between our republican form of government and the autocracy of the Czar of Russia. When the Federal Constitution was framed it was for the purpose of "forming a more perfect union;" it was made by sovereign States themselves, the equals each of the other. It was a sacred and inviolable compact, and the right of the secession of a State was tried in the court of last resort, and judgment was therein entered against the existence of such a right. But do townships meet together for the purpose of forming counties? They are the very creatures of the supreme legislative power in each State, formed and fashioned by the State, without any concurrence of the individuals of the townships, as to whether they shall erect themselves into the municipalities or organisms which are called counties. It is the legislative power which, taking into consideration the wants and necessities of the people, the things that are necessary to administer justice promptly and effectually, sits in judgment and throws around any given territory those undistinguishable lines upon the ground, but seen on our maps, which mark out and define the boundaries of counties.

Then, sir, if this is true, how can this argument as to secession be applied to the vote that is taken by the people directly interested in the formation of a new county, and who are to bear the burdens of the organization of that county? Do they remove themselves from the operation of the Federal government; do they put themselves outside of the State government? Are they not simply, by their votes, expressing their assent to the formation of an organization which the Legislature, for many years preceding the amendment of 1857, established without reference to such assent.

Why is it, I ask, with the gentleman in front of me, (Mr. Mantor,) that twenty thousand people under the shadow of the court house, or in the immediate vicinity of the county town, shall say to the nineteen thousand, thirty or forty miles away from where the justice of the county and Commonwealth is administered, that they shall not go out and form and establish a county for themselves or in conjunction with others?

There is one idea yet that I wish to suggest for the consideration of this committee. It has been mentioned as an inconvenience to which those who live at remote distances from the county seat are subjected, the loss of time as they come to our courts, and as they come to the county offices to prove wills and do the various business that is required to be done there. It is this: That every day lost by any citizen of this Commonwealth in going to and from his home to attend to his business, or the business of the county at the county seat, is just a loss of one day to the wealth and to the industry of the Commonwealth.

I have thus briefly, sir, presented certain of the views that moved the Committee on Counties, Townships and Boroughs to make the report they did. It gives to those who are directly and imme-

diately interested in the formation of new counties the right to speak for themselves and not to be overborne by others who are adversely interested. If there is interest on the one hand, there is interest on the other, but the greatest interest is always with those whose conveniences and necessities are most to be consulted.

Mr. LEAR. Mr. Chairman: In listening to the argument of the gentleman from Dauphin, (Mr. Lamberton,) it seemed to me that I had misunderstood the the application of the arguments of others who have presented their views upon this case, or else I misunderstand the force and meaning of the report of the Committee on Counties, Townships and Boroughs. With regard to this very question upon which we are now called to vote, the question with reference to submitting the determination of the formation of a new county to the people of the whole county, and not exclusively to that portion of the voters who are about to withdraw from the county, the gentleman from Dauphin does not see any likeness to the act of secession; and there may not be, and it may not help to elucidate the point under consideration, because there are some questions and some propositions that are so self-evident that you can borrow no illustration that will aid you in coming to a proper understanding of them.

Now, suppose, as I happen to turn and see the upturned face of my friend from the neighboring county of Montgomery, (Mr. Corson,) that the people of Norristown, and ten miles around, should take it into their heads to take in a part of Chester county and a part of Montgomery county, and form themselves into a new county, is there anything under this report, or under the position of those who advocate it, to prevent those people within ten miles around, taking part of Montgomery and part of Chester and erecting a new county, with the magnificent marble palaces that are constructed at Norristown, for the purpose of administering justice, and cutting off all the upper and lower ends of Montgomery county and leaving those people without a county seat or county buildings?

If I comprehend this proposition and the section that has been reported by this committee, it leaves it open to just that kind of manipulation and management where there are parcels and portions taken out of the two or three counties, and those parcels and portions are cut out in the neighborhood of the county seat of one of those counties. They can throw lines around those county buildings, and around that county town; and they can leave out in the cold a portion of the people of that county who paid their taxes and furnished their money to erect magnificent buildings for the purpose of administering justice, and holding their criminals, and maintaining their poor. And what remains of the county may raise money and erect new buildings. If there is anything in this report that will not permit of that construction, I have failed to see it; and yet it is said that the people in the upper end of Montgomery, or the upper end of Bucks, or the upper or lower end of any other county, remote from the county buildings, shall, by a vote of the people of that territory alone which is about to secede or be taken out of the county, take away with them, not only the territory upon which they vote and live, but shall take away buildings erected for the convenience and for the benefit of the county, that have been constructed at the expense and with the money of the people of the whole county, and without giving those who are left without county buildings an opportunity of having a voice in the matter.

Now, I say that this report, so far as I can comprehend it, leaves the matter just in that way, and there is nothing to hinder that portion of a county which is located where the county buildings are seceding, with adjacent territory, from another county, leaving those who have helped to pay for them without county buildings, and without a voice in the matter, though they have a direct and vital interest in this question. The amendment of the gentleman from Tioga, (Mr. Niles,) which is now about to be voted upon, meets this question and opens an opportunity for the people of the whole county, who are to be effected by this dismemberment, to vote upon the question.

The CHAIRMAN. The question is upon the second division of the amendment offered by the gentleman from Tioga. The amendment will be reported.

The CLERK read as follows:

"No county shall be divided or have any part stricken therefrom without submitting the question to a vote of the people of the county, nor unless a majority of the legal voters of the county voting on the question shall vote on the same."

Mr. BUCKALEW. I move to amend, by inserting after the word "therefrom" the

words "containing more than one-tenth of the population thereof," so as to read:

"No county shall be divided or have any part stricken therefrom containing more than one-tenth of the population thereof, without submitting the question to a vote of the people of the county."

Mr. BUCKALEW. I am in favor of the provision of the present Constitution on that particular point, but I do not think we ought to make it too stringent.

The CHAIRMAN. The question is on the amendment of the gentleman from Columbia to the amendment of the gentleman from Tioga.

The amendment to the amendment was rejected, less than a majority of a quorum voting therefor on a division.

Mr. FUNCK. I offer an amendment, to add at the end of the section the following:

"And whenever any part of a city, borough or township is annexed to another jurisdiction, the proportionable part of the indebtedness of the district from which the territory is taken shall be paid by the inhabitants of the territorial division to which it was annexed."

Mr. NILES. I only desire to say to the gentleman who offered this amendment that the idea of his proposed amendment is contained in the following section of the report, which makes a system of itself. I therefore suggest to him to withdraw his amendment for the present.

Mr. FUNCK. Very well; I withdraw it for the present.

The CHAIRMAN. The question is on the adoption of the second division of the amendment of the gentleman from Tioga (Mr. Niles.)

The amendment was agreed to.

The CLERK read the third division of the amendment of Mr. Niles, as follows:

"There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition for such division, and no territory shall be added to any county without the consent of the majority of the voters of the county to which it is proposed to be added. But the portion so stricken off and added to another county, or formed in whole or in part into a new county, shall be holden for and obliged to pay its proportion of the indebtedness of the county from which it has been taken."

Mr. NILES. With the permission of the committee, I desire to withdraw that portion of my proposition, as it is already provided for in the report of the committee.

The CHAIRMAN. This section of the amendment is withdrawn. The first section of the report, as amended, is now before the committee. It will be read as amended.

The CLERK read as follows:

"No new county shall be formed or established by the General Assembly which shall reduce the county or counties, or either of them, from which it shall be taken, to less contents than four hundred square miles; nor shall any county be formed of less contents; nor shall any county be formed or established containing a less population than twenty thousand inhabitants; nor shall any line thereof pass within less than ten miles of any county seat of the county or counties proposed to be divided.

"No county shall be divided, or have any part stricken therefrom, without submitting the question to a vote of the people of the county, nor unless a majority of the legal voters of the county voting on the question shall vote for the same."

The section, as amended, was agreed to.

The CHAIRMAN. The question now is on the second section.

The CLERK read the section as follows:

SECTION 2. That section of the new county taken from another shall pay its equitable proportion of the existing indebtedness of the county from which it is taken, and if in the formation of a new county, any township be divided, the indebtedness of such township shall be equitably apportioned upon the respective divisions thereof.

Mr. BUCKALEW. This second section certainly is now entirely unnecessary. When you require that a majority of the people of the county, by public vote, shall agree to the cession of a portion of their territory, you give them all the protection that is necessary or that they can desire, and it is perfectly superfluous to insert a provision in regard to the apportionment of the existing debt. The people have the protection in their own hands. Besides that, the friends of the new county will always make reasonable and proper arrangements with regard to the question of debt, in order to get the consent of the county to its division. You need, therefore, no protection like that contained in this provision. If the report of the committee, as contained in the first section, had been agreed to, then this provision would have been proper; this lim-

itation would have been right; but now, as you have agreed that no county shall be divided without its own consent, you give to every county complete protection with regard to all financial questions. They will not agree to the formation of the new county, unless the question of the existing debt is left in a proper form and under proper conditions. As I said before, the friends of the new county, in order to get the consent of the county from which they propose to separate themselves, will make reasonable arrangements on this subject. We ought not to lumber the Constitution with too many provisions. We already have this subject provided for in an exceedingly stringent form in the existing Constitution, and gentlemen who are indisposed to the formation of new counties had better not carry this matter too far.

Mr. LAWRENCE. I have avoided occupying time on the question because I thought I saw at an early period that this body had determined that there should be no new counties formed in the State hereafter. The adoption of the amendment proposed by my good friend from Tioga effectually precludes the formation of a new county in the State for the next fifty years. I make the prediction here to-day that no new county will be formed in the State of Pennsylvania for the next fifty years if you put this in the Constitution as you propose to do. The Committee on Counties, Townships and Boroughs prepared a report that they supposed might be adopted with great safety. We believed that there would not be probably, under the provisions reported by us, one new county formed in ten years, probably not in twenty years. We threw around it all the restrictions that we thought safely required. But this Convention has determined that the subject of new counties shall be left to the vote of the electors of the old counties. They have determined that the line of a new county shall not run within less than ten miles of a county seat. Suppose you want to divide the county of Luzerne into two; and it ought to have been divided long ago—a county with a population of one hundred and sixty thousand—and you want to run a line right through the county; you cannot do it under this provision at all; I refer to that to show how utterly impossible it would be to divide even the county of Luzerne with its vast population. You cannot do it in fifty years if this provision goes into the Constitution. I take it for granted, therefore, that this Convention has determined that there shall be no new counties formed within the State for the next hundred years, let the population be what it will.

My friend from Philadelphia (Mr. Woodward) says he is glad of it. He and I will not live to see the effort made in that time. And yet, as I said yesterday, I am not in favor of the formation of promiscuous counties all over the States, and these movements that are got up from year to year to establish counties in localities to advance personal interests. I am opposed to every thing of that kind. But I do think as wise men we should have made it at least possible, at some future day, for the inhabitants of some parts of the State, laboring under difficulties, to form themselves into municipal corporations or counties.

I can very readily see how in, certain portions of the State, you will find great opposition to the Constitution when you present it in this light. There are tens of thousands of people in this State in favor, in certain localities, of new counties. Of course they will vote against the Constitution if that privilege is not to be allowed to them at all, and you will meet with opposition that you would not have met with before the people if you had given them a reasonable proposition.

Mr. LANDIS. Mr. Chairman: As a member of the Committee on Counties, I must confess that I have felt somewhat surprised at the manner in which the report of that committee has been treated. I had thought that the report of that committe was carefully digested. The provision requiring a vote of three-fifths of the voters of the new county, in order that a new county might be formed, was thought to be a safeguard, a protection to the interests of the people of the old county, for the reason that three-fifths are more than a majority. There was another provision that I think rather escaped the attention of gentlemen, and that was this: That where a new county was formed of sections of old counties or sections of townships, if any one of those sections failed to cast three-fifths of its votes in favor of the new county, the whole project fell; so that, virtually, one section of the proposed new county would really decide the question. That provision, requiring a three-fifths vote, was considered ample protection to the districts of the old county.

But, sir, the committee have passed upon that question. They have deter

mined that twenty thousand population shall be required, and they have determined that the new county shall have not less than four hundred square miles.

There is still one other feature left in the proposition of the committee, and for fear that the members of the Convention may be misled by the suggestion of the gentleman from Columbia, (Mr. Buckalew,) I desire very briefly to call attention to it. Section two, which is now before us, requires that the existing indebtedness of the sections of townships going to form the new county, shall be paid by those sections of the township forming the county. The gentleman from Columbia has suggested that that is now unnecessary. I do not think it is. If the sections of the old townships that go to form the new county, are required to pay their portion of the existing indebtedness, it is an inducement to the remaining portion of the county to vote that the new county may be formed, because the people who reside in the remaining portions of the county will have an argument brought home to them in favor of voting that a new county may be erected, in that the outgoing portions are not relieved from their share of the indebtedness; so that there is still a lingering hope that a new county may be formed.

I do not think we ought to embody in this Constitution a provision on this subject that is utterly prohibitory in its operations. Why, sir, if the people in any portion of the State should desire to form a new county, and you refer them to this provision, it will be found that while it assumes the guise of fairness, it is really clothed with prohibition. It is the very mockery of fairness; and my colleague on the committee, from Washington, has very truly said that under this proposition, as it now stands amended, there will never be a new county formed in the State of Pennsylvania until a new Convention shall be assembled or the Constitution amended. I therefore merely ask the committee to adopt this second section in order that there may be some little prospect of success for the formation of new counties where the necessity for their formation shall arise.

Mr. MINOR. A single word, Mr. Chairman. If anything were wanting to require that the map of this State, so far as county lines are concerned, should be stereotyped—forever unchanged and unchangeable—it would be to vote down this second section. The proposition made by the gentleman from Columbia, and voted down, is in effect a proposition to say that the people of a county will vote away a part of their territory, and then pay all the existing indebtedness themselves. That is just what it amounts to, nothing more, nothing less. "I agree that others may take a portion of the county, and I will pay all the debt, their part and mine, too." That is just what it means. Will any man ever be found who will vote to do that? I repeat then, sir, if there is anything wanting, after the vote already passed, to put this thing beyond question, so that it is stereotyped forever, it is to vote down this second section. That is the last lingering possible ray of hope that any desired new county may have—a willingness to pay their share of the indebtedness. And now it is proposed to cut that off.

Mr. SIMPSON. Mr. Chairman: It strikes me that this section ought not to be adopted in its present form, unless the portion to be taken from the county shall be entitled also to a share of the assets of the county. If a debt has been created for the erection of court-houses, prisons, poor-houses, &c., and those buildings remain with the larger part of the county, that portion should account to the part severed for its proportionate part of assets as well as indebtedness. I, therefore, move to amend the section, in the second line, by inserting after the word "indebtedness," the words, "and be entitled to its proportion of assets."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Philadelphia (Mr. Simpson.)

The amendment was not agreed to.

Mr. DARLINGTON. I move the following as a substitute for the section:

"The Legistature shall, by law, provide that any new county or township that may be formed, shall pay its equitable proportion of the indebtedness of the county or counties or township or townships from which they may respectively be taken."

The amendment was not agreed to.

The CHAIRMAN. The question now recurs on the adoption of the second section, as reported from the committee.

The section was agreed to; ayes forty-nine; noes not counted.

The CHAIRMAN. The third section will be read.

The CLERK read as follows:

"The Legislature shall, by general laws, prescribe the powers of boroughs and town-

ships, and confer upon the courts the authority to erect boroughs and townships, to change their boundaries, and divide boroughs into wards."

Mr. FUNCK. Now I offer an amendment, to add to the end of the third section:

"And whenever any part of a city, borough or township is annexed to another jurisdiction, the proportionable part of the indebtedness of the district from which the territory is taken shall be paid by the inhabitants of the territorial division to which it was annexed."

I have myself, in the course of my practice, seen the injustice which will be done in the division of townships, by annexing a part of one to another, without a provision of this kind. The borough of North Lebanon, Lebanon county, was largely indebted. A portion of that territory was annexed to the township of North Lebanon, and the result was that the borough of North Lebanon, proper, had to pay the whole of the indebtedness. The inhabitants of that part which was cut into the township had the benefit of all the improvements that were made by the expenditures of the money for which the debt was incurred, and afterwards, by being annexed to the township of North Lebanon, were relieved from paying any portion of the burden. This amendment is intended to make a provision against a recurrence of an injustice like that.

The amendment was not agreed to.

The CHAIRMAN. The section as reported is now before the committee.

The section was agreed to.

Mr. KNIGHT. I move a re-consideration of the first section.

Mr. J. PRICE WETHERILL. I second the motion.

The CHAIRMAN. The question is on the motion of the gentleman from Philadelphia.

The motion to re-consider was not agreed to.

Mr. NILES. I submit the following as an additional section:

"No county seat shall be removed until the point to which it is proposed to be removed shall be fixed in pursuance of law, and two-thirds of the voters of the county, to be ascertained in such manner as shall be provided by law, shall have voted in favor of its removal to such point; and no person shall vote on such question who has not resided in the county six months and in the election precinct or district ninety days next preceding such election. The question of the removal of a county seat shall not be oftener submitted than once in ten years to a vote of the people; but when an attempt is made to remove the county seat to a point nearer to the centre of the county, then a majority vote only shall be necessary."

The amendment was not agreed to.

The article reported by the Committee on Counties, Townships and Boroughs being finished, the committee of the whole rose; and the President having resumed his chair, the chairman (Mr. Lilly) reported that the committee of the whole had had under consideration the artiticle reported by the Committee on Counties, Townships and Boroughs, and directed him to report the same with amendments.

The amended article as reported is as follows:

COUNTIES, TOWNSHIPS AND BOROUGHS.

SECTION 1. No new county shall be formed or established by the General Assembly which shall reduce the county or counties, or either of them from which it shall be taken, to less contents than four hundred square miles; nor shall any county be formed of less contents; nor shall any county be formed or established containing a less population than twenty thousand inhabitants; nor shall any line thereof pass within less than ten miles of any county seat of the county or counties proposed to be divided.

SECTION 2. No county shall be divided or have any part stricken therefrom without submitting the question to a vote of the people of the county, nor unless a majority of the legal voters of the county voting on the question shall vote for the same.

SECTION 3. That section of the new county taken from another county shall pay its equitable proportion of the existing indebtedness of the county from which is taken, and if in the formation of a new county any township be divided the indebtedness of such township shall be equitably apportioned upon the respective divisions thereof.

SECTION 4. The Legislature shall by general laws prescribe the powers of boroughs and townships, and confer upon the courts the authority to erect boroughs and townships, to change their boundaries and divide boroughs into wards.

REPORT OF THE JUDICIARY COMMITTEE.

Mr. DARLINGTON. Mr. President: I see that the chairman of the Committee

on the Judiciary is in his seat. I do not know that it is the desire of the Convention to proceed to the consideration of the article reported by that committee.

Mr. ARMSTRONG. Mr. President: It would hardly accord with the general wish of the Convention that the report of the Committee on the Judiciary should be taken up at this time. I may as well say here that I feel constrained, very reluctantly, and much against my wish, to ask leave of the Convention to be absent a part of next week. Business which I cannot postpone, and a matter of very considerable importance, will require me to be away, and I therefore prefer that this report be taken up at some time, either the last of next week or early in the week following. I will make a motion to that effect to-morrow or next day, when I can better ascertain the views of those who probably desire to participate actively in the debate which may ensue. I prefer that the report be not taken up at this time.

REVENUE, TAXATION AND FINANCE.

Mr. BROOMALL. Mr. President: I move that the Convention resolve itself into committee of the whole to consider the report of the Committee of Revenue, Taxation and Finance.

This motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Lamberton in the chair.

The CHAIRMAN. The committee of the whole has had referred to it the article, reported by the Committee on Revenue, Taxation and Finance. The first section will be read.

The CLERK read as follows:

SECTION 1. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws. But the Legislature may, by general laws, exempt from taxation (except from the special assessments herein provided) public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity.

The section was agreed to.

The CHAIRMAN. The second section will be read.

The CLERK read as follows:

SECTION 2. All laws heretofore passed or hereafter to be passed, exempting property from taxation, other than the property above enumerated, shall be void.

The section was agreed to.

The CHAIRMAN. The third section will be read.

The CLERK read as follows:

SECTION 3. The Legislature may, by general laws, uniform as to the class and kind of improvements to be made, vest in the corporate authorities of cities, boroughs, and townships, the power to make, renew and maintain local improvements by special assessments or taxation of contiguous property, or of property specially benefitted thereby, without exception on account of use or ownership.

The section was agreed to.

The CHAIRMAN. The fourth section will be read.

The CLERK read as follows:

SECTION 4. The property and business of manufacturing corporations shall not be taxed in any other manner, or at any other rate than like property and business of individuals.

The section was agreed to.

The CHAIRMAN. The fifth section will be read.

The CLERK read as follows:

SECTION 5. No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, or to repel invasion, suppress insurrection, or defend the State in war, or to pay existing debt; and the debt created to supply deficiencies in revenue shall never exceed in the aggregate, at any one time, one million dollars.

The section was agreed to.

The CHAIRMAN. The sixth section will be read.

The CLERK read as follows:

SECTION 6. All laws authorizing the borrowing of money shall specify the purpose for which the money is intended, and the money so borrowed shall be used for the purpose specefied and no other.

Mr. LILLY. Mr. Chairman: I do not know that this is the place for an amendment to be put in, but I desire in the Constitution somewhere, and I think it should be in this report, a provision in regard to legal holidays. The Legislature make legal holidays and then they make the poor borrower pay his debts beforehand, which I consider all wrong. The day after a legal holiday should be fixed for paying debts falling due upon that day, and not the day preceding the holiday.

Mr. BROOMALL. Mr. Chairman: I think that the gentleman can properly attain his object, if he will wait until the report of the Committee on Commerce shall come up.

Mr. COCHRAN. Mr. Chairman: It seems to me that this section ought to have the words "by or on behalf of the State" inserted after the words "borrowing of money," so as to make the section read: "All laws authorizing the borrowing of money by or on behalf of the State shall specify the purpose for which the money is intended, and the money so borrowed shall be used for the purpose specified and no other."

Mr. BROOMALL. I think that amendment is proper.

Mr. COCHRAN. I move to amend, by inserting the words "by or on behalf of the State," after the word "money" where it occurs the first time.

The amendment was agreed to.

The section as amended was agreed to.

The CHAIRMAN. The seventh section will be read.

The CLERK read as follows:

SECTION 7. Neither the State, nor any county, city, borough, township or other municipality shall loan its credit, or appropriate money to, or assume the debt of or become a shareholder or joint owner in or with any private corporation, or any person or company whatever.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 8. No municipal corporation shall become indebted in any manner, or for any purpose, to an amount, (including indebtedness existing at the adoption of this Constitution,) in the aggregate exceeding the following per centum on the value of the taxable property therein, to be ascertained by the last assessment for county taxes prior to the incurring such indebtedness, to wit: Counties, two per centum; cities and boroughs, six per centum; school districts, two per centum; and townships one per centum.

Mr. J. PRICE WETHERILL. Mr. Chairman: I would like in that section to strike out the word "cities." As I understand this clause, it only gives cities a borrowing power of six per centum on the assessed value of their property. The assessed value of property in the city of Philadelphia is five hundred millions of dollars, and six per centum of this would be less than the present indebtedness of the city. According to this section the borrowing power of six per centum for cities would include the indebtodness existing at the time of the adoption of this Constitution. The Committee on Cities and City Charters have had this matter under consideration, and they will present a section giving what they conceive to be a proper borrowing power to cities. They have fixed it at a certain rate, not including the present indebtedness of cities.

For that reason, and inasmuch as I think the Committee on Revenue, Finance and Taxation have trenched a little on the duties of the Committee on Cities and City Charters, I move to amend the section by striking out the word "cities."

Mr. MINOR. I would like to inquire whether that leaves the cities without any limitation whatever.

Mr. J. PRICE WETHERILL. Only so far as this article is concerned. But the Committee on Cities and City Charters intend to limit cities in this regard.

Mr. MINOR. Very well.

Mr. J. PRICE WETHERILL. Mr. Chairman: If we adopt this section as at present, it would leave us in Philadelphia with an existing debt of about fifty-five millions of dollars, and under the Constitution we should only have a borrowing power of thirty millions, more than twenty millions less than the present actual indebtedness. Therefore, of course, the hands of the authorities for borrowing money in the city of Philadelphia would be completely tied from this time henceforth.

Mr. BROOMALL. Mr. Chairman: I would like to ask the gentleman a question. I understand him to say that his Committee on Cities and City Charters agreed upon a certain percentage, not including the present indebtedness. I wish to ask what percentage it has agreed upon. It seems to me that this matter should be settled here, because it belongs to this subject, and as a member of the Committee on Revenue, Taxation and Finance I would be perfectly willing to accede to the wishes of the Committee on Cities and City Charters on the subject.

I think, however, that a part of the gentleman's statement may be owing to the mode of valuation of property in Philadelphia. I think that the property in this city is not valued up to its selling price.

Mr. J. PRICE WETHERILL. Pretty nearly.

Mr. BROOMALL. My information is very different from that; but yet that may be so. It is desirable, if a section of this kind is put in at all, of which the Convention must be the judge—I mean as to the limit of indebtedness—that all municipal corporations should be brought under a single rule, and that that should be done in this article. I am prepared to favor any amendment that will accommodate the article to the needs of the cities of Philadelphia and Pittsburg.

Mr. DARLINGTON. I wish to ask a question of the chairman of the committee: Do they not mean that this shall be exclusive of present indebtedness? If so, then the city might borrow thirty millions more.

Mr. BROMALL. The section says just the reverse, and probably the object of the gentleman from Philadelphia would be best answered by inserting after the word "amount," in the second line, the word "not," so as to allow them to borrow six per cent. of their valuation beyond their present indebtedness.

Mr. J. PRICE WETHERILL. I have here, if the chairman of the committee will allow me to interrupt him, the section which the Committee on Cities and City Charters have adopted, reading as follows:

"No city shall have the power to create hereafter a debt exceeding two and a half per centum of the assessed valuation of the real and personal estate within its corporate limits, except to suppress rebellion or repel invasion of the State."

If the chairman of the committee will allow me to offer this section as an amendment to the section of his report now under consideration, the Committee on Cities and City Charters will be satisfied.

The CHAIRMAN. Does the gentleman from Philadelphia offer an amendment?

Mr. J. PRICE WETHERILL. I offer the section which I have just read as a substitute.

Mr. BROOMALL. I yielded for the purpose of hearing that suggestion, and I am favorably inclined to it; but I prefer to consider whether it had best go in here. I suggest, however, in the first line, after the word "corporation," the insertion of the words "except a city," so as to read: "No municipal corporation, except a city, shall become indebted," &c.; and then add to the end of the section what the gentleman from Philadelphia has read, and it will make the whole section complete, and meet my views as a member of this committee.

Mr. J. PRICE WETHERILL. I offer that, then, striking out the words "cities and" before "boroughs," in the last line but two.

The CHAIRMAN. The Chair understands that the delegate from Philadelphia withdraws his amendment to strike out the words "cities and," in the sixth line.

Mr. J. PRICE WETHERILL. No; I do not; I insist on that.

The CHAIRMAN. Then this other amendment is not in order at this time.

Mr. BROOMALL. Would it be in order to propose a substitute for the section that should embrace the suggestion I made, and also the suggestion of the gentleman from Philadelphia?

The CHAIRMAN. It would not be in order. It is not an amendment to the amendment.

Mr. BROOMALL. Is it not in order to propose a substitute for the section?

The CHAIRMAN. It is not in order to do that as an amendment to the amendment offered by the delegate from Philadelphia, to strike out the words "cities and," before "boroughs."

Mr. BROOMALL. I propose that he shall withdraw that, because I intend to put that in subsequently.

The CHAIRMAN. The Chair understands him to decline to withdraw that.

Mr. BROOMALL. No, he declines to yield that point. He insists upon that point, and I have no objection to that being agreed to. If the gentleman from Philadelphia will listen while I read what I propose as a substitute, he will find that it embraces exactly his idea:

"No municipal corporation, except a city, shall become indebted in any manner, or for any purpose, to an amount, (including the indebtedness existing at the adoption of this Constitution,) in the aggregate exceeding the following per cent. of the value of the taxable property therein, to be ascertained by the last assessment for county taxes prior to the incurring of such indebtedness, to wit: Counties, two per centum; boroughs, six per centum; school districts, two per centum, and townships one per centum. No city shall have power to create, hereafter, a debt exceeding two and a half per centum upon the assessed value of the real and personal estate within its corporate limits, except to suppress rebellion or repel invasion of the State."

Mr. BIDDLE. I want to know whether this additional section, which is to come

up hereafter, is meant to include all indebtedness, or only new indebtedness.

Mr. BROOMALL. New indebtedness. "Created hereafter" is the language. I ask the gentleman from Philadelphia, who represents the Committee on Cities and City Charters, whether that does not meet his view?

Mr. J. PRICE WETHERILL. That meets my view.

Mr. BROOMALL. Then I offer that as a substitute for the section.

The CHAIRMAN. The committee has heard the substitute, which has been offered as an amendment.

Mr. J. PRICE WETHERILL. Mr. Chairman: I think we can arrive at this whole matter in a more simple form, and perhaps not only meet the views of the delegates from cities, but those who may have boroughs within their districts, requiring also some regulation in this matter; I suggest that in this view, the words "including the existing indebtedness" should be stricken out or modified. I therefore move, in line two, after the word "amount," to introduce the word "not;" and then in line six, to strike out "counties, two per cent.; cities and boroughs, six per cent., school districts." Then the section would read:

"No municipal corporation shall become indebted in any manner or for any purpose to an amount (not including indebtedness existing at the adoption of this Constitution) in the aggregate exceeding the following per centum of the value of the taxable property therein, to be ascertained by the last assessment for county taxes, prior to the incurring such indebtedness, to wit: Two per centum, and townships one per centum."

That would fix the borrowing power of counties, cities, boroughs, and school districts, not including their present indebtedness, at two per cent. That would give a sufficient borrowing power for the cities, and I have no doubt would give sufficient borrowing power for the boroughs and school districts, and would, therefore, probably meet the views of the majority of the delegates of the Convention.

Mr. BROOMALL. I withdraw my amendment for the purpose of letting that amendment be made.

The CHAIRMAN. The delegate from Delaware withdraws his amendment to the amendment offered by the delegate from Philadelphia.

Mr. BROOMALL. It seems to me it would be better to insert "two per centum" throughout, and let the section read "in the aggregate exceeding two per centum of the value thereof," &c.

Mr. J. PRICE WETHERILL. I accept that modification.

Mr. BIDDLE. I want to hear it read again.

The CHAIRMAN. The Clerk will read the amendment.

Mr. BROOMALL. Shall I read it? It is:

"No municipal corporation shall become indebted in any manner, or for any purpose, to an amount (not including the indebtednes existing at the adoption of this Constitution) in the aggregate exceeding two per centum on the value of the taxable property therein, to be ascertained by the last assessment for county taxes prior to the incurring of such indebtedness."

Mr. BIDDDE. Mr. Chairman: This section, as it is read, of course, is intended to include counties; but I doubt whether its phraseology does. A county is not a municipal corporation.

Mr. BROOMALL. Oh, yes.

Mr. BIDDLE. I should say not; at least I should have my doubts about it, and I think it a great deal better to say, "no county or municipal corporation." I have very strong doubts whether a county is a municipal corporation. I think the word "county" ought to be expressed. Let it read, "no county or other municipal corporation," if the gentleman chooses.

Mr. J. W. F. WHITE. Mr. Chrirman: I shall feel disposed, at this time, to vote against this whole section. The question of the limitation of city indebtedness will come up very properly again when the report of the Committee on Cities and City Charters comes before the Convention; and I apprehend that will be the proper time for settling that question. When the report of the Committee on Cities and City Charters was before the committee of the whole, it was understood that there would be a conference of the delegates representing the cities of the State, to try to harmonize our views on that subject. I look upon the limitation of the power of creating debts as one of the important questions that will come before us, and I trust we shall not be embarrassed when that section comes properly before us, by a section incorporated into this report or this part of the Constitution.

I must say further that I doubt very much the wisdom of any limitation based simply on a percentage of valuation. If I understand the last modification of the amendment of the two gentlemen to my

right, who have been trying to fix up something, and I confess that I do not know that I do understand it, they have been changing it about so frequently and giving so many different forms to it, it would limit boroughs and counties and all other municipal corporations to two per centum on the assessed valuation of their property.

Now, Mr. Chairman, just to show you the absurdity of such a limitation, I would refer to the borough where I live, and I call the attention of the members of the committee to the absurdity of such a limitation. I live in the borough of Sewickley, where, under such a constitutional limitation, we could not exceed four thousand dollars of indebtedness, yet we had a law passed last winter—the other delegate of my name from Allegheny county any myself are on the commission created by the Legislature last winter—whereby that borough is authorized to create an indebtedness of sixty thousand dollars, and I do not hesitate to say that it is a wise and proper indebtedness for our borough. I repeat that under such a clause as is now before this committee our borough could not create a debt of four thousand dollars. We already have for school purposes more than that, pretty nearly double that, and we are now incurring a debt of sixty thousand dollars to establish water works, and there is not a property holder in the town who is not in favor of it. Why? Why, sir, we know that we live in a thriving, growing town.

Some years ago, when in the school board of that borough, I went in for creating a debt of six thousand dollars to build a good school house; the people thought I was crazy. The idea of the little village of Sewickley incurring a debt of six thousand dollars, which was far more than two per cent. of the valuation there, or even five per cent. of the valuation at that time, was considered frightful; people thought we were running wild on indebtedness. The six thousand dollars of debt, then incurred to erect a school house, soon turned out to be a great blessing to the town; and it has increased so now that we propose incurring a debt of sixty thousand dollars to establish water works, and I have no hesitancy in saying and believing that it will add to our property there far more than the whole cost of it.

Now, sir, under such a Constitutional provision as you propose here, not only our little borough would be prevented from making an improvement of that kind, but every other borough in the State; every city would be crippled; every borough and municipal incorporation of the whole State would be effectually crippled by any such Constitutional provision.

I, for one, have no fear of the indebtedness of cities, and boroughs, and counties, if you please. When the money is properly expended, it always adds far more to the value of the property than the entire debt. What would Philadelphia have been to-day, if you had had one of these restrictive provisions in your Constitution, or what would Pittsburg have been, or any other city of the State? We could not have gone on with any of the great public improvements. And why, Mr. Chairman, should the present generation, the present property holders, pay for all improvements for the benefit of posterity? Some boroughs and some cities could incur ten times the debt of others, and very wisely and very properly. An old municipal corporation, borough, city or county, might not incur one-tenth of the indebtedness that a new, thriving, growing municipality could incur. I venture the assertion that Philadelphia, Pittsburg, and no other city in this State, would have grown as much or prospered as much as she has if it had not been for the power of creating debt, and I do not believe one of them to-day is unnecessarily burdened with indebtedness. I repeat, sir, if we, of the little borough of Sewickly, want works which are to last for generations to come, why should the present generation pay the entire indebtedness? Why not create a debt that ose who come after us, reaping the benefit of the improvements, shall also contribute to pay for?

I trust, therefore, that the committee will not adopt this section as reported, much less the amendment offered by the chairman of the committee. I feel that we can safely trust the matter to the representatives of the people and the people themselves. I would favor a proposition of this kind, that no debt shall be created by a municipal corporation unless the law or ordinance creating that debt shall provide a fund for the payment of principal and interest within a limited time, say thirty years, or forty years, and also be approved by a vote of the electors. If the people of the town or city wish to incur a debt for a great public improvement, if the property holders within that corporation are favorable to creating a debt for

a great public improvement, although it may amount to ten per cent. of their property, why not let them have the power of doing so? Why, by an unreasonable restriction of this kind in your Constitution, check the growth of the young boroughs and cities of our State? Why not let them do as others have done, have the same means and the same power of making improvements, believing that the value of their property is thereby increased, their population growing and becoming more prosperous.

I throw out these suggestions without any particular preparation, because I had no idea this matter was coming before us at this time. I trust the committee will think very seriously before they put such an unreasonable restriction upon the growing, thriving young boroughs and cities of our State. It seems to be the idea of some that if we can accommodate those who have already got large indebtedness nothing more is needed. I draw your attention to this feature of the case now. The city of Philadelphia already has an indebtedness of more than two per cent. of her valuation—ten per cent. a gentleman in front of me, from the city, (Mr. Hanna,) says. Look at it: Philadelphia already has an indebtedness of ten per cent. of her valuation, and you now say she may go to two per cent. more, making twelve per cent. for the city of Philadelphia, and yet you turn around and say that the other cities and boroughs of the State shall not go beyond two per cent. Is that fair; is that reasonable? Why not let them grow and develop the same as Philadelphia has done? So with the city of Pittsburg, which at this time, perhaps, has an indebtedness equal to four or five per cent. of her valuation. I have no doubt the indebtedness of the city of Pittsburg, at this time, is at least five per cent. of her valuation. You say by your Constitution she may incur an additional indebtedness of two per centum, and yet that those cities and boroughs in the State that now have no indebtedness shall be limited to two per cent. I say it is unreasonable; it is unjust, and I hope that such a provision will not be inserted in our Constitution. I think the better plan is to vote this section down for the present, and let the question come up properly when the report of the Committee on Cities and City Charters shall be considered.

Mr. LILLY. I think the gentleman from Allegheny mis-states the matter. The section before the committee allows the property of any man, in any borough of this State, to be mortgaged for ten per cent. in this way: Six per cent. for borough purposes; two per cent. for school purposes, and two per cent. for county purposes.

Mr. J. W. F. WHITE. I understood the gentleman from Philadelphia that the last modification was two per cent. for all.

Mr. BROOMALL. Two per cent. for each such corporation.

Mr. LILLY. Two per cent., then, for counties, two for boroughs, and two for cities, making six per cent. I hold that this indebtedness should be limited. The operation of all these things is understood, no doubt, by the whole Convention. A debt is created by a majority of votes, and often the men voting the debt do not own a dollar of real estate, but they have it in their power to mortgage every man's property in the county without asking his leave, to an indefinite extent now. I think that there should be a limitation fixed on boroughs and other municipalities, such as counties and cities.

I have been approached by the very best men of this city begging me to vote for putting in the Constitution a restriction on the city indebtedness, and I know the same feeling prevails in the country. The gentleman talks about young boroughs being borrowers to make improvements, and says that thereby capital is invited to come in and build up the corporation. We are borrowers in the borough in which I reside. We have gas works in the borough in which I reside. I hold that it would be very much better that the borough should not own such works, but that private corporations should put their money into such enterprises. If capitalists think they will be profitable, they will go on and build those improvements. If capitalists see that to make them would be a good investment, they will put up water works and gas works, and when they do every man's property is not mortgaged without his consent. I think some restriction certainly ought to be put in, and it ought to be put in for the purpose of making the Constitution strong before the people. The people of the country want some such limitation. It was said by the gentleman from Columbia, yesterday, that we have got to make this instrument as strong as we can to go before the people. Consequently I am in favor of the section.

Mr. J. PRICE WETHERILL. Just a word, sir, in reply to the gentleman from Alle-

gheny (Mr. J. W. F. White.) I suppose it is hardly worth while to argue the question whether cities and townships and counties and boroughs should be limited in regard to the amount of their indebtedness. I have no doubt, from the condition of things, not only in cities and counties and States, but all over the country, that very few men can be found who would advocate unlimited indebtedness.

Now, sir, take the township of Sewickley, as mentioned by the gentleman from Allegheny, and inasmuch as its borrowing power is four thousand dollars, I am led to believe that its assessed value is two hundred thousand dollars. If its assessed value is two hundred thousand dollars, and I do not know how long it has existed as a borough, but probably for many years—its present indebtedness is one thousand dollars. That has been ample heretofore for all the ordinary wants of the borough of Sewickley.

Now, with an assessed value of two hundred thousand dollars, the gentleman desires that borough to go into debt sixty thousand dollars. The gentleman thinks that a proper limit for the borough of Sewickly would be thirty-three and one-third per cent. upon its assessed value; and because the wants of the borough of Sewickly require thirty-three and one-third per cent., he would say that the wants of every other township, and every other county, and every other city in the State require thirty-three and one-third per cent. Shall that be the borrowing power of the city of Philadelphia, already overwhelmed with debt? Why throw all sorts of restrictions around the State? We have just passed the section limiting State indebtedness for any purpose to two million dollars, and shall we, in the line of argument used by the gentleman from Sewickley, increase the borrowing power of every city, and every county, and every township from two per cent. to thirty-three and one-third per cent. I hope not, sir. We, of the city of Philadelphia, know and feel the evil of unlimited borrowing power. We feel the necessity of checks; and in a large city like this a borrowing power of two or two and one-half per cent. would give us a debt of about twelve million dollars, and would only increase the indebtedness of the city of Philadelphia for that amount, and yet we are under the impression that this loading down of debt must stop somewhere, and it does seem to me that to save our city and save our State from disgrace such a limit as this must be placed on the borrowing powers of the cities and counties of the Commonwealth.

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

The motion was agreed to.

The PRESIDENT having resumed the chair, the Chairman of the committee of the whole (Mr. Lamberton) reported that the committee had had under consideration the report (No. 19) of the Committee on Revenue, Taxation and Finance, and had directed him to report progress and ask leave to sit again.

Leave was granted to the committee to sit again this afternoon.

Mr. M'CLEAN. I move that the Convention adjourn until three o'clock.

The motion was agreed to, and the Convention adjourned until three o'clock P. M.

AFTERNOON SESSION.

The Convention resumed its session at three o'clock P. M.

The PRESIDENT. The Clerk reports that there are but forty-five members present, lacking twenty-two of a quorum.

Mr. TEMPLE. I move that the Convention adjourn.

The motion was not agreed to, there being, on a division: Ayes, eighteen; noes, twenty-five.

Mr. DARLINGTON. I move a call of the House.

The PRESIDENT. There is no such thing as a call of the House.

Mr. DARLINGTON. A call of the roll.

The PRESIDENT. The Chair will not order the roll to be called, that being a matter in his discretion, as it is evident there is not a quorum present.

Mr. BOYD. I move that the Sergeant-at-Arms be directed to bring in the absentees.

The motion was agreed to, there being, on a division: Ayes, twenty-six; noes, fourteen.

The PRESIDENT. The Sergeant-at-Arms will bring in the absent members.

Mr. J. N. PURVIANCE. I call for the yeas and nays on that motion.

The PRESIDENT. The call is too late; the result has been announced.

Mr. HANNA. I move that we adjourn.

On the motion to adjourn, the yeas and nays were required by Mr. Bartholomew and Mr. Broomall, and were as follow, viz:

YEAS.

Messrs. Addicks, Ainey, Baker, Bannan, Bartholomew, Biddle, Corbett, Gilpin, Guthrie, Harvey, Hay, Hemphill, Lamberton, Lear, M'Culloch, Newlin, Parsons, Patterson, D. W., Purviance, John N., Stanton, Temple, Wetherill, J. M., Wetherill, Jno. Price, White, J. W. F., Worrell, Wright and Meredith, *President*—27.

NAYS.

Messrs. Baer, Baily, (Perry,) Boyd, Broomall, Brown, Buckalew, Carter, Cochran, Corson, Cronmiller, Curry, Darlington, De France, Dodd, Edwards, Funck, Hall, Hanna, Heverin, Horton, Hunsicker, Landis, Lawrence, Lilly, MacConnell, Mann, Mantor, Minor, Mott, Patterson, T. H. B., Pughe, Rooke, Runk, Russell, Simpson, Smith, Henry W., Walker and White, David N.—38.

So the question was determined in the negative.

ABSENT OR NOT VOTING.-Messrs. Achenbach, Alricks, Andrews, Armstrong, Bailey, (Huntingdon,) Barclay, Bardsley, Beebe, Black, Charles A., Black, J. S., Bowman, Brodhead, Campbell, Carey, Cassidy, Church, Clark, Collins, Craig, Curtin, Cuyler, Dallas, Davis, Dunning, Elliott, Ellis, Ewing, Fell, Finney, Fulton, Gibson, Gowen, Green, Hazzard, Howard, Kaine, Knight, Littleton, Long, MacVeagh, M'Allister, M'Camant, M'Clean, M'Murray, Metzger, Mitchell, Niles, Palmer, G. W., Palmer, H. W., Patton, Porter, Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, James L., Reynolds, S. H., Ross, Sharpe, Smith, H. G., Smith, Wm. H., Stewart, Struthers, Turrell, Van Reed, Wherry, White, Harry and Woodward—68.

The PRESIDENT (after a pause). The Clerk reports that a quorum is now present.

REVENUE, TAXATION AND FINANCE.

Mr. D. W. PATTERSON. I move that the House go into committee of the whole on the report of the Committee on Revenue, Taxation and Finance.

The motion was agreed to, and the Convention accordingly resolved into committee of the whole on the report of the Committee on Revenue, Taxation and Finance, Mr. Lamberton in the chair.

The CHAIRMAN. When the report of the Committee on Revenue, Taxation and Finance was last under consideration, the pending question was on the amendment offered by the delegate from Philadelphia (Mr. J. Price Wetherill) to the eighth section of the article reported by the committee. The amendment will be read.

The CLERK. The amendment is to insert after the word "no," in the first line, the words "county, township, school district, or;" to make the word "including," in the second line, read "excluding;" to strike out the words "the following," in the third and fourth lines, and insert the word "two;" and to strike out all after the word "indebtedness," in the sixth line; so as to make the section read:

"No county, township, school district, or municipal corporation, shall become indebted in any manner, or for any purpose, to an amount (excluding indebtedness existing at the adoption of this Constitution) in the aggregate exceeding two per centum on the value of the taxable property therein, to be ascertained by the last assessment for county taxes prior to the incurring such indebtedness."

Mr. D. W. PATTERSON. I wish to ask the chairman of this committee whether he supposes the limitatation of taxation here proposed will reach all contingencies? For instance, in our city we have water works. Suppose they were destroyed, washed away by a heavy flood or something of that kind. As they exist to-day, they are a source of revenue to our city, and, of course, indispensable to the wants and necessities of the city. Suppose any borough or city, as that word is not struck out, want to erect gas works or public buildings, it might be a heavy taxation, but it might be the unanimous wish and desire of all the citizens of that municipal corporation to erect those buildings, to erect those extraordinary improvements, if you may so term them. It seems to me this limitation would prevent such a thing as that.

I rose also to suggest, at the same time, whether we had better not vote down this section. It is impossible to fix this limitation to meet all the wants of municipal corporations, and as long as we admit the propriety of republican government and representation, we ought certainly to leave municipalities to regulate their own municipal affairs.

I find that in the next section there is a provision as follows:

"Any municipal corporation incurring any indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the

interest and also the principal thereof within twenty years."

Now, I submit to the committee, Mr. Chairman, whether that is not limitation enough. If a municipal corporation resolve to erect those necessary works, such as gas works, water works, or anything of that kind to increase their conveniences and comfort, and are willing to incur a heavy tax therefor, is not this limitation in the ninth section sufficient? Is it possible for us, in the organic law, to fix a limitation limiting taxation that will not conflict, even, with the wants and conveniences, and unanimous votes of the people of the municipal corporations? It seems to me we ought to vote down this section and rely upon the provisions in the ninth section, and that being a general principle, it will accomplish everything we desire, and at the same time not put the fundamental law in such words and restrictions as will be complained of continually, and probably cause a very large vote against the ratification of the Constitution.

Mr. BROOMALL. Mr. Chairman: After the information we have had from the borough of Sewickley, in which the debt has run up to about forty-five per cent. of all the taxable property within the municipality, (and the gentleman representing that district seems to think the job a good one, an example worthy to be followed,) it looks to me as if there should be some limit somewhere to this running into debt of the counties, cities, townships and school districts of the State. Everywhere these debts, when you get people to talk about them at all, are represented as enormous. In many places that would otherwise be thriving, people are prevented from locating simply because of the enormous debt of the municipality which they know they will have to pay some time.

There are two modes by which the creation of debt may be limited; one the indirect mode, which the gentleman from Lancaster (Mr. D. W. Patterson) favors, and which is found in the next section. That section provides that at the time of the creation of the debt, there shall be provided an annual tax sufficient to pay the interest regularly, and the debt within twenty years. That is a pretty good practical, indirect limitation of the debt; but I very much doubt whether it would stop the downward course of Sewickley. I doubt very much whether it would answer all municipal organizations within the State. I doubt very much whether the disposition to borrow is not so great in the American people, particularly in the inhabitants of villages, towns and cities, that would tax themselves about one hundred and one per cent. upon their taxable property annually, before they would find out that they had gone into debt further than they could bear! I am inclined, therefore, to put in some limit such as is contemplated in this section.

Just what that limit shall be is a less important matter, it seems to me, than that there should be a limit. If two per cent. is not enough, put it at three, put it at four, or, if you think the example that I cited a very good one, but do not want to go quite that far, put it at forty-four and a half per cent; but let us have some limit. After talking with some gentlemen on this floor, I incline to think that two per cent. is perhaps a little low; three per cent. probably would answer all purposes, and if it is moved to increase the limit, I shall not object to it. What I want is to get a limit, that there shall be some limit beyond which our municipalities shall not run in debt.

I, therefore, incline to favor the passage of the section as proposed to be amended by the gentleman from Philadelphia; but I suggest to him that he correct an error that appears in the report. In the report as printed one sentence of section eight has got into section nine: "All contracts by which indebtedness beyond such limits would be incurred by any municipal corporation shall be void." I ask him to embrace that in his amendment.

Mr. J. PRICE WETHERILL. I have no objection to that.

Mr. BROOMALL. He assents to it. Then section nine will begin where it properly should.

I say, again, if two per cent. is not enough, let some gentlemen who thinks it is not enough move to increase it to three; but let us have a limit that shall be at least short of forty-five per cent.

Mr. BUCKALEW. I think in some of the States the Constitutions put the limit as high as ten per cent., but I believe in no case has there been an attempt to separate the different items of municipal outlay and impose a limitation upon each, as is attempted in the section reported. There is a limitation in gross upon the actual indebtedness of municipalities, fixed at some stated percentage, some lower and some as high as ten per cent. I am in favor of incorporating in this article, in the shape

in which it shall eventually assume, a limitation of that character in that simple form, and not attempting to separate the different items of local outlay and placing a special limitation upon each.

I am strongly opposed to the proposition contained in the present amendment, which excepts all existing indebtedness of municipalities of every description in the State from the operation of the proposed limitation. Now, sir, in some cases our local municipalities have gone improvidently into this business of contracting debts, and it is from those very municipalities that a demand, and a proper and reasonable one, comes up to us to curb and restrain the local authorities from increasing the masses of debt which they have already created. This amendment, however, leaves existing indebtedness without any regulation; it is not to be taken into account at all in the application of the limitation proposed.

Among other things, such a provision as this is very objectionable, because it operates with gross inequality. Municipalities of various sorts in the Commonwealth, including school districts, if they are to be included in that classification, have made improvements. They have their school houses constructed; they have their water works put up; they have their streets graded; they have their other improvements made, and they require no additional power for the creation of debts at all; and yet there are other of these municipalities that have not made their improvements, and they require a much larger margin than the two per cent., in order to make them and place themselves upon an equality with those municipalities whose improvements are already made. Now, this limitation of two per cent., or one of three or four per cent., would prevent them from making these necessary improvements; and, as I have already said, upon the other hand, this additional amount of indebtedness which is provided for will be unnecessary in the case of those municipalities whose improvements are made.

I am in favor, therefore, of taking a sufficiently high limit, six, eight or ten per cent., whatever may be thought reasonable, and applying it to all municipalities in the State, as far as a constitutional provision will go, making it high enough to cover existing indebtedness, and making it high enough to permit improvements in those municipalities where improvements have not been made. It seems to me that going down into this business of detail, parcelling this subject out into a number of particulars here in the Constitution, is impracticable, and will produce mischief. I am in favor of proposing simply a general limitation, measured by a percentage, and applying it to all municipalities alike, whether they have debts now, or desire to contract debts hereafter.

Mr. BROOMALL. Mr. Chairman: I just want to explain to the gentleman from Columbia why that plan was not adopted. That plan exists in some of the Constitutions which were before us, and the objection made to it was that the county might absorb the whole borrowing power, and then no borough, or township or school district in it would have any power to borrow thereafter.

Mr. BUCKALEW. I beg the gentleman's pardon. My idea is to apply the limitation to each municipality.

Mr. BROOMALL. Well, I understood the gentleman to say that all the debt within a certain territorial bound should not exceed a given percentage.

Mr. BUCKALEW. No, sir.

Mr. BROOMALL. That is what the section as proposed to be amended does.

Mr. BIDDLE. Mr. Chairman: I would like to say a word or two on this section. I consider that what we are about to do on this subject is of as much importance as anything that we have been called upon or shall hereafter be called upon to do. I am not over-stating the case when I say that now the annual taxation paid upon many properties, or a majority of properties in the community from which I come, equals what the rental was thirty-five or forty years ago. And it is becoming worse and worse every year; so that some limitation upon this fatal facility of running into debt is imperatively demanded. About details I care little, provided I get substance.

Now, sir, it strikes me that the suggestion made by the gentleman from Columbia (Mr. Buckalew) hardly works equality. I am not sure that I understand him; but if I do, I do not think it works equality. He draws a distinction properly between municipalities which are unimproved and those which have gone to a certain stage of improvement, who have become rife, and perhaps something that follows after rifeness as to many of them. But if he proposes to apply the same standard to all, I think it

radically unfair. I can understand well how a municipality that is just beginning to be developed, that has no school houses, no public buildings, no water works, (if they are to be built by the public,) as well no gas works, would require a larger amount of money for these purposes than such a community could immediately command. But I see no reason for making the standard a uniform one. I think that Procrustean to the last degree. To those which have already made these improvements, it is an invitation to plunge deeper into debt. Now, if he chooses to discriminate, I am perfectly willing to go for such a discrimination; but something like a check is demanded; and when we are told by my friend and colleague from Philadelphia (Mr. J. Price Wetherill) that two and a half per centum will give us the ability to borrow fifteen millions of dollars, does not it strike everybody here that this is large enough—perhaps too large—large enough in all reason? It would be adding a third or a fourth to our existing debt, calling that forty-five millions of dollars; I believe it is more than that, probably nearer fifty millions.

Why should we not have a limitation? We have to take things as they are, and all experience has shown us that while, theoretically, you may leave these subjects to the parties who are to legislate upon them, practically it does not answer to leave them without limitation. We go on getting deeper and deeper in debt every year, and the result has been already with us, and will be to a greater extent, to drive from our midst some of the best people that are there, to drive manufacturing interests from our large cities, because the taxation is so high that it eats up the profits.

I can see a very easy remedy in regard to these boroughs and municipalities that are not improved, and it is this: Fix your limitation of two or two and a half per cent. upon a fair valuation, that is to say, upon the valuation of real estate or of other property, such as it would bring at a forced sale at an auction, which is a fair test. In regard to those communities which we are told here are unanimous for borrowing, let them raise their assessments. The moment they want to go beyond two and a half per cent., by raising their assessments, they can get just what they want. Now, it is incredible. I do not say this unkindly, but it is incredible, that a borough like Sewickley, with demands such as we have heard, can have its taxable property fairly assessed at $168,000 or $200,000. Perhaps it ought to be ten times that. I do not know anything about it, but I say it ought probably to be $2,000,000 instead of $200,000. But if they want to borrow in the ratio which we are told, $60,000 at a time, the remedy is in their own hands; they have only to raise their assessments to a million or a million and a half of dollars, and they can get what they want. When we want it in Philadelphia, we can do it in the same way.

There must be a very gross inequality in assessments throughout the State, when I hear that a borough with a valuation of $168,000 borrows, at a single jump, a single blow, $60,000. Give us, however, a restrictive limitation. If two per cent. is not enough make it two and a half; but do not leave it entirely uncertain. We are groaning under the infliction of this unlimited power to borrow, which I understand is inherent in men and corporations. It is a vested right, which nothing but a Constitutional prohibition can ever infringe or cut down. We want it; and if there can be a distinction made, such as the gentleman from Columbia points out, between unimproved boroughs and municipalities, and improved ones, make it. But do not put all on the same footing, for that, as I said in the beginning, as I say now at the close, is an invitation to plunge more deeply into this system of borrowing.

One thought more. We say, and we ought to mean it, if our words are to have the effect they ought to have, that we lay a tax to provide for a sinking fund to pay off the indebtedness already incurred. We have forty-five or fifty millions of debt in Philadelphia. It is to be supposed that we intend to pay it in some way when it falls due. We propose to create a sinking fund for that purpose; so that under this mode of borrowing, with a provision for paying off, we do not always stand at the same figure of indebtedness. We are reducing every few years, so that the original standard of indebtedness is being regularly lowered. We may, ultimately, if we mean fairly and act fairly, get out of debt altogether, because it is a simple arithmetical proposition to work out, that if we lay, every time we create a debt, a tax large enough to pay it in twenty or thirty years, it must ultimately pay it off. For these reasons I hope the section as it stands will pass.

Mr. M'ALLISTER. Mr. Chairman: I rise, not to make a speech, but to say simply a word or two in explanation of my vote upon this subject.

I consider the ability of municipal corporations to incur indebtedness the root of a great evil, that evil which leads to extravagance and corruption, and I am assured that there is no way in which that source of evil can be stopped but by a constitutional restriction upon the power. It may be that there are times in the history of municipal corporations, when the desire for borrowing may be almost unanimous; but they are times when there are few land holders there, but somebody that has land to sell, and a great many more that have no land, and never care to have any in the borough. Then they would be almost unanimous.

I have some personal knowledge with reference to the motives which induce men to borrow under those circumstances. Speculators purchase with a view to the establishment of a municipality, a borough, or a city, if you please. They have land to sell, and if they can get up an excitement, can show that those who buy will have all the moral appliances that minister to the comforts and luxuries of life; if they can create an impression that all these will be furnished free of cost to those who purchase and build, the town will increase, largely increase. But purchasers are not told that the Legislature have given the corporate authorities privilege to encumber, to the extent of $50,000, or $60,000, or $100,000, in order to get the money, out of which these works are to be constructed.

If they were informed that the land to be sold had been mortgaged, and they were asked to purchase and improve it, subject to the lien of that mortgage, not a man would purchase. Yet it is effectually a mortgage and an encumbrance upon the whole village, to remain, we are told, to be paid by future generations, on the false allegation that future generations are to be benefited. I hold that all such borrowing and improvement laid, upon such foundations, is a fraud upon the purchasers and a fraud upon the boroughs. It is a witholding of the truth, and ought never to be encouraged. There are in all such municipalities men who have no real estate to be encumbered, and who do not hesitate to spend other people's money lavishly, in large salaries and unnecessary expenses. Now, I am ready to admit that water works are to be built and that gas works are to be built, when a town or municipality will warrant such expenditures. But in all such cases persons will come forward ready to invest their money if they see profit in it, and those works will be built by private corporations. And let me say here, Mr. Chairman, that all these works are better managed, more economically managed, by private corporations, who have an eye to every dollar of expenditure in order to ensure their profit, than they can be by any municipal corporations.

The town councils and the borough corporations care but little, and pay little attention to lavish expenditures on such works; and it is for us here to put a restriction upon the ability to borrow for the protection of all these municipalities.

The CHAIRMAN. The question is on the amendmen of the delegate from Philadelphia (Mr. J. Price Wetherill.)

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

"But outside the city of Philadelphia, this indebtedness may be exceeded with the consent of a majority of the owners of real estate located within the limits of such municipality, at an election to be held for that purpose after due public notice, in which the amount of such indebtedness proposed to be incurred and the purpose thereof shall be specified."

Mr. J. W. F. WHITE. Mr. Chairman: I shall vote for the amendment to the amendment just read, although possibly I shall vote against the whole section if it be so amended. I think that the amendment just now read would relieve the section of some very objectionable features, although my own judgment is that we can safely trust this question to the Legislature and to the people. No borough, county or city has any power to contract a debt unless there is an act of the Legislature authorizing such indebtedness. They do not possess the power simply by virtue of being a municipal corporation. Any law, therefore, which will authorize a county or borough or city to contract a debt must be sanctioned by the Legislature in the first place—by the representatives of the people—and I believe, as a general rule, that the Legislature will pass no law of that kind unless the people interested desire it; and if the people, the property holders and the non-property holders, of a borough or city desire to contract a debt for a proper municipal purpose, I know of no reason why some person out-

side of that borough or city should have any right to say a word on the subject.

I referred this morning, sir, to the borough of Sewickley, not that I wished to beg any favors of this Convention on that point; I merely referred to it as an illustration to show how such a rule as this would work. We, as a borough, are beyond the reach of this Convention in that respect. We have got our law; we have got that law by the sanction, I believe, of every man in the borough. Therefore the gentleman from Delaware (Mr. Broomall) need not be uneasy; it will not hurt him. We want that indebtedness; we want it to make a good improvement; and we respectfully say to the gentleman from Delaware that it is none of his business. That is the way we think about it, and we are not merely a few property holders interested; there are no one or two individuals that have a great speculation in this thing, as intimated by the gentleman from Centre (Mr. M'Allister.) No such thing, sir. We felt, as the citizens of that borough, that we needed water works, because we are so situated there that we have to dig very deep for water, and it is very difficult to get it.

It has been in contemplation for some years, and knowing that water works would not pay there for many years to come, and that, therefore, no company would be organized to build water works there, we felt that it would have to be done under a law whereby the money could be borrowed on the credit of the borough, and a portion of the taxes of the borough, for years to come, appropriated for the payment of the interest of the debt. Knowing all these facts, we deliberately, with our eyes open, and in the enjoyment of our senses, as I believe, went to work and ran in debt; but we did not mortgage our property beyond what it is worth. We do not purpose any fraud, as intimated by the gentlemau from Centre, upon any person who wants to come there to live. Everybody there knows how we propose to erect these works; everybody knows that it is by the bonds of the borough, and those bonds must be paid, and the interest must be met, and there are capitalists willing to take the whole of the bonds, because they know they are a safe investment, and that the works will ultimately pay the borough.

I believe I can say that there was not a single man in our borough, whether a property holder or not who was not in favor of this very measure. In a few years there is no doubt that the borough will so increase as to make the works a paying investment. We are near the city of Pittsburg, and a great many men doing business there wish to go out into the country and seek a rural home, and there are scores of them now waiting until we get these necessary accommodations to go to Sewickley; some of them own property there and are waiting before making their improvements until these facilities and accommodations are obtained. We have already started our gas works by a private corporation. That would pay from the outset. The water works would not; but we all know that in a few years the increase of the property there and the increase of the inhabitants of that town will make the water works pay, and before the bonds become due the borough can well afford to pay them. Nobody will be the loser, but everybody the gainer.

It has been intimated that our property is assessed unreasonably. Why, sir, that borough has not over fifteen hundred inhabitants, and a few years ago it had but five hundred inhabitants. The whole of our property is assessed, I believe, at about $200,000. It is very likely that that property, if put into market, would sell for two or three times that amount, but there is a great portion of it upon land unimproved, ready to be built upon whenever the neeessary facilities for living there are furnished.

I refer to these facts not because I speak here for Sewickley, but I refer to it simply to show you the impolicy and, I think, the injustice of putting any such restriction as this in your Constitution. I do not want to act the dog in the manger. Because we are accommodated, I do not want to say to the other villages throughout the State, "you cannot contract a debt as we have done; you cannot improve your towns as we have done; you must stand back; your capitalists must put their hands in their pockets, and pay the money at the beginning." I want all to stand upon the same level, all to have the same advantages and the same privileges.

The city of Pittsburg at this time, I believe, has an indebtedness equal to fifteen or twenty per cent. upon its valuation. When on the floor before I said that I thought that it was at least four or five per cent. My colleague, who is much better acquainted with the facts than I am, (Mr. Edwards,) corrects me, and from the facts given by him, it is at least fifteen or twenty per cent. upon the valua-

tion of the city of Pittsburg now. Remember the corporation of Pittsburg, a few years ago, was much more limited than it is now. When we speak of Pittsburg as a city, we embrace Allegheny city and the surrounding districts; but the corporate limits of Pittsburg are more limited and restricted. Many of the business men of Pittsburg live outside of the city limits; and yet I apprehend there is not a man in the city of Pittsburg to-day, whether a property holder or not, who regrets the improvements that we have there. The water works could not be built by subscription.

I will venture to say that the water works in very few cities of the country could be built by private corporations. We know how such a private corporation would act when it had to tax every single individual for a drink of water, if every hydrant going into every house was to be taxed. Why, a private corporation would probably meet with difficulties from citizens almost insurmountable, and those water works ought to be under the regulation, to a very great extent, if not exclusively, of the municipal authorities. I doubt whether any city, or very few boroughs in the State, could erect water work unless the municipality owned them, or loaned its credit, or contributed money to the building of them. So it is with school houses. There are many school districts that have contracted debts far beyond the limit proposed here. They have already got their buildings up. Shall we say to other school districts, "you shall not make similar improvements; you shall not run in debt like your neighbors have done, to make an improvement, though you are a thriving, growing community?"

Now, I say that applying the same rule to all localities, to all boroughs and all cities, is unreasonable; it is unjust because some of them can pay ten times as much as others can, in view of the immediate and prospective increase of the prosperity of the borough or the city. I do think it is unkind, too, in the gentleman from Philadelphia. I am not speaking for any locality here, even if I speak for the city of Pittsburg; she has already got her works erected; she has now a debt equal to fifteen per cent. of her valuation, and you propose now to let her contract a debt of two per cent. more—probably enough for Pittsburg. So it is in Philadelphia. They have ten per cent. now of their valuation.

Mr. BUCKALEW. I should like to ask the gentleman a question. He spoke of the very large debt of Pittsburg. I inquire whether a considerable part of that is not a railroad debt?

Mr. J. W. F. WHITE. Part of it was a railroad debt. About $1,700,000 of her entire indebtedness, I believe, was for railroad subscriptions. I believe that the indebtedness of the city of Pittsburg is about eight millions, taking into account the improvements that are now being made; but I say that, so far as the city of Pittsburg is concerned, we do not care much about this.

Mr. BROOMALL. I should like to ask the gentleman a question with his permission.

Mr. J. W. F. WHITE. Certainly.

Mr. BROOMALL. I understand the gentleman to say that the valuation of property in Pittsburg is about $18,000,000.

Mr. J. W. F. WHITE. I did not say that.

Mr. BROOMALL. What is the valuation?

Mr. J. W. F. WHITE. I do not know exactly. I said the debt was about eight millions.

Mr. BROOMALL. I was going to ask whether the property in Pittsburg could be valued anywhere near its market value, if it is valued at about eighteen millions and the population is eighty-five thousand, whereas in Erie, where the population is less than one-fourth of that, the valuation of the taxable property is within two millions of the value of the taxable property in Pittsburg. It seems to me that the valuation of the property in Pittsburg must be less than probably a fifth of its value. If it was valued up, two and a half per cent. would be a great deal more money than the gentleman makes it now.

Mr. J. W. F. WHITE. I do not know what the total valuation of the property of the city of Pittsburg is. I know this fact, however, that a great deal of the property in the city of Pittsburg is valued for taxation at nearly as much as it would sell for. I know that of my own knowledge. I know of no property in the city of Pittsburg but what is assessed at more than one-fifth of its value, and I know some that would scarcely sell at public sale for what it is valued at now for taxation, and I have no doubt of the fact that property in Pittsburg is assessed just as high in proportion to its value as the property in Delaware county, or anywhere else in the State of Pennsylvania.

I do not believe anywhere in the State of Pennsylvania property is assessed, as a regular rule, up to its cash value. Although the law requires that, everybody knows that in the State of Pennsylvania that has not been our custom for many years. Sometimes they have thrown off one-third or something of that kind from what was the estimated value, but I believe property in the city of Pittsburg, and in the town where I live in the county of Allegheny, is assessed just about as high, in proportion, as property elsewhere in the State of Pennsylvania. It is unreasonable to say that if a borough wishes to contract a debt it must increase its valuation up to an amount to justify such an indebtedness. It is most unreasonable and unwise to throw out such a suggestion. We ought to have a uniform rate of valuation throughout the State, and I hope there will be such.

I referred to my own town simply by way of illustration, not that I care personally, or as representing Pittsburg, what you shall put in your constitution, because we are provided for; but I say it is unjust in us, it is unkind in us to other localities of the State now, when we have got all we want in the way of public improvements, and when we have contracted debts equal to ten, fifteen, and twenty per cent. of our valuation, to turn around to other localities that want to make improvements and say "no, you shall not go beyond two per cent."

Now, I am willing to leave this question to the people; to the Legislature in the first place, and to the people of every locality, and I believe it is more safely left in that way than by any Procrustean rule, as the gentleman from Philadelphia says, which you may adopt in your Constitution. But if you will have anything of the kind, then I go for the amendment of my friend from Lebanon, (Mr. Funck,) which enables the people, by a vote, to increase their indebtedness beyond that limit. I think, however, we had better let the whole thing go now, and when the question of cities comes up, put in some provision that we may agree upon in reference to it.

Mr. ALRICKS. It was not my purpose to make a speech on this subject; but the gentleman who has just taken his seat has satisfied me that the power to which he proposes to refer this matter is an unsafe one: that is, the Legislature and the localities who propose to borrow the money. We know very well that those persons who wish to obtain a particular privilege from the Legislature can get it. It matters not how onerous it may be upon the people, they can get the Legislature to grant it, and therefore, I apprehend, on the gentleman's reasoning, he is wrong. We ought to put some limit upon the amount of money which a municipal corporation may borrow.

It is very doubtful whether any debt created by any municipality within our recollection, in the last twenty years, has been paid. If the gentleman can name any single borough or city that has contracted a debt within the last twenty years that it has paid off, I apprehend he will be very fortunate indeed.

The reason why I would have a limit upon the power of municipalities to contract debts is that it is grinding out the poor property owners. The very class of men that it is our duty to protect are ground out by the fact of the large improvements being made; and as has been very properly said by the gentleman from Centre, (Mr. M'Allister,) they are generally suggested by the men who have a direct interest in them, and the poor property holders, whose income is limited, and whose taxes are increased daily or yearly, find that their property is swept away from them when the place is improved, although that property may advance somewhat in value.

Now, I apprehend there is no doubt that there are always in every community a few men who will make a raid upon the treasury, and that there always is a "ring" ready to make that raid. I apprehend one has only to look throughout the different cities and towns of our Commonwealth to find the proof of it.

Therefore I shall, for one, be very anxious to see that some limit is put upon corporations creating debt. I do not apprehend there will be any difficulty about building good substantial school houses, although the school directors may be limited with regard to the amount of indebtedness they may contract. There will be no difficulty in raising a sufficient fund by taxation for the purpose of building the school houses and making the other necessary improvements. I do not think there will be much danger that, even if a private corporation should be required to bring good water into any city, they would be resisted by the people, because quite a number of our cities thoughout the State have received their

gas from private corporations, and, although the consumers often feel that they are imposed upon by the company, I am not aware that any such company has been resisted to any great extent, but they have been sustained in all their legal proceedings. Sometimes they have imposed on the consumers onerous restrictions, but the companies have been sustained.

I submit, then, that there is no difficulty in private corporations doing a great many things that the gentleman says ought to be done by municipalities. I have no objection to municipalities doing them if it should become necessary, but I am satisfied that it is our duty to the poor property holders throughout the Commonwealth, and to all men of limited means, who wish to acquire a home in any city or borough, to take eare that the men who are interested in making public improvements do not crush them out with taxation.

Mr. T. H. B. PATTERSON. Mr. Chairman: Just one word. It seems to me that the able argument of my colleague (Mr. J. W. F. White) would apply to almost any public improvement, if I learn anything from him. I take it that if the members of this Convention will look at the dicisions of the Supreme Courts of the various States in this country, they will discover that there is no kind of manufacture, no kind of development of raw material, no kind of improvement, or provision for new means of transportation that has not been declared by the courts of some State to be a public purpose, within the application of public funds, and to be developed by municipal authority.

This being the case, there is scarcely a mode of development or manufacture or improvement, into which a municipal corporation cannot go, if they choose to embark in it, and be warranted in so doing by the decision of some court or other in this cuntry. If this is the case, then it becomes the delegates of this Convention to consider seriously if the time has not come when we ought to put a limit beyond which the public servants shall not use the people's money in embarking in such enterprises, even though it may ultimately result in benefit to the community; because we all know that when we have unlimited treasuries from which to draw, and unlimited property of other people to mortgage, we are very free in making public improvements, on the plea of doing benefit to the community.

Therefore I take it that we must put some limit, because if we follow the bent of the argument of those who oppose a limit, why, then, we have no restraint at all, for there is no limit to the public purposes within the control and within the proper discretion of municipal corporations of this country, under the decisions of our courts. I take it, then, that there ought to be a limit, and the only question for this Convention seems to be to fix a reasonable limit, and when we fix on that limit it will not only benefit us directly, in fixing a point beyond which our public men cannot go on running us into debt, and really mortgaging our real estate, but it will also make them considerate, and induce them to consult together when they are going to incur indebtedness, because if one man secures an indebtedness for one purpose, it will entrench upon the prospect of getting an indebtedness for some other purpose, and therefore among themselves they will be more careful, so that a limitation will react in every respect in favor of prudence.

Now it seems to be the only real question where we shall fix the limit. We certainly must have a limit, or our history will be that of many of the great cities of this country, where the municipal indebtedness is now such as to produce an annual taxation of more than nine per cent. on the value of the real estate. The city of New Orleans to-day has a tax on its real property amounting to between nine and ten per cent., and the consequence is that real estate is a dead thing in the market; it cannot be sold or handled; it will not bring any price; it is mortgaged for more than its marketable value for public purposes. But of what benefit are public purposes when the property of the people is mortgaged for more than the legal interest it could possibly produce? This is a serious question, and it is a question which we ought to meet now and firmly.

Mr. FUNCK. Mr. Chairman: This is an important subject. The Convention will not likely be called upon to act upon a question of more general public interest than this. I hope, therefore, that it will be well considered, and that a conclusion will be reached satisfactory to the people. I am not willing, for one, to entrust the creation of debts in our municipalities to the authorities there. Too frequently

irresponsible and reckless men obtain those positions, and they use the offices which they acquire, by corruption, for their own selfish gains. Too frequently they have no interest in the prosperity of the municipalities which they govern; they hold no property, and every contract that they can make they have an interest in some way or other. They are thus personally interested, and therefore the question is not how the affairs of municipalities ought to be administered for the benefit of the people, but how they are to be conducted so that they can make most money out of it themselves.

Now, by the amendment which has been submitted, a certain sum is fixed beyond which the officers of municipalities cannot go. To that extent I should be willing to trust them, but whenever they are to exceed that amount, then I would say that the property holders within the municipality whose real estate is to be mortgaged for the payment of the debt shall be consulted in the matter. If any great public improvement is to be constructed, in which the whole municipality feels an interest, there will be no hesitation on the part of the real estate owners in it to vote in favor of the indebtedness. If, on the contrary, it is a mere scheme on the part of the authorities to make money, to the prejudice of the holders of real estate, they will vote it down. The property holders are therefore the proper parties who ought to be consulted, and for that reason I submit the amendment to the amendment. I think it covers the ground fully, and affords a requisite measure of protection to owners of real estate within the territory of municipalities.

Mr. MINOR. I think, sir, it is settled by the experience of nearly every person who has lived in a city that the tendency is to over-rate and over-estimate the future growth and prosperity of his place of residence, and on that account we find city upon city laboring under a burden of indebtedness. While there may be one example like that referred to by the delegate from Allegheny (Mr. J. W. F. White) as to Sewickley in incurring a tremendous indebtedness, believing it would be for the interest of that place to do so. You will find a great many others who have taken similar steps, and have been groaning ever since under the burden. I could name to the delegate from Allegheny a city that once voted a quarter of a million of debt upon itself, and if I remember aright, but one man out of several thousand raised his voice against it; and yet, sir, in a very few years there was hardly a man in that whole place but what regretted it. It is the easiest thing in the world to get up a furore in a place by a gentleman like the eloquent member from Sewickley, who can picture the improvements and their great advantages, who can build castles in the air and direct water works to supply them, and he will carry with him the whole community. It is a very easy thing done. I have seen it done. I once in a mild way helped to do it, and I regret it; and I stand now to try to correct the error into which I then fell.

I say it is not urgency that we need towards indebtedness, but it is restraint, restraint. Why, you may travel over the States of this Union, and if time permitted, I could name city after city, for I investigated this question years ago, when looking up a residence for myself, and I found city after city burdened in this manner, until its property in some cases would not sell for the taxes placed upon it, and cities that I examined fifteen years ago, and were then under debt, are still groaning under debt at the present time, groaning under debts incurred in their own improvement. It may be that Pittsburg will flow over into Sewickley and build it up. That may be. I will not dispute the correctness of the gentleman's prophecies, but we are here fixing a Constitution for the entire State. Even then, leaving it to the people themselves, our experience is that you may rush people into a vote that is really against their own permanent interest. Men do not like to oppose what is said to be for public improvement, what is said to produce benefits to their place, and all that sort of thing. It is the grandest thing in the world to hold out this idea of improvement to a place when you can silence a man by saying he is opposing the interest of his place in opposing these public measures, and yet the men who vote against them may be the true friends of that place.

But, sir, go a little further. Allusion has been made (and I will simply strengthen the proposition) to the fact that when you come into the councils of many of our smaller cities, you find there men who have no interest except to increase the indebtedness, no part of which they pay. Gentlemen may call to mind many places, and I could name man after man who has voted thousand after thou-

sand of dollars' indebtedness upon the city of his residence, and yet he himself has no property wherewith to pay any part of it. And it is on account of these things, that but lately, in the State of New York, in proposing amendments to their Constitution there, they have made a proposition whereby in every city anything that increases the indebtedness of that city shall first pass a board of property holders, as a matter of protection, and it is part of the law of New York, that before they can vote in nearly all their cities in favor of aiding a railroad, that they shall have a vote of two-thirds in number and two-thirds in the value of the property, both. They have found that restraint necessary, and yet that has not, in all cases, been sufficient.

I say, then, that it is necessary in the organic law of the State to place some reasonable limit, because councils of cities will not place it upon themselves, and you cannot always trust to a vote of the people. You are bound, then, to act for the interest of the whole State.

I say further, sir, that we ought, as far as possible, to place our aggregate business upon the same principle that we would place our individual business, conduct it upon business principles, that is, pay as fast as you go as nearly as you can, never get out of sight of yourself, never go beyond your present means of paying, that is, where you can see how you are to pay for the debt which you incur at the present time. I have been appealed to when a member of a board in a city to use present funds and incur indebtedness instead of increasing our taxation. I fought against it, and it so happened that it constituted a turning point in the history of indebtedness of a certain place, and saved it from a tremendous burden.

I say, then, we need this limitation. It is the history of our State. It is the history of nearly every State in the Union. Two per cent., perhaps, may be about right; two and a half may be better, in addition to our present indebtedness, but we shall err in getting it too large, it seems to me, rather than in getting it too small.

Mr. DALLAS. Mr. Chairman: In the admirable article that has come to us from the Committee on Finance, there is nothing contained more important than the section which we now have under consideration. It is the misfortune of the city of Philadelphia that this section, with the limitation contained in it, cannot be made applicable here, for we have already upon us an indebtedness beyond the maximum which that section would sanction. But, sir, that very fact makes it evident that it is more important here than elsewhere that *some* limit should be imposed; and while I am perfectly satisfied that any amendment to this section should be adopted that may be acceptable to gentlemen residing outside of Philadelphia, so far as the rest of the State is to be affected, I trust that delegates will vote for some restriction (and I think a restriction of two and a half per cent. above the indebtedness already existing would be about the proper one) for the city of Philadelphia.

It has been suggested here—and my purpose in arising is to answer that suggestion—that property in Philadelphia is not appraised at its full value. I happen to know, and very well know, of the instance of one gentleman, a property owner in this city, whose property in one house is appraised within $1,000 of the price for which he actually purchased it, and in the case of another house it is appraised at exactly the price at which he did purchase it, and at which he is again willing to sell it and take two-thirds of the price in a mortgage; and I know that in most instances it is not only the intention and purpose to appraise property here at its full value, but that that intention and purpose is practically and actually carried out. The people of the city of Philadelphia now suffer under an indebtedness of $55,000,000—an indebtedness created for the purpose of shirking, in a great many instances, the responsibility of direct taxation—and I heartily trust some limit (not less than two and one-half per cent.) upon the appraised value, beyond the indebtedness now existing, will be imposed upon the municipal government of Philadelphia, so that hereafter, whenever money is to be raised from the property holders of this city, we shall, at least, have those proposing to create the indebtedness saying to us, face to face, in the shape of direct taxation, what it is they propose to do.

Mr. MACCONNELL. Mr. Chairman: I concur with the gentleman who has just sat down as to the importance of having some limit on the creation of municipal indebtedness. There is an extravagance abroad on that subject which is really startling, and I do not know any instance of it more so than that of which we are

informed by my colleague from Allegheny. He tells us of $60,000 of indebtedness contracted by the little village of Sewickley. If I understood the gentleman aright he said there were about fifteen hundred inhabitants there. Looking at the tax list I find that there are just three hundred and forty taxable inhabitants residing there, and it will take ten dollars and sixty cents for each tax-payer, if I cipher aright, to pay the interest on that indebtedness at the rate of six per cent. There is an extravagance about that that it seems to me ought to satisfy all persons of any degree of prudence whatever that it is time that a stop should be put to that kind of thing. I doubt whether, if the property in that village of Sewickley was put up at sheriff's sale to-morrow, it would actually sell for enough to pay that indebtedness.

Why should such a thing be tolerated? I understood my colleague to say he was one of the commissioners to create that debt, and certainly I entrust that gentleman, both for integrity and sagacity, as well as prudence, as soon as I would trust any other gentleman; but I only call attention to the extravagance of this idea of contracting debts for municipal corporations.

Mr. J. W. F. WHITE. Will the gentleman allow me to ask him a question?

Mr. MACCONNELL. Yes, sir.

Mr. J. W. F. WHITE. Does the gentleman propose, here in this Convention, to repeal that act, so as to save us from our folly?

Mr. MACCONNELL. Of course I would stultify myself if I did attempt that. I have no authority to repeal any act; but, as the gentleman says, they have got their act.

Mr. J. W. F. WHITE. Will the gentleman allow me to ask him another question?

Mr. MACCONNELL. Yes, sir; half-a-dozen, if the gentleman wishes.

Mr. J. W. F. WHITE. Does he think that he knows better what we want than we do ourselves?

Mr. MACCONNELL. I do not know that I do; but I do think ——

Mr. J. W. F. WHITE. Will the gentleman allow me to ask him another question? Does he think we are capable of attending to our own business?

Mr. MACCONNELL. I do not think they are when they run that badly in debt. [Laughter.] When men run so extravagantly in debt, as it appears the citizens of Sewickley have done, I would not have any trust in them. But I cannot speak for Sewickley. They may be very well satisfied with the state of their finances in that respect. If they are, I do not want to fight them, but I should think that it was an illustration of the necessity of some limitation.

Well, now, sir, speaking of others, take the city of Pittsburg. They are running into most enormous debts there, and they are trying to increase them year after year. The Legislature never meets but that we do not hear of some project or other, got up by some special commission, for the purpose of contracting debts which the city will be bound to pay. Fortunately we have been able to defeat them in a good many of these projects, but in several of them, unfortunately, they have been able to defeat us. I think the time has come for a constitutional restriction.

I do not want to subject myself, as far as I am concerned, as a citizen of Pittsburg, to the risks I have been suffering from heretofore in regard to this matter of municipal debts. I say, and I say it most heartily, that there must be some limit put to this debt. My experience on the subject will not allow me to say what that limit ought to be. I will leave that to gentlemen of more experience than myself in that regard; but that there must be some limit put to it, the interest of the community, it seems to me, imperatively requires.

It is said that in a subsequent section in this article there is a provision made for a sinking fund; that the municipal corporation shall provide that the debt shall be paid by taxation in twenty years. I suppose that most of us have lived long enough to be pretty thoroughly convinced that that kind of an indirect obstruction to the contracting of these debts is of very little account. Twenty years is a pretty long time, and the idea that there is no telling how rich we shall be hereafter, is the failing of everybody, and particularly the failing of Americans in this country, who think we are growing rich and populous so fast. I think we had better not trust to that kind of limitation. We had better make a direct one, whatever it may be, two and one-half, three or five per cent. Let us have some limit that cannot be passed.

Mr. WORRELL. Mr. Chairman: I desire to say but a single word in regard to the figures which have been mentioned in the proposition of the committee, and,

also, by gentlemen here to-day. I find, upon examination, that all the real estate within our city bounds, subject to taxation, is valued at $518,234,568. The total valuation of all property, real and personal, in this city, subject to taxation, is $527,165,268, and our funded indebtedness on the first day of January last, was $53,634,479 92. The actual indebtedness of the city exceeds ten per cent. of the full valuation of all property within the city, and this, notwithstanding there were expenditures last year by the departments of the city exceeding the aggregate——

Mr. LILLY. I should like to ask the gentleman a question. Can he inform the Convention how much the city is worth in the shape of railroad stocks, gas works, water works, and so on?

Mr. WORRELL. I can. If the gentleman desires the information, I will give it to him presently.

Mr. LILLY. I shall be glad to have it.

Mr. WORRELL. I was going to say that notwithstanding the expenditures of the city during the last year exceeded $18,000,000, the funded indebtedness alone of the city was increased $4,867,000. With an indebtedness amouting to ten per cent. of the full valuation of all the property within the city, subject to taxation, we are actually increasing our funded indebtedness every year to the amount of one per cent. of the full valuation of all our property.

I think it is important, looking at the subject in this light, that there should be some limitation upon the power of municipalities to contract indebtedness, because it is a matter of easy calculation, with an indebtedness now of ten or eleven per cent., and that indebtedness increasing at the rate of one per cent. a year, to ascertain at just what time the whole property of the city will be required for the purpose of discharging the city's indebtedness. This is exclusive of our taxation, which is now two dollars and fifteen cents on the one hundred dollars of valuation. I think, if anything, the figures proposed as the limitation are too large.

If I could determine the proposition, I would restrict our own municipal corporation from increasing its debt at all. With the improvements we have provision should be made every year for the purposes of government, and the debt should not be increased. At this rate, if other municipalities throughout the Commonwealth follow the example that has been set by the city of Philadelphia, it will be but a very few years when the whole property of the citizens of the Commonwealth will be necessary to discharge the indebtedness of the various local governments. And I call attention to the fact that the indebtedness has been upon the steady increase. No backward step has ever been taken, but the burdens of debt and taxation have been steadily increasing for the last ten or fifteen years, and there are no facts to warrant any one in supposing that the indebtedness will be decreased or limited, unless there is a restriction in the Constitution upon the power of the districts and municipalities to contract indebtedness.

Mr. BUCKALEW. I should like to give notice of an amendment to this section, which I shall offer when it is in order. As I have written it in some haste, I will read it:

"No city, county, borough, or other municipality or incorporated district shall incur a debt or increase its debt above the limit of ten per centum upon the assessed value of the property therein, nor incur a debt or increase its indebtedness more than two per centum upon such assessed valuation of property within it, without the assent of the qualified electors thereof, at a public election, in such manner as shall be provided by law: *Provided*, That any city, the debt of which now exceeds ten per cent. of such assessed valuation, may be authorized by law to make temporary loans not exceeding two per centum in the aggregate, at any one time, upon such valuation, in increase of its indebtedness, until its debt shall be reduced below eight per cent. upon its assessed valuation."

That will allow an aggregate indebtedness, not exceeding ten per cent., in all municipalities of the State. It will allow two per centum to be created or increased by general law without further regulation, and any increase above two per cent. within the limit of ten per cent. shall be made by the assent of the inhabitants at a public vote, under legal regulations. Lastly, it provides that in any city, Philadelphia, Pittsburg, or any other city in the same situation, where the debt is above ten per cent., by law they may be authorized to make additional loans not exceeding two per centum until their aggregate indebtedness shall hereafter be reduced below eight per cent. That, in the city of Philadelphia, will authorize the obtainment of $10,000,000 in the form of public loans in addition to the present indebted-

ness of the city. I think the amendment in this form will work probably a general regulation through the State, while it will make ample and convenient provision for exceptional cases of Philadelphia and Pittsburg, and possibly one or two other cities which may be in the same situation. I cannot offer the amendment now, but I shall do so at the proper time.

The CHAIRMAN. The question is on the adoption of the amendment to the amendment.

Mr. LANDIS. I ask that it be read.

The CLERK read as follows:

"But outside of the city of Philadelphia this indebtedness may be exceeded with the consent of a majority of the owners of real estate located within the limits of such municipality or district, at an election to be held for that purpose, after due public notice, in which the amount of such indebtedness proposed to be incurred, and the purpose thereof, shall be specified."

The amendment to the amendment was not agreed to.

The CHAIRMAN. The question recurs on the amendment of the delegate from Philadelphia (Mr. J. P. Wetherill.)

Mr. BUCKALEW. If it is in order I will offer my amendment at this time as a substitute for the section.

The CHAIRMAN. The Chair is of opinion that that amendment would not be in order, not being an amendment to the pending amendment, the amendment of the delegate from Philadelphia (Mr. J. Price Wetherill. The question recurs on that amendment.

The CLERK read the amendment, which was to so amend section eight as to make it read as follows:

"No county, township, school district or municipal corporation, shall become indebted in any manner or for any purpose to an amount, (excluding indebtedness existing at the adoption of this Constitution,) in the aggregate exceeding two per centum on the value of the taxable property therein, to be ascertained by the last assessment for county taxes, prior to the incurring such indebtedness; and all contracts by which indebtedness beyond such limits, would be incurred by any municipal corporation shall be void."

The amendment was agreed to; ayes, thirty-four; noes, twenty-six.

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

Mr. BUCKALEW. I now move my amendment as a substitute.

The CHAIRMAN. The question is on the amendment of the gentleman from Columbia.

The CLERK read the amendment as follows:

"No city, county, borough or other municipality or incorporated district, shall incur a debt or increase its debt above the limit of ten per centum upon the assessed value of the property therein, nor incur a debt or increase its indebtedness more than two per centum upon such assessed valuation of property within it, without the assent of the qualified electors thereof at a public election, in such manner as shall be provided by law: *Provided*, That any city, the debt of which now exceeds ten per cent. of such assessed valuation, may be authorized by law to make temporary loans not exceeding two per centum in the aggregate at any one time upon such valuation in increase of its indebtedness, until its debt shall be reduced below eight per cent. upon its assessed valuation."

Mr. SIMPSON. I cannot vote for the proposition of the gentleman from Columbia, because it will virtually say to the city of Philadelphia that she shall not borrow any money except for a temporary purpose and by a temporary loan. That temporary loan will have to be paid within a very reasonable period of time or it will be a permanent loan. It will apply, I think, only to Philadelphia and Sewickley, which has been referred to here to-day.

Mr. J. W. F. WHITE. We do not want it.

Mr. SIMPSON. I am very glad to hear the delegate from Sewickley say they do not want it, and I am sure we do not.

But seriously, Mr. Chairman, there are classes of improvements necessary in a city like Philadelphia, that it would be unjust and unwise not to have done, and it would be unjust and unwise to compel the people upon their present property to pay for them out of the taxation for the current year; such improvements as opening streets, curbing, paving, laying sewers, the extension of water works, the extension of gas works, all of which will in a series of years be productive of a large revenue to the city, and yet for which large outlays must be made, and to impose the cost of them upon the already overburdened tax-payers would be more than they ought to bear. The effect of the amendment of the gentleman from Columbia will be to restrain the city of Philadelphia from making any permanent

improvements for her extension, and for that reason I shall be compelled to vote against the proposition.

Mr. BUCKALEW. The concluding part of the amendment, which relates to cities, I feel very little interest in. What I am interested in is the great body of the amendment, applicable to all parts of the State. The word "temporary" there will have a large latitude given to it in interpretation by the Legislature or by authority of law; it may mean a loan of three or five years, and the sinking fund arrangement will be directed to the redemption of those comparatively limited loans, while the main body of city loans will be for a long period of time. But I do not care what particular form this exception at the end of the section shall assume. On that matter I am perfectly willing to take the judgment of gentlemen from the city themselves. It is only necessary to cover that branch of the case, because it is involved in the general question. If gentlemen desire to amend that proviso in any particular in which it is deficient, I am perfectly willing to agree to it.

Mr. SIMPSON. I do not know that I have any particular objection to the gentleman's amendment; but a temporary loan, as I understand it, is a loan that must be met within a year, and I think the courts would so construe it if such a question was raised. When it goes beyond that it becomes of the nature of a permanent loan.

Mr. BUCKALEW. I have no objection to omit the word "temporary" if it will make the amendment satisfactory to the gentlemen from Philadelphia, and I will so modify my amendment.

The CHAIRMAN. The amendment will be so modified.

Mr. D. W. PATTERSON. Mr. Chairman: I would like to ask what effect this amendment will have if adopted, because if we adopt the section in its present shape, and as it has just been voted on, it would virtually prevent our city of Lancaster from making any contemplated public improvement. It is too small a matter. I think that leaving the question of taxation to a vote of the people, we ought to adopt this amendment in relation to the section reported by the committee, and I hope we shall——

Mr. J. PRICE WETHERILL. Mr. Chairman: I rise to a point of order. The motion of the gentleman from Columbia is not in order. Under rule sixteen no motion can be received to postpone for the purpose of introducing a substitute. That amendment which I offered passed and, therefore, under the ruling, I think the motion of the gentleman from Columbia is not in order——

The CHAIRMAN. There is no motion to postpone offered. This, as the Chair understands it, is an amendment to the section, offered as a substitute for the section, and therefore strictly in order.

Mr. J. PRICE WETHERILL. Mr. Chairman: I raise the point of order that it strikes out of the section what I have put in.

The CHAIRMAN. The Chair does not so think. The section has not been adopted. An amendment to the section has been agreed to, but a substitute for the section is in order, and this is offered as a substitute for the whole section.

On the question of agreeing to the substitute, a division was called for, which resulted twenty-seven in the affirmative, which, not being a majority of a quorum, the substitute was rejected.

Mr. STRUTHERS. Mr. Chairman: I move to amend to increase the per cent. to three instead of two, by striking out the word "two" and inserting "three."

Mr. LILLY. I hope that will be adopted.

Mr. D. W. PATTERSON. I move to further amend the amendment, by making the per centum three and a half.

Mr. RUNK. Why not make it four?

Mr. BROOMALL. Better let it stand at three.

The amendment to the amendment was rejected.

On the question of agreeing to the amendment, a division was called for, which resulted twenty-nine in the affirmative. This not being a majority of a quorum, the amendment was rejected.

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

Mr. H. G. SMITH. I move to amend by striking out "two" and inserting "two and a half."

On the question of agreeing to this amendment a division was called for, which resulted forty-two in the affirmative and twenty-seven in the negative.

So the amendment was agreed to.

On the question of agreeing to the section as amended, a division was called for, which resulted: Forty-seven in the affirmative and eleven in the negative. So the section as amended was agreed to.

Mr. MANN. Mr. Chairman: I rise to a question of privilege. I move to re-consider the vote by which the fourth section of this article was adopted.

The CHAIRMAN. Did the gentleman from Potter vote with the majority?

Mr. MANN. I did, sir.

The CHAIRMAN. Is the motion seconded?

Mr. PARSONS. I second it. I voted in the affirmative.

The motion to re-consider was rejected.

The CHAIRMAN. The ninth section will be read.

The CLERK read as follows:

SECTION 9. All contracts by which indebtedness beyond such limits would be incurred by any municipal corporation shall be void. Any municipal corporation incurring any indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof within twenty years.

Mr. BROOMALL. Mr. Chairman: I desire to make two corrections in this section as printed. First, the first sentence was improperly put in this section, when it belonged to the preceding one. It has been voted into the eighth section. I move to strike that out here.

Then I desire to make another motion, inasmuch as the term "municipal corporation" may not embrace counties, townships, and school districts, to insert after the word "any," the words, "county, township, school district or"

These are mere verbal corrections, and I move to amend by making them as I have suggested.

The amendment was agreed to.

Mr. HANNA. I move to amend, by striking out the word "twenty," in the last line, and inserting the word "thirty."

It has been found by the experience of the city of Philadelphia, that when a loan is created the proper plan is to direct that a sufficient sum shall be raised by annual taxation, to pay the interest upon the loan, and also to set apart three-tenths of one per cent. to the sinking fund, and this will, at the expiration of thirty years, pay the principal of the loan. That has been the uniform custom, and has been found to work admirably. A sufficient sum is raised and the sinking fund thereby is applied to every year, and the loans are met promptly as they mature. I therefore submit that it would be much more practicable, and much more convenient for the tax-payers, if this provision be made thirty years instead of twenty years.

Mr. SIMPSON. Mr. Chairman: The amendment offered by my colleague is an amendment that I rose to make myself, but I intended to assign another reason for it. It is well known to persons who are engaged in financial matters, that a thirty years bond can be sold at a higher price than a twenty years bond, especially where investments are sought for trust purposes. As a thirty years bond will bring a higher price in the market, we ought to increase the limitation in this section to that term.

Mr. J. PRICE WETHERILL. Mr. Chairman: I desire, if in order, to offer an entire substitute for this section, and to do so for this reason; believing that a sinking fund should be a little more explicitly defined than the one named in this section, I would offer the following, at the proper time, as a substitute:

"When any debt is authorized for the use of any county, city, borough or school district, the act by which the debt is created shall provide therein for the levy of an annual tax, which shall be sufficient for the payment of the interest thereon semi-annually, and the principal thereof at the expiration of thirty years, and the extinguishment of the debt at its maturity. The portion of the tax for the payment of the interest shall be kept separate and apart, and held for the payment thereof, and that for the extinguishment of the debt shall be kept separate and apart as a sinking fund, and under law for its regulation shall be invested with the income thereof, and at maturity of the debt applied to its extinguishment."

Now, by adopting a section of this sort, we bind the treasurer or the parties having control of the loan, or of the sinking fund, to keep it separate and apart, so that when the loan matures the money will be ready to take it up. It does seem to me that if we think it right and proper to introduce anything like a sinking fund into this article; we should make that sinking fund plain and specific in its direction. I therefore, if it is now the proper time, offer this as a substitute, and if it is not in order now, at the proper time I shall submit it.

The CHAIRMAN. There is at present an amendment pending, to strike out "twenty," and insert "thirty." When that is disposed of the gentleman from Philadelphia can offer his substitute.

The amendment was agreed to.

Mr. J. PRICE WETHERILL. Mr. Chairman: Now I offer this as a substitute for the section:

The CHAIRMAN. The substitute will be read.

The CLERK read as follows:

"When any debt is authorized for the use of any county, city, borough or school district the act by which the debt is created shall provide therein for the levy of an annual tax, which shall be sufficient for the payment of the interest thereon semi-annually, and the principal thereof at the expiration of thirty years, and the extinguishment of the debt at its maturity. The portion of the tax for the payment of the interest shall be kept separate and apart, and held for the payment thereof, and that for the extinguishment of the debt shall be kept separate and apart as a sinking fund, and under law for its regulation shall be invested with the income thereof, and at maturity of the debt applied to its extinguishment."

Mr. BROOMALL. Mr. Chairman: I am entirely in favor of the object of the gentleman from Philadelphia, but I am inclined to think it rather a matter for legislation than for constitutional provision. If we declare that the act creating a debt shall provide for the collection of an annual tax sufficient to pay the interest, for thirty years, it seems to me that the manner in which that should be done, the details ought properly to be left to the Legislature. While I am entirely in favor of the object sought to be reached by the gentleman from Philadelphia, I would prefer that the section be adopted as it stands, leaving the Legislature to arrange the details.

The substitute was rejected.

The CHAIRMAN. The question is on the section as amended, which will be read.

The CLERK read as follows:

"Any county, township, school district or municipal corporation incurring any indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest, and also the principal thereof, within thirty years."

The section, as amended, was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 10. To provide for the payment of the present State debt, and any additional debt contracted as aforesaid, the Legislature shall continue and maintain the sinking fund sufficient to pay the accruing interest on such debt, and annually to reduce the principal thereof by a sum not less than two hundred and fifty thousand dollars. The said sinking fund may be increased, from time to time, by assigning to it any part of the taxes or other revenues of State not required for the ordinary and current expenses of government; and, unless in case of war, invasion or insurrection, no part of said sinking fund shall be used or applied otherwise than in extinguishment of the public debt until the amount of such debt is reduced below the sum of five million dollars.

Mr. BOYD. Mr. Chairman: The hour of five having arrived, I move that the committee do now rise, report progress and ask leave to sit again.

The motion was rejected.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 11. The moneys of the State, over and above the necessary reserve, which shall be as small as possible consistent with the public demands, shall be used in the payment of the debt of the State, either directly or through the sinking fund; and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything except the bonds of the United States or of this State.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 12. All moneys of the State shall, as far as possible, be kept at interest for the benefit of the State or in loans upon the security of the bonds of the United States or of this State; and the Legislature shall provide means for the publication, at least once in every three months, of a statement showing the amount of all such moneys, where the same are deposited or loaned, and on what security.

The section was agreed to.

Mr. LILLY. Mr. Chairman: I offer the following additional section:

"The Legislature, by general law, shall provide that all taxable property shall be valued for assessment at its full market value, and shall provide by law penalties for all non-compliance with this section."

The proposed additional section was rejected.

Mr. ALRICKS. Mr. Chairman: I offer the following as a new section:

"A State Revisor shall be selected every three years, whose duty it shall be to examine and revise any and all accounts presented against the Commonwealth, and if any claim is not just or true, he shall report the same to the Auditor General. The said Revisor shall report annually to the Legislature such bills and claims made against the Commonwealth for work, labor, and materials furnished, as are fair accounts, and shall also report why any claims made should not be allowed, and shall report whether all taxes on corporations have been equitably and fairly adjusted."

Mr. Chairman, I desire to say a word upon this section. I have it from the best authority that hundreds of thousands of dollars are annually paid beyond what the Commonwealth ought to pay; and I have it from the same authority, that it is the opinion of those who have had experience in that mattter, that if we had some person, whose duty it would be to revise these accounts and call the attention of the Auditor General to the fact, that although they are *prima facie* fair, yet there are matters in them that ought not to be allowed, in all probability these items would be stricken out, or that, at all events, they would not be paid. I received the impression from a gentleman who has had great experiences in connection with and an intimate knowledge of the Auditor General's office, that hundreds of thousands of dollars have been paid on the *prima facie* evidence of the account when the money was not really owing.

Let not gentleman say that I propose to appoint some person to keep an eye on the Auditor General. I apprehend that that objection will not avail, because, really, the Auditor General has a very large amount of duties to perform. He has charge of the settlement of accounts with the different corporations throughout the Commonwealth, and that of itself would engage the attention of an officer for a large portion of the year. I think it is in the interest of the Commonwealth that we should have some other person whose duty it should be to examine with care those accounts which are presented against the Commonwealth, and to report them to the Legislature, so that their attention might be directed to the subject and unjust accounts, although they might appear on their face *prima facie* to be correct, should not be paid. I regard this as a matter of very great moment, and I trust the amendment will receive favorable consideration.

Mr. BROOMALL. This is a matter for legislation; and, surely, it does not belong in this article, because it is the creation of a new office.

The CHAIRMAN. The question is on the amendment of the gentleman from Dauphin, (Mr. Alricks,) to add the section proposed by him.

The amendment was rejected.

The article, as reported, having been gone through with, the committee rose, and the President having resumed the Chair, the chairman (Mr. Lamberton) reported that the committee of the whole, having had under consideration the article reported by the Committee on Revenue, Taxation and Finance, had directed him to report the same with amendments.

The amendments were read.

The article as proposed to be amended by the committee of the whole is as follows:

ARTICLE —.

SECTION 1. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the Legislature may by general laws exempt from taxation (except from the special assessments herein provided,) public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit and institutions of purely public charity.

SECTION 2. All laws heretofore passed or hereafter to be passed exempting property from taxation, other than the property above enumerated, shall be void.

SECTION 3. The Legislature may by general laws, uniform as to the class and kind of improvements to be made, vest in the corporate authorities of cities, boroughs and townships the power to make, renew and maintain local improvements by special assessments or taxation of contiguous property or of property specially benefited thereby, without exception on account of use or ownership.

SECTION 4. The property and business of manufacturing corporations shall not be taxed in any other manner or at any other rate than like property and business of individuals.

SECTION 5. No debt shall be created by or on behalf of the State, except to sup-

ply casual deficiencies of revenue, or to repel invasion, suppress insurrection, or defend the State in war, or to pay existing debt; and the debt created to supply deficiencies in revenue shall never exceed in the aggregate, at any one time, one million dollars.

SECTION 6. All laws authorizing the borrowing of money, by or on behalf of the State, shall specify the purpose for which the money is intended, and the money so borrowed shall be used for the purpose specified, and no other.

SECTION 7. Neither the State nor any county, city, borough, township or other municipality shall loan its credit or appropriate money to, or assume the debt of, or become a shareholder or joint owner in or with any private corporation, or any person or company whatever.

SECTION 8. No county, township, school district or municipal corporation shall become indebted in any manner or for any purpose to an amount (excluding indebtedness existing at the adoption of this Constitution) in the aggregate exceeding two per centum on the value of the taxable property therein, to be ascertained by the last assessment for county taxes, prior to the incurring such indebtedness; and all contracts by which indebtedness beyond such limits would be incurred by any municipal corporation shall be void.

SECTION 9. Any county, township, school district or municipal corporation incurring any indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax, sufficient to pay the interest, and also the principal thereof, within thirty years.

SECTION 10. To provide for the payment of the present State debt, and any additional debt contracted as aforesaid, the Legislature shall continue and maintain the sinking fund sufficient to pay the accruing interest on such debt, and annually to reduce the principal thereof by a sum not less than two hundred and fifty thousand dollars. The said sinking fund may be increased from time to time by assigning to it any part of the taxes or other revenues of State not required for the ordinary and current expenses of government; and, unless in case of war, invasion or insurrection, no part of the said sinking fund shall be used or applied otherwise than in extinguishment of the public debt, until the amount of such debt is reduced below the sum of five millon dollars.

SECTION 11. The moneys of the State, over and above the necessary reserve, which shall be as small as possible, consistent with the public demands, shall be used in the payment of the debt of the State, either directly or through the sinking fund; and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything except the bonds of the United States or of this State.

SECTION 12. All moneys of the State shall, as far as possible, be kept at interest for the benefit of the State, or in loans upon the security of the bonds of the United States or of this State; and the Legislature shall provide means for the publication, at least once in every three months, of a statement showing the amount of all such moneys, where the same are deposited or loaned, and on what security.

On motion of Mr. Landis, the Convention, at five o'clock and fifteen minutes P. M., adjourned.

EIGHTIETH DAY.

THURSDAY, *April* 17, 1873.

The Convention met at ten o'clock A. M.

Prayer by Rev. J. W. Curry.

The Journal of yestereay's proceedings was read.

Mr. WRIGHT. I desire the Journal to be corrected in one respect. My name was put down yesterday, on the call of the yeas and nays, as voting for the motion to adjourn. I never intended to give such a vote, and it was done entirely through misapprehension. I desire the change to be made. I voted "nay."

The PRESIDENT. The Journal will be so corrected. The Chair will state that in the resolution passed the day before yesterday, directing an adjournment each day at one o'clock, to meet again at three o'clock, there was an accidental error in the use of the term "adjournment." There can be no adjournment except to another day, and the proper entry is "that the House took a recess." The Chair has therefore taken the liberty of having the Journal modified by using the word "recess," instead of "adjournment," because if we call it an adjournment we must begin by reading the Journal when we come together again, and receiving memorials, &c., which was not the intention of the House. If the House dissents from this view it will express that dissent. The motion of Mr. M'Clean, yesterday, is also entered as a motion to take a recess. Will the House agree to these corrections?

["Aye."]

RESIGNATION OF A MEMBER.

Mr. LAMBERTON. I present a communication, which I send to the desk to be read.

The CLERK read as follows:

LANCASTER, *April* 15, 1873.

Hon. WILLIAM M. MEREDITH,

Pres't of Constitutional Convention:

MY DEAR SIR:—Permit me through you to tender to the Constitutional Convention my resignation.

The many professsional and private engagements which demand my attention during the months of April and May, and which I cannot postpone without great loss and inconvenience to others, have necessitated this course.

It is with much regret that I sever my connection with this Convention, assembled in response to a call from the people to execute the work of reform.

So far the action of the Convention meets with my hearty approval, and if in the end all is realized that a good beginning justifies anticipating, the people of the State will congratulate each other that they placed a great work in such trustworthy hands, and all who contribute to the result will have just cause to feel proud.

I have the honor to be

Yours respectfully,

SAMUEL H. REYNOLDS.

Mr. LAMBERTON. I move that the resignation be accepted, and that it be referred to the delegates at large chosen upon the ticket upon which Mr. Reynolds was elected, to fill the vacancy.

The motion was agreed to.

PETITIONS AND MEMORIALS.

Mr. DALLAS presented two memorials of citizens of Philadelphia, praying for an acknowledgment of Almighty God and the Christian religion in the Constitution of the State, which were laid on the table.

Mr. GIBSON presented a memorial of citizens of York county, with the same prayer, which was laid on the table.

Mr. JOS. BAILY presented a memorial of citizens of Perry county, with the same prayer, which was laid on the table.

Mr. T. H. B. PATTERSON presented two memorials of citizens of Allegheny county, with the same prayer, which were laid on the table.

Mr. M'ALLISTER presented two memorials of citizens of Juniata county, with the same prayer, which were laid on the table.

Mr. ROOKE presented a memorial of citizens of Union county, with the same prayer, which was laid on the table.

Mr. CORBETT presented a memorial of citizens of Clarion county, with the same prayer, which was laid on the table.

Mr. LAWRENCE presented two memorials of citizens of Washington county, with the same prayer, which were laid on the table.

Mr. RUSSELL presented two memorials of citizens of Bedford county, with the same prayer, which were laid on the table.

Mr. STRUTHERS presented thirty-one memorials from citizens of Warren county, requesting the insertion of a clause in the Constitution prohibiting the manufacture and sale of intoxicating liquors, which were laid on the table.

Mr. CORSON presented a petition in favor of female suffrage, which was laid on the table.

LEAVES OF ABSENCE.

Mr. WHERRY. I desire to ask leave of absence for Mr. Hanna, of the city of Philadelphia, for this afternoon.

Leave was granted.

Mr. NILES. I desire to ask leave of absence for Mr. Elliott, of Tioga, for a few days, on account of sickness in his family.

Leave was granted.

DAILY SESSIONS OF THE CONVENTION.

Mr. BOYD. I offer the following:

Resolved, That on and after to-morrow the Convention meet at ten o'clock A. M. and adjourn at three o'clock P. M.

On the question of proceeding to the second reading and consideration of the resolution, the yeas and nays were required by Mr. Boyd and Mr. Addicks, and were as follow, viz:

YEAS.

Messrs. Addicks, Ainey, Alricks, Armstrong, Bannan, Boyd, Broomall, Brown, Cassidy, Corbett, Corson, Craig, Curry, Curtin, Darlington, Finney, Gilpin, Guthrie, Hay, Hemphill, Lamberton, Lear, M'Allister, Mann, Metzger, Newlin, Parsons, Patterson, D. W., Patton, Reynolds, James L., Ross, Runk, Simpson, Smith, H. G., Stanton, Walker, Wetherill, J. Price, Worrell and Meredith, *President*—39.

NAYS.

Messrs. Andrews, Baer, Baily, (Perry,) Baker, Bartholomew, Buckalew, Carter, Collins, De France, Dunning, Edwards, Funck, Hall, Hanna, Harvey Horton, Hunsicker, Landis, Lawrence, Lilly, Long, MacConnell, M'Culloch, Mantor, Minor, Mott, Niles, Palmer, G. W., Pughe, Rooke, Russell, Smith, Henry W., Struthers, Wherry, White, David N., White, J. W. F. and Wright—37.

So the question was determined in the affirmative.

ABSENT OR NOT VOTING.—Messrs. Achenbach, Bailey, (Huntingdon,) Barclay, Bardsley, Beebe, Biddle, Black, Charles A., Black, J. S., Bowman, Brodhead, Campbell, Carey, Church, Clark, Cochran, Cronmiller, Cuyler, Dallas, Davis, Dodd, Elliott, Ellis, Ewing, Fell, Fulton, Gibson, Gowen, Green, Hazzard, Heverin, Howard, Kaine, Knight, Littleton, Mac Veagh, M'Camant, M'Clean, M'Murray, Mitchell, Palmer, H. W., Patterson, T. H. B., Porter, Purman, Purviance, John N., Purviance, Samuel A., Read, Jno. R., Reed, Andrew, Sharpe, Smith, Wm. H., Stewart, Temple, Turrell, Van Reed, Wetherill, J. M., White, Harry and Woodward—66.

Mr. STANTON. I move to amend by making the hour of adjournment four, instead of three o'clock.

Mr. H. G. SMITH. I rise to inquire whether the resolution, as now before the House, will include a session on Saturday or not?

The PRESIDENT. No, it will not include a session on Saturday, because of the resolution on that subject adopted on Tuesday.

Mr. H. G. SMITH. Then I move to amend the resolution so as to read, that this Convention will hold daily sessions, commencing at ten o'clock and adjourning at three o'clock. There are a great many members from the country who are necessarily detained here every Saturday, and who cannot get home. With the exception of one Saturday, just before the close of the session of last winter, we did not fail to have a quorum here on every Saturday. There is no reason why one day in the week should be wasted when it can be properly employed in attending to our legitimate business. A sufficient number of members will always be found here every Saturday, from this time until the adjournment of the Convention, to attend to the necessary transaction of business.

Mr. LILLY. Mr. PRESIDENT: The very argument of the gentleman from Lancaster shows that there is no necessity for a meeting on Saturday. He says there has been no quorum here on any Saturday.

Mr. H. G. SMITH. No, sir; only that on one Saturday there was not a quorum.

Mr. LILLY. I know there has been a quorum here almost every Saturday; but

it has been said that whatever has been done on Saturday has been badly done. If we hold no sessions on that day, I believe that our work will be better done. I am ready to come here on Monday morning, and stay as long in session for work as anybody. The argument of the gentleman from Lancaster shows that there will be no occasion for a session on Saturdays. In these days of railroads, when people can get to their homes so readily, it is impossible to hold a quorum, or at least barely more than a quorum here, and this will be found to be our experience every Saturday.

Mr. D. W. PATTERSON. Mr. President: I only want to say that I was astonished at my colleague (Mr. H. G. Smith) offering this amendment to provide that we hold a daily session. He has hitherto enjoyed a fine reputation for morality, and, therefore, when he introduces an amendment to hold a session daily, and desecrate the Sabbath day, I am utterly astonished. [Laughter.] I hope the amendment will not prevail.

Mr. H. G. SMITH. Mr. President: I desire to say that I did not intend to hurt the Presbyterian principles of my colleague. But I do not think either that he ought to make his religious scruples an excuse for going home one day in the week to attend to his private business, when he has been elected by the people to attend to public business during the whole week. [Laughter.]

Mr. J. W. F. WHITE. Mr. President: I have taken very little part in these repeated motions for changing our hours of meeting. I have, I believe, on every motion, since we first met at Harrisburg until the day before yesterday, voted against an adjournment over Saturday. Day before yesterday I voted to adjourn over Saturday. I believe I shall vote for that now, because I found our Saturday sessions not very profitable sessions. Although we have generally had a quorum, yet it is well known that we have not had much more than a quorum, and not much has been accomplished on Saturdays.

I trust, however, Mr. President, that the Convention will fix definite hours for our sessions. I should prefer that we commence at ten o'clock and adjourn at four o'clock, so as to give us six working hours per day, and I shall vote for the amendment proposed by the gentleman from Philadelphia (Mr. Stanton.) I also would desire to have no session on Saturday. I believe that if we adopt that rule as a Convention, and do not try to change it every day, but adhere to it regularly and permanently, we shall accomplish the best thing in the way of sessions that we have yet done.

I do hope that we shall not have this question about adjournment brought up every day or two. I voted day before yesterday for two sessions a day, believing we should accomplish more in that way; but I must confess that the experience of yesterday shook my faith in that. I know that our President and many other members of the Convention would much prefer but one session a day, and I therefore shall vote to-day for a session from ten to four o'clock, only hoping that it will become the permanent rule of our Convention from this time forward. And then let us leave off Saturday.

Mr. BOYD. Mr. President: I was influenced in my action, in offering the pending resolution, by the experience of yesterday. At one o'clock we took a recess until three; and when the hour of three arrived, there was not a quorum here. I felt it to be my duty, under those circumstances, to move that the Sergeant-at-Arms be sent after the absentees, which the House did agree to; and soon after we were able to secure a quorum. It is manifest that the same difficulty will occur every afternoon. I do not think that I ever before offered a resolution upon the subject of the hours of meeting of the Convention; but upon reflection on the situation of affairs when we had no quorum yesterday, I am convinced that it was not exactly the thing to disturb members in their repose, and that members who snore audibly are an annoyance to those who are indulging in a dozy, dreamy sleep. [Laughter.] It is exceedingly unpleasant to ask gentlemen to come here after eating a weighty dinner. They are certainly in no condition to perform work, such as is required of us here, because everybody must agree that it requires us to be wide awake, and the mental strain is a continued one. Therefore there is no opportunity afforded for rational and profitable repose, and, indeed, there could not be. Now, I am very well persuaded by the remarks of my friend from Allegheny, (Mr. J. W. F. White,) that the true rule to adopt and to adhere to, would be to meet at ten and adjourn at four, and let that be the fixed rule for the government of this body.

I therefore, sir, have risen for the purpose of explaining the reason for this mo-

tion, and also for the purpose of accepting the suggestion made by the gentleman from Pittsburg. I accept the modification of four o'clock, in place of three o'clock, and I also accept the suggestion to dispense with sessions on Saturday.

Mr. STANTON. I believe I offered the amendment to fix the hour of adjournment at four o'clock.

The PRESIDENT. The Chair understood the gentleman to withdraw that for the purpose of allowing the motion to provide for a session on Saturdays to be offered.

Mr. STANTON. No, sir. The original motion was to adjourn at three, and I moved to amend by making the hour four.

The PRESIDENT. The Chair understood the amendment to be withdrawn, and he received the motion of the gentleman from Lancaster (Mr. H. G. Smith) to hold daily sessions. The question before the House is upon that amendment.

The amendment was rejected.

Mr. STANTON. Mr. President: I now move to make the hours of session from ten to four.

Mr. BOYD. I accept that.

The PRESIDENT That cannot be accepted, because the House has acted on the resolution.

Mr. CURTIN. Mr. President. I rise to ask a parliamentary question. Would it be in order to offer an amendment to stop this discussion in some way in reference to the hours of adjournment, and to introduce a motion that if we do establish any rule at all, it shall not be interfered with again?

The PRESIDENT. It would not be in order at this time.

Mr. M'ALLISTER. I move that the resolution be amended, by striking out "four o'clock" and inserting "three o'clock."

The PRESIDENT. Three is already named in the resolution. All the gentleman has to do to accomplish his object is, to vote against the amendment. The question is on the amendment to strike out "three" and insert "four o'clock."

Mr. LAWRENCE. I do not wish to waste the time of the Convention by discussing this resolution, but I do not think——

Mr. BARTHOLOMEW. I rise to a question of order. I remember that there was a resolution offered, and, I think, adopted by this Convetion, providing that questions of adjournment should be passed upon without debate.

The PRESIDENT. That resolution has been rescinded.

Mr. BARTHOLOMEW. I am sorry for it.

Mr. LAWRENCE. I was about to say that I do not think it creditable to us to be drawn into a discussion every morning by somebody, in reference to the hours of adjournment and hours of meeting. I think we acted as sensible men the other day, after having had so long a recess at home, when we came back and agreed to have two sessions a day. Some of us live in the country, and are farmers. We eat our dinners at one o'clock at home, sometimes before that, and we would prefer adjourning at about one o'clock, and taking our dinners and then coming back to the Convention. There are other gentlemen here who are accustomed to what I call irregular hours of eating, sleeping, &c., and they prefer to meet at ten and adjourn at four. This difference of taste and habit brings up a discussion here every day. Now, I say that my friend from Allegheny (Mr. J. W. F. White) has no right to presume that the failure yesterday, if it was a failure—I think it was not—is an indication of what will occur in the future. I think we accomplished very much yesterday. In the first place we determined that there should never be any new counties formed in the State, and then we disposed afterwards of the report of my friend from Delaware, (Mr. Broomall,) which I believe was entirely gone through with in the afternoon session. I think we accomplished a good deal yesterday.

I am giving my experience in other bodies when I say that we shall accomplish more by having two sessions a day. I think the people expect this of us. I do not think that any member of the Convention is doing his duty when he goes home at the hour of recess and refuses to come back in the afternoon; nor do I think any member is doing his duty when he stays away from the Convention about one-half or one-third of the time without even a reasonable excuse. I might refer to particular members who have not been here one-fourth of the time. I say they are not doing their duty to the Convention nor to the people.

I am tired of this continual discussion about adjournment. I hope we shall stick to what we did yesterday and continue to have two sessions per day. I would rather meet on Saturday, but as we refused to do that I am willing to fore-

go it. Therefore I move to lay the resolution on the table.

The PRESIDENT. The gentleman from Washington (Mr. Lawrence) moves to lay the resolution on the table.

On this motion, the yeas and nays were required by Mr. Boyd and Mr. D. N. White, and were as follow, viz:

YEAS.

Messrs. Andrews, Baer, Baily, (Perry,) Bartholomew, Buckalew, Carey, Carter, Cassidy, Cochran, Collins, Cronmiller, Curry, De France, Dodd, Dunning, Edwards, Funck, Hall, Hanna, Harvey, Horton, Hunsicker, Knight, Landis, Lawrence, Lilly, Long, MacConnell, M'Clean, M'Culloch, Mantor, Minor, Mott, Niles, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Rooke, Russell, Smith, Henry W., Struthers, Wherry, White, David N., Worrell and Wright—47.

NAYS.

Messrs. Addicks, Ainey, Alricks, Armstrong, Baker, Bannan, Boyd, Broomall, Brown, Corbett, Corson, Craig, Curtin, Dallas, Darlington, Fulton, Gilpin, Guthrie, Hay, Hemphill, Lamberton, Lear, M'Allister, Mann, Metzger, Newlin, Parsons, Reynolds, James L., Ross, Runk, Simpson, Smith, H. G., Stanton, Walker, Wetherill, J. M., Wetherill, Jno. Price, White, J. W. F. and Meredith, *President*—28.

So the question was determined in the affirmative.

ABSENT OR NOT VOTING.—Messrs. Achenbach, Bailey, (Huntingdon,) Barclay, Bardsley, Beebe, Biddle, Black, Chas A., Black, J. S., Bowman, Brodhead, Campbell, Church, Clark, Cuyler, Davis, Elliott, Ellis, Ewing, Fell, Finney, Gibson, Gowen, Green, Hazzard, Heverin, Howard, Kaine, Littleton, MacVeagh, M'Camant, M'Murray, Mitchell, Palmer, H. W., Porter, Purman, Purviance, Jno. N., Purviance, Samuel A., Read, John R., Reed, Andrew, Sharpe, Smith, Wm. H., Stewart, Temple, Turrell, Van Reed, White, Harry and Woodward—57.

REPORT OF THE JUDICIARY COMMITTEE.

Mr. ARMSTRONG. I offer the following resolution——

Mr. D. N. WHITE. I object, unless it is read for information. Resolutions are all the time sprung on us here, and we do not know what they are until they are read.

The PRESIDENT. The resolution will be read for information.

The CLERK read as follows:

Resolved, That the report of the Committee on the Judiciary be made the special order in committee of the whole for Tuesday, the 22d instant, at eleven o'clock A. M.

Mr. D. N. WHITE. I withdraw my objection.

The resolution was ordered to a second reading, and was read the second time.

The PRESIDENT. The resolution is before the House.

Mr. BARTHOLOMEW. I move to amend the resolution, by making the time Monday next, at eleven o'clock.

Mr. ARMSTRONG. I do not know that I have any objection to that, if it be a more convenient day for gentlemen of the Convention. I leave it entirely to their discretion. I suppose there would be many members absent, who would go home on Saturday, and would not be able to attend, so as to be present at the session on Monday.

Mr. STANTON. I should like to ask the gentleman whether all the minority reports have been printed, or will be by that time?

Mr. ARMSTRONG. They will be by that time.

Mr. DARLINGTON. I rise to inquire of the gentleman who made this motion, and I wish the attention of the Convention called to it also, whether it is certain that we have business enough of another character to occupy the time until that day; or shall we be through all the other business, and forced to take this up at an earlier day? I rather suppose we shall.

Mr. ARMSTRONG. From what I understand, there will be abundance of business to engage the attention of the Convention until Tuesday morning.

Mr. DARLINGTON. What is it, let me ask, that will engage the attention of the Convention?

Mr. CAREY. Mr. President: I desire to state that the report of the Committee on Agriculture, Commerce and Manufacture was postponed until Tuesday next, and, I think, was made the special order for that day.

The PRESIDENT. The article reported by the Committee on Agriculture was not made the special order for Tuesday. The committee of the whole, on that subject, had leave to sit again on Tuesday. This special order will exclude that.

Mr. COCHRAN. I think it is very unadvisable to be making special orders in regard to any of this business. I do not see why it should be done. It seems to me that every tub ought to stand on its own bottom, and we should take up the business of the Convention without making special orders to accommodate particular members; nor do I see what practical benefit is to come from it. We have two daily sessions this week, and how are we going to occupy the time between this and Monday, if you postpone the report of the Judiciary Committee? There is but one other report that can possibly be disposed of between this and Monday, and we shall get our whole business in confusion. I do not see the propriety of making any special orders.

The PRESIDENT. The question is on the amendment to strike out "Tuesday," and insert, "Monday, April 21."

Mr. ARMSTRONG. I will accept that.

The PRESIDENT. It cannot be accepted. The question is on the amendment.

The amendment was agreed to.

On the question of agreeing to the resolution as amended, a division was called for, which resulted: Ayes, forty-three; noes, twenty-one. So the resolution was adopted.

CHANGE OF HOUR OF MEETING.

Mr. LILLY. I ask leave to offer a resolution at this time.

The PRESIDENT. It will be read for information.

The CLERK read as follows:

Resolved, That no resolution to alter the hour of meeting of the Convention shall be considered except by a two-third vote: *Provided*, This shall not prevent special sessions.

Mr. DALLAS. I object to the consideration of that resolution at this time.

The PRESIDENT. Mr. Lilly asks leave to present this resolution. Shall he have leave? ["No!" "No!"] It appears not to be agreed to. It is not agreed to.

QUESTIONS OF ADJOURNMENT.

Mr. BARTHOLOMEW. I ask leave to offer the following resolution:

Resolved, That hereafter all questions of adjournment shall be disposed of by the Convention without debate.

Leave was granted to offer the resolution.

The PRESIDENT. It will lie on the table one day under the rule.

SEAT OF MR. S. H. REYNOLDS.

Mr. MANN. I ask leave to make a statement at this time.

Leave was granted.

Mr. MANN. The resignation of Mr. S. H. Reynolds was accepted this morning, which leaves seat No. 39 vacant, and if it be agreeable to the Convention I should like to have leave to occupy it.

SEVERAL MEMBERS. His successor will be entitled to it.

Mr. MANN. I withdraw the request.

Mr. CORSON. I move that Mr. Mann have leave to occupy that seat.

The motion was agreed to.

RAILROADS AND CANALS.

Mr. D. N. WHITE. I move that report No. 17 be taken up.

The PRESIDENT. It is moved that the House proceed to the consideration of the article reported by the Committee on Railroads and Canals.

The motion was agreed to.

Mr. HEMPHILL. I rose before the question was put to the Convention on the motion.

The PRESIDENT. The question is not debatable.

Mr. HEMPHILL. There is a minority report on this subject which is not yet prepared.

The PRESIDENT. The gentleman can move that the committee rise after it shall have been formed. That is the way to reach the question.

The Convention then resolved itself into committee of the whole, Mr. Broomall in the chair.

The CHAIRMAN. The committee of the whole have before them report No. 17, the article on railroads and canals. The first section will be read.

The CLERK read as follows:

"SECTION 1. Any individual, company or corporation, organized for the purpose, shall have the right to construct a railroad or canal between any two points in this State. Any railroad may intersect and connect with any other railroad, and no discrimination shall be made in passenger and freight tariffs, on persons or property, passing from one railroad to another, and no unnecessary delay interposed in the forwarding of such passengers and property to their destination. The Legislature shall by general law prescribing reasonable regulations, give full effect to these powers and rights."

Mr. M'ALLISTER. I will simply state, Mr. Chairman, that this is an exceedingly

important report. Notice was given that there would be a minority report. The report was made just on the eve of the adjournment, and leave was granted to those who chose to make a minority report. That report would have been placed in the hands of the printer yesterday if it had not been for the sickness of some of the members of that committee, who were unable to attend, but who are in the Convention this morning. It seems to me that it would be injudicious to take up this report until the minority report is before the committee. I therefore move that the committee rise, in order to afford the minority of the Committee on Railroads and Canals an opportunity of submitting their minority report.

Mr. HEMPHILL. I second that motion.

The CHAIRMAN. It is moved that the committee rise and ask leave to sit again.

Mr. D. N. WHITE. Mr. Chairman: This Convention has been in session five months, sitting nearly all the time, with two recesses. How long do gentlemen expect us to wait for their reports? Are we to stay here waiting on gentlemen's reports the whole summer? Everybody knew that this subject was to come up. It is reported and before us. It is a very important business. We have a full attendance to-day, as full as we ever have, and gentlemen can bring in their amendments to the report, if they choose to do so, just as well to-day as at any other time.

Mr. AINEY. I am opposed to the committee rising for the purpose of postponing the consideration of this report. Under the system that we have adopted in considering these reports, amendments may be offered, and all that is desirable may be obtained in that way. I see no necessity for postponing the consideration of any report, from any committee, because a minority desire to make a report. Anything that they may desire to insert or change in the report can be moved, and the only way it can be done, is by offering amendments before this Convention.

The CHAIRMAN. The question is, shall the committee rise, report progress, and ask leave to sit again.

The motion was not agreed to.

The CHAIRMAN. The first section is before the committee.

Mr. LILLY. I move to amend, by inserting after the word "another," in the sixth line, the words "and being carried the same distance."

The CHAIRMAN. The question is on the amendment of the gentleman from Carbon.

Mr. LILLY. The reason why I offer that amendment is to give the railroad companies the power to make the necessary discrimination that this committee appears to have reported against, a discrimination that passengers, carried a long distance, may travel at a less rate than those carried a short one. I, for one, believe that it is entirely necessary in order to keep up our system of railroads in Pennsylvania, and the carrying of freight, that this amendment shall be inserted right here. I believe this is the best plan. I do not want a railroad to discriminate in favor of another road, or passengers traveling over the same road, the same distance. I want every one to pay the same fare precisely, but I do not want to take away all power of discrimination and kill our railroad system in Pennsylvania. The insertion of this amendment will prevent that. I think it is proper. But, sir, I have no desire to make any remarks on the subject.

Mr. COCHRAN. I have no desire, Mr. Chairman, to occupy the time of the Convention in making speeches of a general or special nature on this report, except where it is necessary; but where it becomes my duty I shall endeavor, as far as I am capable of doing it, to support and explain what I believe to be right with regard to the several provisions of this report.

Now, I do not understand this matter at all in the way the gentleman from Carbon does. The object of this section, and I think it is explained on its face, is simply this, that when freight passes from one railroad to another, the company to whose railroad it is transferred shall not discriminate against that freight by putting discriminating duties or charges upon it which it does not impose upon freight carried on its own road. That is the effect of the section. It is simply that when the freight passes from one road to another, the company to whose road it is transferred shall carry it at the same rates for which it carries freight along the line of its own road.

Sir, is there anything unjust in that? It is to avoid a possible discrimination against the transfer of freight, not for the purpose of compelling the road to which it is transferred to carry it for the freight tariffs of any other road, but to compel it to carry that freight so transferred accord-

ing to the freight rates which it has established for transportation on its own road. I cannot make that matter any plainer. It seems to me to be perfectly plain.

If you adopt the amendment of the gentleman from Carbon, you would necessarily defeat the whole provision, because if the freight taken from one road on to another is carried one mile less or one mile more on that other road, then it can discriminate against it as it pleases. That is the effect of the amendment as I understand it.

Now, I certainly do not think the committee want to adopt a provision of this kind, nor does this provision impose any onerous burden upon the road to which the freight is transferred. It simply says to that road, "you shall treat this freight, brought on your line from another road, on the same terms that you treat all freight that is carried on the line of your own road."

Mr. DARLINGTON. Mr. Chairman: I am not certain that I understand precisely, not being very familiar with it, what would be the effect of a provision of this kind. If there are two connecting railways, one intersecting the other, freight from a road which connects with another is intended by this section to be carried upon the road with which the connection is made, at the same rate per ton per mile as it would carry it from the same point on its own line, or for the same distance on its own line. I suppose if there be a road four hundred miles in length, upon which the freight from one end to the other is necessarily less, proportionally, than it is for one-fourth of the distance, by reason of four times as much handling of the freight that has to be done, that it is not designed, if another road casts freight upon this long line, to require that it shall not charge at the same rate it would upon the whole line. That would be unjust. I suppose it is not designed for that purpose, and yet it would admit of that construction. Take, for instance, the Pennsylvania railroad, running from one end of the State to the other. If freight is put upon it at the West Chester intersection to come to Philadelphia, a distance of twenty-two miles, would the Pennsylvania railroad company be entitled to charge more per ton per mile for that short distance than it would have a right to charge per ton per mile for the whole distance; or is it restricted to precisely the same terms for that freight as for the long distance? If so, it is very unjust, because no railroad can carry at a profit or even to pay expenses for a short distance as cheaply as it can for a long distance. Nay, wherever the expense of handling freight is quadrupled, the charges must be somewhat increased to meet the actual expenses. I should like to hear the railroad gentlemen here explain this section, for I confess I do not understand it precisely as seems to be suggested.

Mr. LILLY. Mr. Chairman: My reading of the section was precisely that of the gentleman from Chester, that is to say, the Pennsylvania railroad shall be required to carry freight from the West Chester junction to Philadelphia, at the same rate per mile as they would freight from Pittsburg to Philadelphia, which I perfectly agree with the delegate from Chester, would be entirely wrong; and the section should not be passed in that way. I want to give the railroad companies the power to make a just discrimination.

Mr. COCHRAN. Will the gentleman from Carbon allow me to explain? I certainly do not understand the section in that way. Take the illustration put by the gentleman from Chester; here is freight brought on the Pennsylvania railroad at West Chester intersection from the West Chester road, and there is freight brought to that point on the Pennsylvania railroad from any other party, say a farmer living in that neighborhood. Now the Pennsylvania railroad under this section would have the right to charge precisely the same rate on the freight brought from the West Chester road as they would charge to the farmer in that neighborhood. That is the whole thing. It makes no provision about so much per ton per mile; it simply says that freight brought from that other road shall pay no more than the freight which any man in that neighborhood brings to that road for the purpose of being transported to the city of Philadelphia.

Mr. LILLY. My idea is that any freight which passes on the Pennsylvania road, taking that for illustration, twenty-two miles beyond the West Chester junction, that being about the distance from there to Philadelphia, shall pay the same for those twenty-two miles as for any other twenty-two miles of the road. That is what I want to get at. I do not stand here as the advocate of any railroad, but I shall vote to do what I think is precisely right as far as all the railroads are concerned, and I hope every

other man on the floor will do the same thing. I am ready to vote and will vote for any healthy restriction that this report or any minority report or that any member of this Convention may offer against exactions by the railroads. I believe that it is human nature if you put power into the hands of corporations to reach out and use it. Corporations are reaching and grasping. I want to cut off that arm which reaches out to the detriment of the public; but in doing that, I do not want to deprive the Commonwealth of Pennsylvania of the great benefits that we have received from our railroad system. I do not want to cut our own throats by attempting to restrict these corporations. I am ready to give them all their rights—all the rights they ought to have, and I am willing to restrict them in every proper way. Now if this amendment is not in that direction, I am perfectly willing to withdraw it.

Mr. COCHRAN. That is my understanding.

Mr. LILLY. Then I withdraw the amendment.

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

"Any individual, company or corporation shall have the right to construct a railroad or canal between any two points in this State, under such general laws and regulations as may be prescribed by the Legislature."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Chester (Mr. Hemphill.)

The question being put, a division being called for, which resulted: Ayes, twenty-one, which not being a majority of a quorum, the amendment was rejected.

Mr. JOSEPH BAILY. Mr. Chairman: The day before yesterday I presented a series of sections on this general subject. The third in the series reads in this style, and I prefer it to the section now before the committee of the whole, because I think it is more specific in its terms:

"Railroad or canal corporations shall have the right to intersect their lines of improvement, by proper connections, with the works of any other accessible railroad or canal company, and shall have the right to pass cars or boats."

There I make it specific. The section before the committee only allows the transportation of passengers and freight approaching a connecting railroad. I propose that freight in cars or boats shall be passed, loaded or unloaded:

"Loaded or empty, or passengers and freights not loaded, over each other's railroads and canals, free from discriminations in rates of passenger and freight tariffs, and without delay or hindrance in their movements. Individual transporters shall have the same rights of passage."

I do not know that it is worth while to offer this section as a substitute for the section now under consideration; I suppose it will be voted down, but I believe I will offer it.

I therefore present it, not as a substitute, but as an amendment to the section, to come in after the word "State," at the end of the first sentence. I move to amend, by striking out all after the word "State," down to the word "destination," and inserting the following:

"Railroad or canal corporations shall have the right to intersect their lines of improvement, by proper connections, with the works of any other accessible railroad or canal company, and shall have the right to pass cars or boats, loaded or empty, or passengers and freight not loaded, over each others railroads or canals, free from discriminations in rates of passenger and freight tariffs and without delay or hindrance in their movements. Individual transporters shall have the same rights of passage."

On the question of agreeing to the amendment a division was called for which resulted twenty-five in the affirmative. This being less than a majority of a quorum the amendment was rejected.

Mr. DARLINGTON. Mr. Chairman: For the purpose of making clear the meaning of the clause to what I before referred, I move to amend by inserting after the word "another" the words "from those passing like distances on its own road." The section, it will be perceived, will then read:

"Any railroad may intersect and connect with any other railroad, and no discrimination shall be made in passenger and freight tariffs on persons or property passing from one railroad to another from those passing like distances on its own road; and no unnecessary delay interposed in the forwarding of such passengers and property to their destination.

Mr. BOYD. I move to amend the amendment, by adding the words "of the same grade," to the amendment of the gentleman from Chester, so that a road of

a heavier grade shall be entitled to charge more than a road of a lighter grade.

Mr. RUNK. Is not that, in substance, the same as the amendment offered by the gentleman from Carbon (Mr. Lilly.)

Mr. CHAIRMAN. That has been withdrawn.

Mr. LILLY. Mr. Chairman: I desire to say to the gentleman from Montgomery, that this amendment is a very important one, a very proper one too, in my opinion. We have railroads in Pennsylvania that have a grade of two hundred feet to the mile. It costs such a railroad to transport property over that two hundred feet grade, five times as much money as it does to carry it over a level grade. I know this from my own experience, living, as I do, on the mountains, where there are coal roads, and the branches of the Lehigh Valley railroad are built upon these heavy grades. The cost of transportation over such grades is simply immense.

Mr. AINEY. Mr. Chairman: The gentleman from Carbon either misunderstands the purpose of this section, or I do, and I rise more for the purpose of inquiry than to discuss the proposition. If I understand the intention of the Committee on Railroads and Canals in this report, it is to provide that companies shall not fix their own rates higher on freights that are transferred to them by other roads and which are to go beyond the point of transfer, than they would on freight received from persons who live at the termination of the road. If the Pennsylvania railroad company contracts for freight to be shipped to Philadelphia, and also for freight to be shipped beyond here, on a connecting road, the rate of charge to Philadelphia by this section are required to be the same as to parties living beyond Philadelphia, and *vice versa*. The section only applies to their own freights, not the freight of the connecting road. If the proposition is that the freights on the road from Philadelphia shall be the same to all parties, whether living at the termination of the road, or elsewhere, on all freights carried beyond it, then the amendments are unnecessary. If this is the purpose of the section, I think it is eminently proper and right, and I shall vote for it as it comes from the committee.

Mr. T. H. B. PATTERSON. Mr. Chairman: Before the question is taken, I would like to say a word. The phrase "of the same grade," which is sought to be added by the amendment of the gentleman from Montgomery, (Mr. Boyd,) would entirely defeat the whole object of this section, because it would introduce into the section an element of discrimination with regard to grades and freights on roads of different grades and elevations, which was not contemplated by the section at all; and which the Committee on Railroads and Canals did not intend to go into this section, and which this section is not designed to cover. It will entirely defeat the whole object of the section to put in anything with regard to discrimination as to grade.

Mr. KNIGHT. Mr. Chairman: I trust this committee will be very careful in acting upon this important section. We may do a great deal of harm, probably, without knowing it. At present the railroad system is so extended and interwoven in the different States, that if we confine the State of Pennsylvania to a strict rule, we may do our institutions great injustice. For instance, the road leading from New York to Washington passes through New Jersey, Pennsylvania, Delaware, Maryland and the District of Columbia; and if the other railroad corporations on that line are allowed more liberty or latitude than we are in this State, it will certainly cause a great deal of trouble, and work to the injury of the State and of our railroad companies.

As to the amendment offered by the gentleman from Montgomery, (Mr. Boyd,) I do not know who is to judge of the different grades of the roads. It would lead to difficulties and litigations, it seems to me, constantly.

I only throw out these ideas, that the Convention may think well before they adopt a clause of this kind. My own opinion is that a well regulated, free railroad system will eventually cure a great many of the evils complained of.

Mr. BOYD. Mr. President: The reason why I offered the amendment, I can best illustrate by giving an example. For instance, the Reading railroad company can bring from the coal regions one hundred and thirty cars laden with coal as cheap as the North Pennsylvania railroad can haul fifty cars from the coal regions. The Reading railroad company will deliver coal to a branch road which intersects with theirs, and that coal is to go up that branch road, which is of a steeper grade and a more expensive one to ascend than the descending grade of the Reading railroad. Would it be fair to require that small road, which is an independent road of but fifteen or twenty or

thirty miles in length, owned by a weak corporation, to transport freight at the same rate of charge that is received by the Reading railroad company, when it costs them, perhaps, twenty-five or fifty per centum more to haul it a mile up that branch road than it does upon the Reading road. It seems to me that if this is to be adopted as a uniform rule for all railroads, you will discriminate against the smaller and feebler roads; for with their steeper grades, not having had money enough when they built their roads to make as easy a grade as that of the older companies, it will be impossible for them to carry freight over their branch roads as cheap as it can be done over the established roads with improved grades.

If they are to charge no more, I say they cannot conduct their business profitably, and in many instances within my own knowledge, it would amount to a virtual prohibition of carrying traffic over a small road.

It therefore seems to me that there ought to be some provision here by which there should be a just allowance made where the grade is of steeper or more difficult ascent than that of the old established roads with improved grades, and that was the object I had in view in offering this amendment, for it is in vain to say that the small roads of heavy grades can compete with the old established lines of improved and good grades.

Mr. M'ALLISTER. Mr. Chairman: I beg leave to say a word or two about this section. It seems to me that the amendments proposed are wholly unnecessary. It is right that we should understand the purport of this section. Although a member of the Committee on Railroads and Canals, I was taken sick in the midst of their deliberations, and therefore have very little more knowledge of the report than I should have if I had not been a member of the committee. But as I understand the intent of the provision here, it is this, that the Pennsylvania railroad is required to receive from the Reading road, at Harrisburg, any amount of freight which any individual may choose to ship from Philadelphia, and to charge no more to Pittsburg, upon that freight, than it charges citizens of Harrisburg for transporting goods directly from Harrisburg to Pittsburg. That I understand to be the object, and it seems to me to be a legitimate and a proper object. It is proposed now to remedy a supposed evil by providing that the grade shall be taken into consideration; but what has the grade of the Pennsylvania railroad between Harrisburg and Pittsburg to do with the discriminations between freight received from the Reading road, and freight received from citizens of Harrisburg? Certainly nothing.

Again, in reference to this matter of grade, I will admit that there is a difficulty arising in fixing any uniform system of grades upon different parts of a railroad, for certain parts of it may cost ten times as much as other parts. If a railroad company had spent ten times as much money in the construction of their road over the mountains, and had tunneled them and had a perfectly level grade, should they be required to carry at a less price than if they were subjected to large expenses over high grades? The cost of the roads should be taken into consideration, and that is one of the difficulties that arises in reference to transportation upon railrords, and fixing that in all cases by the mile. It would seem right that the cost of the railroad should be an element in the charges.

In glancing over this report, there are many things that strike me as very objectionable; but I do not find them in this section. The only difficulty that presents itself to my mind, in reference to the provisions of this section is, that it seems to me to give the power to a junior railroad connecting with a trunk railroad, to fix the point at which the senior railroad shall establish a depot, shall receive freight, though it might be within a mile or half a mile of a depot previously established. I may be mistaken in that supposition, however, but I understand the provision is that they shall have a right to connect. To connect where? Where they please. Shall they subject the senior railroad to the extraordinary expenses of the maintenance of two depots within sight of each other, in order that transhipments may be made? I would ask the chairman of the committee for information on that subject. If this be the result of the adoption of this provision, then it is surely objectionable. It is the only serious objection that seems to present itself to my mind to this section.

Mr. COCHRAN. Mr. Chairman: The argument or statement of the gentleman from Centre, it seems to me, makes it perfectly clear that the amendments offered by the gentlemen from Chester and Montgomery are entirely unnecessary, and that if they are put into this section they simply complicate it, and

make it almost incapable of a reasonable construction.

Now, sir, take the illustration which has been made here, if you choose, of a railroad having a steeper grade connecting with one that has a lower grade. If you transfer freight from the one that has the lower grade to the one that has the steeper grade, the minute it is transferred, under this section, it becomes subject to the rate of charges on the steeper railroad. That is the effect of this, and there is not the slightest necessity for the amendments of the gentleman from Chester and Montgomery, because the section itself, in its very terms, is as clear and distinct as language can make it, and the additions which they propose complicate and make obscure that which is clear on its face. There is no such practical difficulty in the case as the gentleman from Montgomery seeks to throw in.

Now a word with regard to the last statement made by the gentleman from Centre; and that is the point of connection, as I understand him, between the tributary and the receiving road. There is not a railroad charter in this State, I believe, which does not permit the railroad chartered to connect with any other railroad, and it does not limit the point. The connection is necessarily at the legal terminus of the road and nowhere else. Wherever a road terminates or touches another road under its charter, there it connects; and the general railroad law of this State on this same subject gives the power of intersection and connection. This section does not alter that or change it, or interfere with it in the slightest degree; it just exactly leaves it where our statutes fix it; and how would you regulate that matter? It is certainly necessary—the gentleman himself would want the branch road to connect with the trunk road somewhere; and where will it connect except at the point where the branch road terminates or touches the other road?

There is nothing in this section requiring the trunk road to erect depots or stations at the point of connection. It is the business of the branch road to get its freight on to the line of the trunk road. All that this section says is that when the freight gets on to the line of that trunk road, it shall be transported on as favorable terms as any other freight brought from the same point to the line of the trunk road. That is the whole of it, and whether that road be steep or level, whether it be long or short, its rate of charges regulates the rate which is to be imposed on the goods brought upon it from the other road.

It seems to me that that is perfectly clear. Why then complicate this section with amendments? Why put in provisos? Why are the gentlemen from Chester and Montgomery so much afraid on this subject? What are they afraid of? I see nothing to be afraid of. The language of the section is perfectly clear, and its operation is perfectly clear. It cannot do harm to any trunk or main line road; but it has this effect, this great public, beneficial effect, that it does make it possible to transport freight from one point to another over connecting roads, and so establish a system of transportation from one point to another, so that it will not be in the power of railroad companies to impose improper burdens on the transportation of the produce and property of the people of this Commonwealth. The idea is to establish a system of connecting roads, a system of transportation from the point of departure to the point of destination, and that no corporation shall undertake, by imposing unjust discriminations upon property, to prevent free transportation from one point to another. It is as important to the large railroads as it is to the small; it is as important to the small as it is to the large; and it is important especially to the producers and the transporters of this Commonwealth that such a system should be inaugurated.

Mr. NILES. I simply rise to ask the chairman of the Committee on Railroads and Canals to explain the first three lines of this section, especially what he means by the organization of an "individual, company or corporation" to construct a railroad; whether by this he intends that any individual can run a railroad anywhere he pleases without interference from anybody.

Mr. COCHRAN. The gentleman's grammatical criticism, I think, is rather hypocritical. The section says "any individual," but when you come to punctuate it there, you will find a comma. It then says "company or corporation organized." Of course, that word "organized" does not refer to the individual. Although the three first lines do say any individual may make a railroad; the gentleman will find that qualified by the three last lines of the section, providing that the Legislature is to regulate the whole matter by general law, and it will regulate the right

of the individual as well as of the company or the corporation.

Mr. BARTHOLOMEW. I ask the Chairman of the committee to explain the meaning he places on the words "freight tariff," in the fifth line.

Mr. COCHRAN. Simply, charges on freight.

Mr. BARTHOLOMEW. Does it mean the charge of the railroad company for more transportation, or does it include the charge for the use of the rolling stock and motive power?

Mr. COCHRAN. It includes all, I take it—everything that enters into the cost of transportation.

Mr. BARTHOLOMEW. The Supreme court of Pennsylvania, I understand, has made a decision on that question in the case of the Philadelphia and Reading railroad, in which it ruled that the charter limit of a corporation is simply the restriction upon the rate of transportation over the road, but that it has an unlimited right to charge for the use of its motive power and rolling stock. Now, I take it that the freight tariff, unless it is restricted by some term of limitation, might apply simply to the right of way on the question of transportation, and not include the use of the motive power and rolling stock. I think it ought to be restricted in some way or other.

Mr. BIDDLE. I suggest to the chairman of the committee to amend, by inserting the word "tolls." There is the distinction mentioned in the case which has been referred to. Tolls relate to taxes for the use of the highway, the road, and freights and tariffs more properly for the use of rolling stock.

Mr. DARLINGTON. I do not think the distinction is quite so clear as the chairman of the committee conceives it to be. At all events, if I understand the object of the Committee on Railroads and Canals, and the object of the committee of the whole, it is to prevent unjust discriminations by one railroad against the passengers and freight to be carried on it coming from another road; yet this clause does not say so:

"No discrimination shall be made in passenger and freight tariffs on persons or property passing from one railroad to another."

That is, you shall not discriminate; this is the proper import of the language, I take it, between those so circumstanced; they shall not charge more on one person or one article of freight, coming from another railroad, than for like service on their own road. That is what the committee mean. They mean that you shall not discriminate in favor of persons and freight passing on their own road for the like distance; but they do not say so; and what I mean by my amendment is simply to make that more clear, if I can, than the committee have made it, by saying that no discrimination shall be made in passenger and freight tariffs on persons or property passing from one road to another, over those passing like distances on their own roads.

As to the amendment proposed by the gentleman from Montgomery, (Mr. Boyd,) I respectfully submit that there is a good deal in it, more than you would at first suppose. For instance, to get at the meaning of this thing by looking at individual cases, there is connected with the Reading railroad an independent road, starting at Phœnixville and running up into the heart of Chester county, up high grades and over high hills, and owned by a separate company. It is perfectly apparent that they cannot carry freight over their small road, having but little of it, at the same rate that is charged upon the Reading road. No road could live by it, and thus the citizens of Chester county would be deprived of the privileges of railroad communication virtually, for a railroad could not live there with the same charges as upon the Reading road. It is proper, therefore, that discrimination should be made when the grades differ, so that a higher charge may be made than for property coming over the Reading railroad. That is but a single instance. We have a number of roads running into Chester county in the same way, small, weak roads, and yet of immense value to the people, and the people are perfectly willing to pay the passenger and freight tariffs for persons and property, although they may not be quite so cheap as those charged upon a through road.

Mr. BIDDLE. Mr. Chairman: I hope the amendment will not carry. I consider this section most valuable. The intention is excellent, and I think the language is properly expressive of the intention. I see no necessity for putting in the word "grade" at all; because, if you attend to the preceding language, as well as the language of the close of the section which requires the Legislature to prescribe "reasonable regulations," you get rid of all the supposed difficulty.

What this section intends to prevent is an unjust distinction, a partial distinction against those who come from a connecting road on to the trunk road, or *vice versa*, and it necessarily gives to either road, the transferred road, if you please, the right to charge at the same rate for those that come upon its road from another road, that it charges for those who were originally or continuously running upon it; but it properly prevents them from making a partial or distinctive surplus charge so as to impede the free transit of passengers or merchandise. The word "discrimination" necessarily implies that. It means a distinction other than an impartial one—different from a just one.

This section says to the road upon which merchandise or passengers are transferred, you shall not charge the people who run exclusively on your road three cents a mile (if that be the ordinary rate) and those coming upon it five or six cents. That is all it says; and the concluding language of the section gives power to the Legislature to regulate, by going into detail, exactly how those charges shall be made. It would be preposterous to suppose that where by reason of steepness of rade, tunneling or other elements of greater expense, the road on which property was transferred was compelled to charge a higher rate of toll than the average rate of toll for merchandise or passengers running continuously over it, it should not have the same right to charge the same higher rate than what might be called the average rate throughout the State, for passengers or merchandise brought upon it. That is not the meaning of the section at all. The meaning is that they shall not charge in addition to this, an element of prohibition, of unjust distinction, or, in other words, of discrimination.

Now, sir, we had better leave it just as it is, permitting the Legislature, as is authorized by the last line and a half of the section, to write out in detail, what we can never do properly here in a Constitution, those reasonable regulations to give effect to these powers and rights which are here properly conferred upon the community as some equivalent for parting with the franchise which they give away to these corporations. I trust the section will not be amended as it is proposed to be.

Mr. LEAR. Mr. Chairman: I am satisfied, from the remarks of the gentleman from Philadelphia, (Mr. Biddle,) that the amendment, with regard to the question of grade, is unnecessary; but I am more fully satisfied, from the same remarks, that this whole provision is not only unnecessary, but improper, because it is argued, and I think properly, by the gentleman from Philadelphia, that this provision that no railroad shall discriminate in favor of or against any other road with regard to the rate of freight or passenger travel simply means that they shall take into consideration all these questions of the expensiveness of the road, the amount of the grade, the expensiveness of transportation, and all the other questions which, as the gentleman well says, must be written out in detail by the Legislature and provided for in a general law; and if we undertake to provide in general terms about a thing, and the terms we use mean nothing, we are making ourselves ridiculous rather than useful in laying down the fundamental law of the State.

There are other words in this same clause of this section that demonstrate that the remarks I have just made with regard to the position into which we shall put ourselves by adopting this section are not too strong for the occasion, for it provides not only that they shall not discriminate against freight that is brought upon one road from other roads, or *vice versa*, but that there shall be "no unnecessary delay" in the transportation of passengers and freight. Now, Mr. Chairman, what do we mean by saying to the railroad companies of Pennsylvania, "you shall not be guilty of any unnecessary delay in the transportation of freight and passengers?" It only shows that the Committee on Railroads have undertaken to provide for evils which either do not exist or that they could not compass by the amount of English language which they could get in a single section; and when they say that there shall be no discrimination, and that there shall be no unnecessary delay, they are using idle words; and yet we are asked to make provisions in the presence of the people of this State as a part of our fundamental law, that will require the aid of the Legislature to make them effective or they will amount to nothing more than if we had left that section a blank.

What is "unnecessary delay?" Is it stopping for the purpose of taking on freight at an intermediate station? Is it stopping to allow the hands on a railroad to go out to a neighboring barn and look for eggs? Is it stopping for the conductor and brakesmen to take a drink at a

restaurant? What is "unnecessary delay?" How shall we determine that? And if these roads are to be guilty of unnecessary delay in the transportation of freight and passengers, what shall be the consequence? Do they forfeit their charters? Are they to surrender up their franchises? What will be the consequence when these railroad companies do discriminate between freight and passenger travel upon the different lines of road, that connect with each other, and what shall be the consequence when they are guilty of unnecessary delay?

It only shows, Mr. Chairman, that there is lingering in the minds of some of the gentlemen of this Convention, and particularly of the members of this committee, some of the old prejudices against corporations, that induce the people always to suspect that there is in the hand of power some evil that we must thunder our denunciations against, however harmless those thunderings may be. Now we are here denouncing what? We are denouncing these railroad companies for discriminating in freight and passenger travel, and for being guilty of unnecessary delay when we are providing no penalties, but, as the gentleman from Philadelphia said, leaving it to a general railroad law, where, if we do our duty in this Convention sensibly and properly, we will leave this whole question, for there it must come at last. When we undertake to provide in a Constitution how railroad companies shall run their trains, at what rate they shall charge fare, how they shall intersect with each other, how they shall transport each other's freight and passengers, and when they may or may not be guilty of delay, instead of in a law, which is subject to be changed from year to year, while this Constitution, as we hope, is not to be the subject of change for a great many years, we are providing for a state of things which may entirely differ from the present condition of things in the State of Pennsylvania, and when the Constitution, which we shall adopt, will be found entirely inapplicable.

Why, a gentleman yesterday rose in his place and said that he was surprised that the report of the Committee on Counties should have been so effectually slaughtered as it was, and wondered why it was so. I have been surprised that more reports of committees in this Convention have not been slaughtered than there have been. I have been looking with earnestness and anxiety to see some committee in this Convention that dared have the courage to say, "we report this article of the Constitution of Pennsylvania as we find it, without change." But there has been no committee, and, so far as I know, no member of any committee who has had the courage to come into this Convention with a report reporting back to the Convention an article untouched by the superior wisdom of these respective committees. It seems that we have been committing a great mistake from the time the government of Pennsylvania was organized down to this time, and that we have been living under a fundamental law that is entirely inadequate and inapplicable to our condition, and that we are required now to make everything new and not an article of the old Constitution is left, though occasionally one or two sections of articles have been left untouched by this disposition to change and the hand of innovation; but not a single article of the present Constitution has been reported back as being adequate to the wants and requirements and interests of the State of Pennsylvania. We were elected to this Convention under the provisions of the act of 1871, which provided that there should be a Convention to *amend* the Constitution of Pennsylvania, and when we were elected here we were elected to *amend* that instrument and not to *destroy* it. Yet we are here seeking to put into the Constitution a code, civil and criminal, for the people of Pennsylvania, instead of declaring great, comprehensive, crisp principles of fundamental law for the government of the Legislature and the people. When we put into this Constitution a provision which says that there shall be no discrimination in the carrying of freight, no unnecessary delay in the transportation of passengers, we are belittling the great office to which we have been promoted, instead of doing a duty that we ought to do by granting some general power to the Legislature, if power were necessary—and I do not think that power is necessary to be put into this report at all—to give the Legislature the ability to pass a general law for the purpose of regulating, governing and controlling railroad corporations.

Sir, it has been said, sneeringly, of this Convention that there are members in it who believe that railroad corporations are an evil to the State. I do not believe that there is any member of this Convention who has such a contracted idea as that of the railroad corporations of Pennsylvania;

but it is true that there are members of this Convention who have an idea that their principal vocation here is to fight corporations, and particularly railroad corporations, and I have seen manifestations of that. I am sorry that one gentleman who has manifested these symptoms, and who sits close beside me, from the western part of the State, is not present. Whenever a question about a railroad corporation comes before this Convention he goes into spasms, and manifests a disposition to tear things to tatters in the presence of this Convention, because a railroad corporation is mentioned.

Why, Mr. Chairman, when it was discovered by Watt and Fulton and Fitch that half an ounce of anthracite coal would draw two tons a mile, they had only entered upon the incipient stages of the great development of the State of Pennsylvania. It was necessary that that half ounce of coal should be harnessed to the two tons of freight or passenger travel, and that it should find a track to be laid down, upon which it should draw its burden. When I first became acquainted with railroads in the neighborhood of my friend from Carbon, they hauled, not by the aid of steam developed by anthracite, but by the aid of mules, up the grade to the summit empty cars, for the purpose of transporting coal from the summit down to the Lehigh river, and thence by the canal. That was the second railroad in the country. These hills, which now produce their millions of dollars worth of wealth to Pennsylvania, and which are for all purposes of agriculture, and to all appearances on the surface as barren as the desert of Sahara, and yet they have incalculable wealth beneath their surface; and without these railroad corporations the right arm of the wealth and the prosperity of the State of Pennsylvania would be almost valueless; but now we are asked to put into the Constitution these detailed provisions, for the purpose of "pitching into"—if I may use that sort of term—railroad companies, in order that they may be crippled and cramped by constitutional provisions, so that they shall not have an opportunity of performing the great functions which they were intended to perform in the development of the material wealth of Pennsylvania.

I recollect one of the first contests that were entered into against railroad travel in the State of Pennsylvania. It occurred in the county of Lancaster. There was a farmer who had a stalwart bull, which disputed the right of the iron horse to traverse the track through the county of Lancaster. Every day the train passed he would square himself at the engine. The engine had to stop. The engine did stop and wait for this bovine obstruction to get out of the way, and he was removed from day to day until they got tired of it. After awhile, instead of waiting, they put on their head of steam, and the bull came to the charge, and there was nothing left of that contest but a streak of blood and a few splotches of hair and hide and hoofs, and the subsequent proceedings interested that bull no more. [Laughter.] The contest which was begun in Lancaster has been transferred to the house of York, and now we find that the pole emblem of the house of York, has been entwined with the bloody insignia of Lancaster, and they unite their forces to carry on this contest against the railroad interest of Pennsylvania, in a report which prescribes, in a constitutional provision, that there shall be no discrimination on freight, and no unnecessary delay in the transportation of passengers.

Mr. CAMPBELL. May I ask the gentleman a question?

Mr. LEAR. Yes, sir.

The CHAIRMAN. The gentleman's time has expired.

Mr. LEAR. Then I will answer the question next week. [Laughter.]

The CHAIRMAN. The question is on the amendment to the amendment offered by the gentleman from Montgomery, (Mr. Boyd.)

The amendment to the amendment was rejected.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Chester, (Mr. Darlington.) The amendment will be read.

The CLERK. The amendment is to insert after the word "another," in the sixth line, the words "over those passing like distances on its own road."

The amendment was rejected.

Mr. NEWLIN. I offer the following amendment: After the word "freight," in the fifth line, to insert "tolls and," and and to strike out the word "on," and insert "against," in the same line, so as to read:

"Any railroad may intersect and connect with any other railroad, and no discrimination shall be made in passenger and freight tolls and tariffs, against persons or property passing," &c.

Mr. Chairman, the object of the amendment is to cover the whole ground. Either this provision should be here or it should not. If it should be here, and I think it should, then the whole ground should be covered. Now, there is a distinction between a charge for the mere right of way, or the use of the road itself, and a tariff for the use of the motive power. If the section is adopted as reported from the committee, only one kind of charge is provided for. By adding the words "tolls and," every kind of charge that can be made for the transportation of passengers or property is covered, and it is made a complete whole. The striking out of the word "on," and inserting "against," is a mere verbal amendment. It seems to me it would make the section read better.

Mr. COCHRAN. Mr. Chairman: From what I have heard this morning said on this subject, I certainly do not object to this amendment. As far as I can see, I believe it is entirely proper and correct. I do not object at all to the section so amended. It meets the objection which was raised by the gentleman from the city of Philadelphia (Mr Biddle) and the gentleman from Schuylkill, (Mr. Bartholomew,) with regard to the discrimination which was made by the Supreme Court between tolls and the tariff charged for the use of locomotive power. I do not object to it, and I think the amendment is altogether well in itself.

In discussing these propositions before this committee, I have not thought it my duty, nor do I think it would be just to the committee, to go into large and general declamation on the subject of railroads on each section as it came up. I have thought the proper plan would be to discuss questions and provisions on their merits. I did not know that Slaymaker's bull and his achievements had anything to do with this question; but the gentleman on the other side of the house, (Mr. Lear,) seemed to be impressed with the idea that now is the time for Bucks to "have at ye all," and he has pitched in generally, and hence this debate in regard to railroads and the whole scheme of this report. He seems to find nothing admirable in it at all; nothing worthy of consideration. He appears to think that we are running a muck for the purpose of breaking down and destroying the whole railroad system of this State. Sir, I do not pretend to vie with that gentleman in information; but I do know that the object of the Committee on Railroads and Canals in making this report, in proposing these provisions, was not to destroy but to protect alike the railroad interest itself and the public. I have no interest, private or professional, in railroads, for or against them. I stand here neither as their champion nor their opponent, and I am not animated by any anxious desire to commend myself specially to the favor of either their friends or their enemies. The house of York in this matter is clear of any such entangling alliances; I hope the house of Bucks is equally so. [Laughter.]

Now, sir, with regard to this whole matter, I have said, and I repeat, that the measure before us is intended to be beneficial. It is intended to protect the interests of the community, and to secure a system of intercommunication from one end of this State to the other for the transportation of persons and property; and certainly this is a great public interest, and I do not see what there is in it which should have excited so warm a feeling on the part of the gentleman from Bucks. Why, sir, he says that there are men in this Convention who think it is their duty, their mission here, simply to fight corporations. If there be men of that class—I do not know it to be the fact—I am not one of them. I was brought up in that school which taught me to believe that corporations, within their proper sphere, and judiciously guarded, were beneficial institutions. I hold to that opinion still. I have no disposition to do the slightest harm or injury to any public corporation which confines itself within the sphere of its duties, and lives up to the object for which it was constituted, and for which it was clothed with a part of the sovereign power of this Commonwealth, to go into the country and take private property, and appropriate it to its use under the exercise of a portion of the right of eminent domain. Railroad corporations, and all other corporations of that kind, are corporations which have no right to exist, except as they promote the general public welfare. When they do promote that welfare they ought to exist, and should be sustained and supported; but when they go beyond that, and undertake to trample upon the rights of the people, then it is time for this Convention to stand up in resistance to them; and that is exactly the position that I occupy as chairman of this committee.

In the Railroad Committee I was not ingenious to pick out provisions for the pur-

pose of hindering, hampering or restricting railroads. We had, to a certain extent, a new field over which we were to travel. We had to look to the interests of the public, and do the best we could; and that is what we have tried to do. I repeat, again, that I do not believe there was one member of this committee who had any desire or design of doing wrong or injury to these corporations, but simply to so restrict, control, direct and govern them that they should contribute to the public welfare, which was the object for which they were created and incorporated.

Now, sir, on the general question this is all I have to say. I am neither a bull nor a locomotive. If the gentleman from Bucks is a locomotive, I hope he will not get his steam too high and burst his boiler, in opposing this report. [Laughter.]

Mr. NEWLIN. Mr. Chairman: That portion of my proposed amendment, which is to strike out the word "on," and insert "against," I withdraw. The amendment will then simply propose to insert the words, "tolls and."

The CHAIRMAN. The amendment will be so modified. The question is on the amendment as modified, to insert the words, "tolls and," after the word "freight," in the fifth line.

The amendment was agreed to.

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

Mr. GIBSON. I think, Mr. Chairman, there is one difficulty in regard to this matter, which occurs from the manner in which the section is framed. I therefore move as an amendment a mere change of phraseology, beginning with the words "railroads and," in the second sentence, to insert: "No unnecessary delay shall be interposed in the forwarding of passengers and property from any one intersecting railroad to another; and no discrimination shall be made in the tolls or tariffs on persons and property so transported from one railroad to another."

Mr. NEWLIN. "Tolls *and* tariffs" was what was adopted.

Mr. GIBSON. Very well; I accept that. It is merely an amendment which transposes the words of the section itself.

Mr. J. R. READ. Mr. Chairman: I ask for the reading of the section as it will stand if amended.

The CLERK read as follows:

SECTION 1. Any individual, company or corporation, organized for the purpose, shall have the right to construct a railroad or canal between any two points in this State. Any railroad may intersect and connect with any other railroad, and no unnecessary delay shall be interposed in the forwarding of passengers and property from one intersecting railroad to and on another; and no discrimination shall be made in passenger and freight tolls and tariffs on persons and property so transferred from one railroad to another. The Legislature shall, by general law, prescribing reasonable regulations, give full effect to these powers and rights.

Mr. KNIGHT. Mr. Chairman: I beg to ask a question of the chairman of the Committee on Railroads and Canals, whether he means that the locomotive and trains of a branch railroad or any railroad shall have the right to run on the road that it connects with; or whether it shall be a simple transfer of freight and passengers. If it should be allowed for one railroad to run its rolling stock at pleasure on the tracks of another road, I cannot see how it is possible for a well managed railroad to run its trains without very great fear of running over bulls or bursting the boilers, or something of that kind. [Laughter.]

I have known cases within the last year or two where, owing to the great competition and opposition between competing railroad lines, extending from New York and from the sea-board to the west, the rates of fare and freight from the west to and from Philadelphia have been changed by telegraph five times in a day. Now, if these roads connect with each other, is it designed by this section to give one road the right to run its locomotives and trains on the track of the connecting road? If so, it is a very great power to give them and a very unjust one.

Mr. COCHRAN. Mr. Chairman: I beg leave to say that the idea of the Committee on Railroads and Canals is not to transport the locomotives and steam power from one railroad to another. The section simply provides for the transfer of freight and passengers, and not of the locomotives and rolling stock; that we have no idea of doing.

Mr. MINOR. Mr. Chairman: I am unable to see that the amendment aids the section at all. It simply transposes the phraseology. It appears to me that there is a defect in this section, as I understand it, and I desire the light of the chairman of the Committee on Railroads and Canals upon it. I call attention, sir, to the construction of the section:

"No discrimination shall be made in passenger or freight tariffs," &c.

Now, that may mean either of two things, if I understand it, neither one of which is what the committee that reported this article desires. Let me explain. "No discrimination is to be made." In what? "In passenger or freight tariffs." On what? "On persons or property passing from one railroad to another." Now, that means, if I understand it, this: It would be the natural construction that whatever passes from one railroad to another, shall be carried at the same rate. That is, if anything passes from one railroad to another to-day, it shall be charged the same as if it passed to-morrow; any one kind of freight passing shall be charged the same, or if sent by one individual, shall be charged the same as if sent at another time or by another individual, because it is limited to these articles which are transported, making no discrimination whatever between those, if I understand the way this reads. I take it that that does not reach the difficulty. If it does, it gives rise to yet another difficulty. That is one consideration, and I repeat it here that I may get it clear. No discrimination shall be made between the articles themselves.

The other consideration would be this, that no discrimination shall be made between the charges of the two railroads on the same article. Now, if the last is the construction, if it refers to railroads instead of articles, then it would necessarily give rise to this, that whatever is the highest rate that one railroad may charge the other railroad may charge, because you must not discriminate in that way. You create a coil of unjust charges greater than the evil that you are trying to cure.

What I suppose the Committee on Railroads and Canals intended was this: That if freights or passengers are transferred from one road to another that the road receiving them shall not charge any higher rate than they charge for similar articles transported over their own road and not received from the other. I understand that is the evil aimed at. Now, let us get this clear. The evil aimed at is to prevent a road charging more for articles that it receives from another road than it does for articles that come simply over its own road. That, I believe, is the evil the Committee on Railroads and Canals design to cure. But, if I understand the reading of this section, it does not reach that at all. It is limited simply to articles under the construction I have first mentioned, or it gives rise to the evil of subjecting all articles that go over both roads to the highest rate of freight established on either.

I do not know that at this moment I could move an amendment. I would if there was time, which would cure the trouble. But I ask the chairman of the Committee on Railroads and Canals, whether the evil I have mentioned is not the evil aimed at; and if so, whether this section, by its language, does not hit something else rather than that evil.

Mr. COCHRAN. Mr. Chairman: I would say, in reply to the gentleman from Crawford, that he is right as to the evil aimed at. According to my understanding, the section meets that evil. It was intended to do so, and I think it does. I cannot, myself, make it any better than it is.

Mr. DALLAS. Mr. Chairman: I ask for the reading of the section, as it will be if amended on the motion of the gentleman from York (Mr. Gibson.)

The CLERK read as follows:

"Any individual, company or corporation, organized for the purpose, shall have the right to construct a railroad or canal between any two points in this State. Any railroad may intersect and connect with any other railroad; and no unnecessary delay shall be interposed in the forwarding of passengers and property from one intersecting railroad to and on another; and no discrimination shall be made in passenger and freight tolls and tariffs on persons or property so transported from one railroad to another. The Legislature shall, by general law prescribing reasonable regulations, give full effect to these powers and rights."

Mr. DALLAS. I move, as a substitute for the pending amendment, to insert after the word "and," where it occurs the third time in the second sentence, these words:

"No unreasonable discrimination, in any respect whatever, shall be made for or against any passenger or passengers, or for or against any person or persons, corporation or corporations, offering property for transportation."

Mr. Chairman, the amendment offered by the gentleman from York (Mr. Gibson) is simply, as I understand it, by way of transposition of the language of the section itself, in the particular in which he proposes to amend it. I have proposed to substitute for that amendment the amendment which has just been read, and my reasons for doing so I will state very brief-

ly. As I understand from the chairman man of the Committee on Railroads and Canals, the purpose of this section is to prevent unreasonable, unjust and unfair discriminations between different passengers and different persons offering goods for transportation upon railroads, and particularly as to those goods which go from one railroad on to another. Now, sir, the very purpose which we seek, by this amendment to our Constitution, to attain, has become the Constitution of England by the growth of that Constitution, for in that country its Constitution grows, and is not made as Constitutions are with us. But there it applies to all discriminations, as well those arising where individual transporters offer goods directly to the company affected, as where the goods are received from adjoining companies or intersecting companies. The section, as I read it here, would apply only to prevent discrimination upon goods received from intersecting companies, and I desire to cure what I consider to be the defect in that particular.

The wisest judges of England have, over and over again, in considering this very principle, said that it is not discrimination on the part of the railroad company that is objectionable; it is the unreasonable discrimination. And, sir, to put into our Constitution that no discrimination shall ever be made, is to say to the corporations of Pennsylvania that they shall not do business in a great many instances. Why, sir, the discrimination is made per ton, per mile, constantly. The railroad companies charge more per ton per mile where they are to carry goods a short distance than where they are to carry them a longer distance.

Mr. COCHRAN. Will the gentleman from Philadelphia permit an interruption for the object of explanation? I wish to say, simply, that this particular section was intended to meet but one point, and that is the transfer of property from one railroad to another. The general question which the gentleman is discussing comes up under another section in this report, with regard to general discrimination by railroads; under the eighth section, if he will refer to it. It was intended by the committee to keep the two ideas distinct and separate, and under the other section he will find that to which his amendment, if proper, will be entirely applicable. But the amendment which he proposes is a great deal larger than the section itself, and goes entirely out of the sphere which it was intended to cover.

Mr. DALLAS. Mr. Chairman: I had seen the eighth section before I offered this amendment, but it does seem to me that there is no use in making two sections or two portions of this section applicable to the same subject of discrimination. It might as well all be put in one section, and I believe this is the proper place to put it.

I was about to say when the Chairman of the Committee on Railroads and Canals rose, that the unreasonableness of the discrimination is the objectionable feature, and the only objectionable feature in it. As to what that word "unreasonable" means, lest it be supposed to be too indefinite to be placed here, let me say that it has been so frequently judicially determined, and is so well understood by the courts and the profession, that it is a perfectly safe word to use.

Now, sir, it is a reasonable discrimination that a company should charge more per ton per mile for carrying exactly the same freight a short distance than it would for carrying it a longer distance, for there is a certain fixed cost to the company, which they have to pay if they go but one mile the same as if they go twenty. And on this very subject of goods received from intersecting railroads, the transfer from one railroad to another is something considerable, and may make some slight discrimination reasonable. Whether it does or not, I am not now able to say. The delay of the rolling stock of the corporation which is to receive goods from an intersecting railroad, while waiting for the arrival of those goods and for the supply of that matter for transportation, may make a slight discrimination reasonable. Therefore it is that, right here, I would meet both questions, because this word is necessary to both, and I would have the report read: "Any railroad may intersect and connect with any other railroad, and no unreasonable discrimination shall be made," just for the reasons I have stated.

Then, in addition, there has been considerable discussion of the necessity for the use of the word "tolls," as well as of "freight," in speaking of discriminations in regard to tariff; and then there is added, "that there shall be no unreasonable delay," which is only saying again that there shall be no unreasonable discrimination in the time of carriage. That is making a long story, which I propose by my amend-

ment to abbreviate, by saying that "there shall be no unreasonable discrimination in any respect whatever," which I think will cover the time of carriage, the freight and the tolls, and cut off all unnecessary words, "that no unreasonable discrimination shall be made in any respect whatever, for or against any passenger or passengers, or for or against any person or persons, corporation or corporations, offering property for transportation."

This is a brief explanation of the amendment I have offered, and no attempt at argument in regard to it.

Mr. LEAR. Mr. Chairman: In regard to that matter of the unreasonable discrimination, the gentleman from Philadelphia says its prohibition has been adopted as part of the Constitution of England, by the mode which they have of making a Constitution there; that is, by its growth. That simply means that it has been judicially determined that there shall be no unreasonable discrimination. When gentlemen upon this floor talk about the Constitution of England, they are talking about just such matters as that, and not talking about an instrument similar to that under which we are living, or similar to that which we propose to adopt. Their Constitution, as he says, grows; ours is made; and if we were sitting here to determine, as a judicial tribunal, whether a railroad corporation had transgressed the common law, rights and privileges, in making an unreasonable discrimination in the carrying of freight or passengers, or in the delay of carrying freight or passengers, then it would be a proper question for us to determine, in that particular case, and that is the only way in which it can come up. It is for that reason that I object to undertaking to do that by a general system, by a general proclamation, if you please, in a constitutional provision, which can only be done to suit each particular case, or which can at most be done from session to session of the Legislature, as the wants, necessities and requirements of the people of the State show that they are entitled to receive protection.

I have no particular interest in this question beyond that of any other member of this Convention, or of any citizen of the State of Pennsylvania, and I have no feeling upon it whatever. So far from it, it is a matter that I have as little interest in, probably, as any member on this floor; but I do say, that, with regard to this matter, my feeling not only applies to this report, but there are other reports of committees that I object to, just as much as to this, on account of their undertaking to declare and re-affirm that which we know to be the law of this State just as well as if we put it into the Constitution in every article, and re-affirmed it in every section. That is just what we are doing in this case. I have no doubt that the courts, governed by rules of law, will determine this matter about unreasonable discrimination, and they will determine the matter about all that is contained in this section, under what, at least, seems to be required—a general railroad law for the purpose of carrying this section into operation.

What do we do in the very first grant of power which we make to any co-ordinate branch of the Government under our Constitution? Why, we declare that the legislative power of the State shall be vested in a General Assembly. That is everything; and that permits the Legislature to legislate upon everything which is not literally and affirmatively prohibited. Then if the legislative power of the State is vested in a General Assembly, why should we say in this section—and I am making these remarks not only as to this amendment, and as to this second sentence of this section, but to the whole section—"any individual, company or corporation, organized for the purpose, shall have the right to construct a railroad or canal between any two points in this State," when we have the provision in the Constitution that the Legislature shall have the power to give an individual, a company or corporation the right to do that very thing? An individual does not require any right or power to transport merchandise or freight from one part of the country to another over the public road. Before railroads were known in the State of Pennsylvania, when the people from Philadelphia used to send their merchandise to Pittsburg, across the mountains, with their four, and six, and eight horse teams, they had the power, not only without any constitutional provision, but without any legislative provision, to stop at the foot of the Alleghenies, and double their teams, and put on two teams to one wagon, and draw them up with sixteen horses instead of eight; and no power under the Constitution, or the law, could prohibit them from thus combining their motive power for the purpose of getting over the Alleghenies, and no power in the State of Pennsylvania, unless we infringe the personal liberty and freedom of the

citizen, can prevent a man to-day from transporting merchandise from one part of the State to another, or transporting his passengers, and combining capital for that purpose as a firm; but when it comes to a corporation, it is created by the State, and the creation of that corporation is subject to such restrictions as the State sees proper to impose upon it.

What I am opposed to is, that if we grant these corporations the power to act at all, they shall be so circumscribed and curtailed in their powers of operation, that they shall be entirely unable to perform the functions for which they were created.

Now, we undertake to provide here in the first sentence of this section just as I have read. In the second sentence we provide some general declarations of the character which you have heard mentioned several times here. Then we provide in the third sentence, at last, and after all, that "the Legislature shall, by general law, prescribing reasonable regulations, give full effect to these powers and rights;" and there it all is in the two lines that close the section. "The Legislature shall, by general law, prescribing reasonable regulations, give full effect to these powers and rights." When the Legislature does that, it has done everything that is necessary, and therefore I should say, strike out the second sentence in this section, because the third sentence gives the power to the Legislature, and unless the Legislature does prescribe these reasonable regulations, then the second sentence is of no validity, because there is nothing at all in a general proclamation unless you enforce it by sanctions and penalties.

Then, if you strike out the second sentence, where is the necessity of the first sentence? It comes back at last to such powers and the performance of such duties as the Legislature may prescribe by a general railroad law, for the purpose of giving scope and operation to the combinations of capital, for the purpose of crossing our mountains, tunneling our hills and getting freight and passengers in the cheapest and most expeditious manner possible from one part of the State to another; and if we undertake to prescribe by general provisions of this kind, as I remarked before, that which must depend upon the Legislature at last to carry out, we are encumbering this instrument with an amount of verbiage which, if it does not make it ridiculous, makes it more difficult to understand and comprehend by the people who are to pass upon it, and will subject it to greater difficulties in passing that final ordeal which it must when it is submitted to the vote of the people of the State.

The CHAIRMAN. The question is on the amendment to the amendment, offered by the gentleman from Philadelphia.

Mr. NEWLIN. I ask that it be read.

The CLERK. The amendment is to insert, after the word "and," in the fourth line, the words: "No unreasonable discrimination in any respect whatever shall be made for or against any passenger or passengers, or for or against any person or persons, corporation or corporations, offering property for transportation."

Mr. COCHRAN. Mr. Chairman: As I stated when the gentleman from Philadelphia was on the floor in advocacy of his amendment, I hope it will not be inserted here. It refers entirely to another and a different question from that which is included in this section. In the eighth section of this report the question of discrimination on railroads, generally, in regard to transporting persons and goods upon them, is treated and disposed of; but this is an entirely different question. This section was constructed in the first place for the purpose of providing for the passage of a general railroad law, and then the provision connected with it was that there should be no discriminations made against freight passing from one railroad to another. That is a distinct question by itself, and I hope it will be kept distinct and separate, and that the amendment of the gentleman from Philadelphia, which is entirely too general, and, I think, inadvisable to adopt, at any rate will not be inserted here. Let us keep the two questions separate and distinct from each other, and treat them in their proper order as they come up in this report.

The CHAIRMAN. The question is on the amendment to the amendment, offered by the gentleman from Philadelphia.

The amendment to the amendment was rejected.

The CHAIRMAN. The question recurs on the amendment of the gentleman from York (Mr. Gibson.)

Mr. NEWLIN. Let it be read.

The CLERK. Strike out all after the word "railroad," in the fourth line, and insert: "And no unnecessary delay shall be interposed in the forwarding of passengers and property from one intersecting railroad to and on another; and no dis-

crimination shall be made in passenger and freight tolls, and tariffs on persons and property so transferred from one railroad to another."

The amendment was rejected.

Mr. LAMBERTON. I move to amend the section, by adding after the word "rights," in the ninth line, "but no railroad shall be authorized to cross another at the same grade."

Mr. BAER. Mr. Chairman: I rise to remark that the proposed amendment of the gentleman from Dauphin is covered by a section in the article reported by the committee, and it would be entirely out of place at this point.

Mr. LAMBERTON. What section? Section sixteen is the only one that relates to this subject at all, and that applies only to cities and boroughs.

Mr. BAER. I believe the gentleman is right, and that that restriction is confined to cities; but this amendment should be voted down at any rate, for the reason that if the proposition were engrafted in the Constitution now, it would simply enable the great lines in the State, the Pennsylvania and the Reading, to adjust their roads to correspond, and thus crush all the smaller companies of the State. There are quite a number of small railroad companies in the State that would be entirely unable to change their roads so as to make them cross above or below grade; and to put this restriction on them would be equivalent to tearing them up, and for that reason it should be voted down. It is not proper that it should be made part of the fundamental law, for all the smaller roads of the State. A railroad of six miles long may have to cross a dozen public roads, and you make it so expensive to conform to this provision that it will be utterly impossible to build the road, and yet the mere crossing of these dozen roads might not conflict with a safe crossing of a person in a wagon or on horseback. It is too broad and sweeping a proposition to incorporate with the Constitution, and for that reason it should be voted down.

Mr. MINOR. It seems to me, sir, this amendment ought not to prevail, for very obvious reasons. It is required, by us and by law, that one railroad shall connect with another; that freight and passengers shall be received by one railroad from another. Now, it may be a matter of the highest convenience, of the utmost importance, in order to make those connections in given instances, that the roads should come together at grade. Now, if we put it in the Constitution that the grades must be different, then we interfere with other very important provisions. Suppose you take two railroads that build a depot right over their crossing, one far enough above the grade of the other to let a locomotive pass under, and how are you going to transfer your freight and passengers without the utmost inconvenience?

I say, sir, that the Legislature of the State, at the present time, have protected that sufficiently. They have left that under the control of the courts to fix it, directing them to cross, not at grade, whenever the court, in their opinion, think they ought not to. Let the companies agree; but if you put it here in the Constitution that they cannot cross at grade, it will be a very serious detriment. Leave it to their interest, and to the present legislation that we have on the subject, and do not make an iron rule that will give rise to evils greater than those we are trying to cure.

The CHAIRMAN. The question is on the amendment of the gentleman from Dauphin.

The amendment was rejected.

Mr. STRUTHERS. I am in favor of the section as framed by the committee, but it appears to me it might be modified in its language, to express the object a little more fully and clearly, and I call the attention of the chairman to a modification which I propose. After the word "tariffs," in the fifth line, I would strike out the rest of that line and introduce the following: "Or tolls against freight and passengers received by one railroad from another."

Then the section would read:

"Any railroad may connect or intersect with any other railroad, and no discrimination shall be made in the passenger and freight tariffs or tolls, against freight and passengers received by one railroad from another."

That, I believe, is the object and intention of the committee, but I think this would express it much more clearly. I move the amendment.

The CHAIRMAN. The Chair will state that the word "tolls" has already been inserted. The Clerk will read the amendment.

The CLERK. Strike out all of the fifth line after the word "tariff," and insert, "or tolls against freight and passengers received by one railroad from another."

Mr. STRUTHERS. The word "tolls" should be left out.

The CLERK. As modified, the amendment reads, "against freight and passengers received by one railroad from another."

Mr. COCHRAN. I have very great confidence in the judgment of the gentleman from Warren, but I submit to him that "received by one railroad from another," is language that might have a very injurious effect. Suppose one company should refuse to receive; suppose the goods were brought there, and the company would not receive them? I think the word "passing" is better. And unless he thinks the word "against" is better than "on," I would prefer to leave the section as it is. But to put in the word "received," instead of the word "passing," is to throw a power into one railroad company which might defeat the whole object of this section. Then what is meant by the "receiving company?" I would prefer not to have the word "received."

Mr. STRUTHERS. I am perfectly willing to adopt the gentleman's modification of my amendment.

Mr. COCHRAN. The amendment, as modified, would then be simply to strike out the word "on," in the fifth line, and insert "against."

Mr. STRUTHERS. Yes, sir.

The CHAIRMAN. The question is on the amendment, as modified, striking out the word "on," and inserting the word "against."

The amendment was rejected.

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

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

The CHAIRMAN. The gentleman will indicate the division he desires.

Mr. J. M. WETHERILL. Down to the word "railroad," in the fourth line.

The CHAIRMAN. The Clerk will read the first division.

The CLERK read as follows:

"Any individual, corporation or company, being organized for the purpose, shall have the right to construct a railroad or canal between any two points in this State. Any railroad may intersect and connect with any other railroad."

The division was agreed to.

The next division was read as follows:

"No discrimination shall be made in passenger and freight tolls and tariffs on persons or property passing from one railroad to another, and no unnecessary delay interposed in the forwarding of such passengers and property to their destination. The Legislature shall, by general law, prescribing reasonable regulations, give full effect to these powers and rights."

The division was agreed to.

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

The motion was agreed to, there being, on a division, ayes 47; noes 36.

The President having resumed the chair, the Chairman (Mr. Broomall) reported that the committee of the whole had had under consideration article No. 17, reported by the Committee on Railroads and Canals, and had directed him to report progress and ask leave to sit again.

Leave was granted, and this afternoon at three o'clock was fixed as the time at which the committee should sit again.

APPOINTMENT OF A DELEGATE.

Mr. WOODWARD. Mr. President: I beg leave to present the report of the delegates at large in regard to the vacancy existing in the Convention.

The PRESIDENT. Before the report is received, it will be necessary to give that delegation leave to sit during the sittings of the House.

Mr. WOODWARD. I ask that leave.

Leave was granted.

The PRESIDENT. The delegation make a report, which will be read.

The clerk read as follows:

To the Constitutional Convention:

The delegates at large, to whom it was referred to fill the vacancy in the membership of the Convention, occasioned by the resignation of Samuel H. Reynolds, delegate at large, do report that they have filled the said vacancy by the appointment of William Bigler, of Clearfield.

GEO. W. WOODWARD,
GEO. M. DALLAS,
WM. L. CORBETT,
WM. J. BAER,
A. G. CURTIN,
R. A. LAMBERTON,
S. C. T. DODD,
JOHN H. CAMPBELL,
J. S. BLACK.

On motion of Mr. Darlington, the Convention, at twelve o'clock and fifty-seven minutes, took a recess until three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at three P. M.

RAILROADS AND CANALS.

Mr. WORRELL. Mr. President: I move the Convention resolve itself into committee of the whole upon the article of railroads and canals.

The motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Broomall in the chair.

The CHAIRMAN. The committee of the whole have before them the article on railroads and canals. The second section will be read.

The CLERK read as follows:

SECTION 2. Every railroad or canal corporation organized or doing business in this State shall maintain a public office therein for the transaction of its business, where transfers of its stock shall be made and books kept for public inspection, in which shall be recorded the amount of capital stock subscribed or paid in, and by whom, the names of the owners of its stock, and the amounts owned by them respectively, the transfers of said stock, and the names and places of residence of its officers. The chief officer or director of every such corporation shall annually make a report, under oath or affirmation, to the Secretary of Internal Affairs, which report shall include a detailed statement of its receipts and expenditures, assets and liabilities, and such other matters relating to its business as are now or hereafter may be prescribed by law, or required by said Secretary.

Mr. M'ALLISTER. Mr. Chairman: I move to amend, by striking out, in the first sentence the word "public," where it first occurs; by striking out the word "public" where it occurs the second time, and insert the word "the," and by inserting after the word "inspection," in the first sentence, the words, "of all having a pecuniary interest."

Mr. STANTON. Mr. Chairman: I move to amend the amendment, by striking out the word "public," where it occurs the second time, and inserting "by any stockholder or bondholder of any such corporation."

The CHAIRMAN. Is that offered as an amendment to the amendment?

Mr. STANTON. Yes, sir.

Mr. COCHRAN. Mr. Chairman: I would really like to have some reason assigned why these amendments should be adopted. Though the gentlemen have moved these amendments, they have assigned no reason for adopting them; and why should they be adopted? I would like to hear some reason assigned. It might operate on my judgment as well as the judgment of others.

Mr. M'ALLISTER. Mr. Chairman: The reason why I moved the amendments is that I cannot perceive the necessity of declaring this office a public office. I cannot understand the necessity of allowing anybody, through mere idle curiosity, to visit this office and demand a right to inspect all the books; to ascertain who are stockholders; to publish to the world who are stockholders, and thus pry into the private interests of individuals. Such a rule has never been applied to any corporation, so far as I know, on the face of this earth. The rule does not apply to any other institution, and I know no reason why it is more applicable to railroad corporations than to banking institutions, or any of the numerous private corporations throughout this land.

Now, sir, it is for the chairman of the Committee on Railroads and Canals to give us a reason for providing this opportunity, through idle curiosity, to pry into the private transactions of men, by ascertaining how much stock they own, when they obtained it, when they assigned it, and to whom they assigned it. It has not been thought wise in our Legislatures to require any such exposition in the reports annually issued for the benefit of the people of the Commonwealth. Our Auditor General's report shows no such prying into the affairs of railroads or any other corporations. Why then should it be applied here to railroads and canals? I cannot, for the life of me, see the necessity for it. I can see very well why an office should be kept. I can see very well why persons having claims against railroads or canals should visit the office to ascertain who are liable to legal process, and to ascertain many other things that are necessary for the public interests; but is there any necessity for divulging to the public the name of every individual stockholder, and the number of shares he owns? Of what use can it be to the public? If you make the company's office a *public* office, liable to *public* inspection, open to the inspection and the inquisition of everybody who visits it, you do more than ever has been done in reference to any other corporation. I therefore call upon the chairman of the committee to tell us the necessity of this requisition, and the great public good that can arise from it.

Mr. COCHRAN. Mr. Chairman: In regard to this section I may state what I

think is rather in contradiction of what the gentleman from Centre has just asserted, that this is by no means a new thing; it is not original. I recollect that on one occasion some gentleman here referred to the Constitution of Illinois, and I remember some other gentleman said he hopod he would never hear that Constitution cited on this floor again; he hoped we were going to do a great deal better than the Convention that sat in Illinois. Every gentleman here present will find, on examining the Constitution of the State of Illinois, that this section is taken almost *in haec verba* from that Constitution; it is not original with us. We have the example of others, at all events, for introducing this section into the Constitution of Pennsylvania. Since the gentleman frnm Centre began his remarks I have not had time to examine the Constitution of West Virginia and some of the other later Constitutions of the other States; but I have referred to the Constitution of Illinois, and I find the section there.

I know, Mr. Chairman, it was an opinion in old times, in the times when I was considered a very high corporation man, indeed, that it was altogether impertinent for any man to know anything about what was going on in any corporation, unless he himself had a personal, private, pecuniary interest in the corporation. With regard to some classes of corporations, I do not know that that idea was wrong; but in regard to other classes of corporations, I respectfully submit that the principle is not a correct one. When we come to act on a question of this kind, I apprehend we must first consider what kind of a corporation it is. If, for instance, it be a railroad or a canal corporation—let me inquire, is a railroad or canal corporation strictly a private corporation, in which no man has any interest whatever except those who are stockholders in the corporation? Is it a corporation in which the community at large has no interest, either in regard to the management of its internal affairs, or the conduct of its public administration? Why, sir, a railroad corporation is no such thing, and I do not state this on my own authority; I state it on the authority of the Supreme Court of this State, in cases which I have not at hand now, but I have referred to them within a week or two, in which it was distinctly decided that a railroad corporation was not strictly a private corporation. The reason of the thing is so: A railroad or canal corporation is invested with certain public powers and functions, which strictly private corporations do not possess. They exercise, under the grant of the Legislature, that great transcendent power of eminent domain, and they are constituted, as I said this morning (and they have no right to exist unless they carry it out) for the purpose of performing public duties.

I do not say that it is wrong that the stockholders of railroad corporations should derive benefit from their investment. I take no such position as that; but I say that the benefit to the private stockholders is the incident, and the public good is the great paramount object for which such corporations should be constituted, and for which only they ought to be, or can be, constitutionally constituted in a republican government.

Now, sir, when you look at these corporations in that light, you have a public interest in them, and every citizen of every community has an interest in the conduct and management of these corporations within the Commonwealth of which he is a part. They are acting as the agents of the Commonwealth, and as the representatives, to a certain extent, of the people of this Commonwealth, and are responsible alike to the people and to the State at large for the manner in which they discharge their duties.

Mr. Chairman, let me ask, in response to the inquiry of the gentleman from Centre, what harm can be derived from a public examination of the books of these corporations? What harm can arise from it? I know the idea is an old idea, an idea that was common in former years, that it is invidious; that it is inquisitorial, or, as the gentleman from Centre expresses it, that it is prying into the affairs of these corporations. Is any man who holds ten shares, or a hundred, or a thousand shares of stock in any corporation of this kind in the State, ashamed to let other people know that he owns it? Has he done anything wrong that he need be ashamed to let the people at large know that he has purchased that stock? I apprehend not, sir. I, unfortunately, do not own more than four shares of stock in any railroad company in the world; but if I owned a hundred thousand I would not be ashamed if everybody knew that I owned it. All men would be perfectly welcome to know that, if that knowledge would do them any good. Is there any

harm in it? I can see no possible harm. Is there not some good in it?

I might ask, why was this section introduced into the Constitution of a sister State? I have not recently read the Debates, and I have not a very distinct recollection of them on this point; but so far as I do remember, I believe it was placed in that Constitution *remine contradicente*, nobody objecting to it. Not a man in the Illinois Convention raised his voice in opposition to this provision. Why should objection be raised here?

Now, Mr. Chairman, there has been one great corporation in this country, not in Pennsylvania, the Erie railroad company. What has been the history of that corporation? Would it not have been well for the public and for the stockholders of the Erie railroad company, years ago, if their books of transfers of stock had been open to public inspection? Would not hundreds and thousands of men have been saved from great loss? Would there not have been a restraint imposed upon the frauds that were practiced in watering that stock and in distributing it broadcast for corrupt purposes throughout the country, if the books of transfers of that stock had been kept open, and public inspection had been brought to bear upon them?

I take it, as a general rule, that no good thing will avoid the public eye. There are exceptions, but as an ordinary thing, a matter that undertakes to avoid the inspection of the public eye is a matter which requires to be watched with very considerable care and caution.

I have referred to the example of the Erie railroad company. I think it is an example in point. I go no further into it. I see no harm that can arise from making this a matter of public inspection. It will do no harm to any one, and it will give protection to the stockholders and to the public at large; and we cannot disguise the fact, every man in the community is, to a certain extent, interested in the management of the affairs of these great transportation institutions. It will give all an opportunity to know the state and condition of these institutions. I remember, Mr. Chairman, to have read, only a short time ago——

Mr. M'ALLISTER. Will the gentleman allow me to ask him a question?

Mr. COCHRAN. Well, I suppose so. [Laughter.]

Mr. M'ALLISLER. I simply desire to know what is the object in ascertaining the manner in which the shares are distributed? In the Auditor General's report, and in all our reports we have the amount of stock, and it is essential we should have it, the increase of stock and when it was increased; but I ask why should you throw open to public inspection the individual ownership? That is what I want to get at.

Mr. COCHRAN. What harm does it do?

Mr. M'ALLISTER. Then I will ask the gentleman this question. What harm would it do to allow anybody to see your private ledger, or to allow any one to do so in the case of a turnpike company, which has the same right of eminent domain?

Mr. COCHRAN. If the people should invest me with any public duties or obligations which required me to keep a book, I say they would have a right to come and examine that book. That is the difference between a railroad corporation and myself.

Mr. Chairman, I have read, within a comparatively short time, the proceedings of a corporation of this character, in which an inquiry was addressed to the officers of that company to know what was the amount of the capital stock, and the reply was that it was "about" so much. That was the inquiry of a stockholder to the officers of the company, and the answer was, that it was "about" so much.

I have no disposition to find fault with the conduct or management of any railroad or canal corporation, (I have nothing to do with any other in the scope of my duty,) where there is no reason for it; but here is the point: Suppose certain parties have, by some means or other, *per fas aut nefas*, become the controllers of one of these great public improvements, and suppose a portion of the stockholders should be dissatisfied with the management of that improvement, why would you prevent those stockholders from going to the books of that company and ascertaining who were their co-partners and associates in that corporation, and so to arrange matters among themselves, if they thought it was right, as to get up an opposition to the reigning power and dominion within the corporation? Why should you isolate these men? Why should you prevent these men from having this opportunity? This section provides that these men shall have the opportunity of doing that, and at the same time that the public at large, whenever they have an interest in it, shall have

the opportunity of examining into the condition of the books, stocks and transfer of these corporations. I am unable, for my own part, to see any harm in it. I do not think any good thing need shun the light. I do not think there is any harm, whatever, in letting the public know what the amount of the capital stock of these corporations is, and how it is distributed among the several stockholders.

Mr GOWEN. Mr. Chairman: The inquiry was made by the gentleman from Centre, (Mr. M'Allister,) who will be benefited by the adoption of this section? The gentleman from York (Mr. Cochran) has not answered the question, but I can answer it, and I can say who will be benefited by the adoption of such an amendment to the Constitution. In the first place, every clique of stock gamblers will be benefited by it. Every man who wants to convert the stock market of Philadelphia into the bear garden that exists in New York will be benefitted by it. Every man who wants to get up what is called a "corner" in stocks, to do which it is absolutely necessary that he should know who owns a particular stock, and go and buy those shares which are saleable, and then speculate upon those which are not for sale, will be benefited by this section.

Again, every large railroad company in this State that wants to get hold of the property of a small railroad company will be benefited by the adoption of this section.

I am one of those who believe that the railroad system of this State does require some action on the part of this Convention. I draw the distinction, however, between the ownership of property and the dishonest exercise of public power; and while I agree that the dishonest exercise of public power should be visited by swift condemnation and punishment, I do not believe that the ownership of property is a crime. Neither do I believe that it is for the interest of the people of this State that the prosperity of the State should be retarded, and a wall drawn around its outward battlements, and every interest in this State bound hand and foot, and handed over to the tender mercies of the largest corporation in the State of Pennsylvania. I say (and if I had more than twenty minutes, to those who are familiar with these subjects, I could demonstrate it,) that the great railroad company of this State could afford to pay $10,000,000 for the adoption of this new article to the Constitution of the State of Pennsylvania, which forever prohibits new works, and makes the prosperity of this State tributary to the one great line that already extends out all over the State with its branches. It is not proper to say this upon this one section, but as this system is a comprehensive one, and as no one portion could be adopted without reference to the other, it is almost impossible to make any argument on this subject without referring to sections succeeding the one now under consideration.

There are eight or nine things that I admit should be done by this Convention. In the first place, I admit that there should be a free railroad law passed, by which any persons can build a railroad wherever they please, provided that they do not put it right upon the track of another one; that the whole Commonwealth shall be open to every man who has money to build a railroad. That is one thing. I believe that there should be some constitutional protection of the interchange of traffic between one railroad and another. I believe that there should be some constitutional protection to the local trade of a community that resides upon the line of a railroad. I believe—and this is of vast importance, and it is something which I think is entirely overlooked in its most essential features by the report—that there should be some protection to the minority stockholders of a corporation, whereby one large corporation, by getting hold of the control of the majority of the stock, could not injure the minority. I believe that there should be a constitutional prohibition against the officers of any railway company engaging in business along the line of its road. I believe that there should be a total abolition of the free pass system. I believe that there should be a prohibition of any interference or control, or attempt of interference or control, by a railroad company or its officers with the legislative, judicial, or any other branch of the government, and swift punishment to the guilty agent and to the corporation that employs him for any such interference. Then I believe that there should be some protection whereby the stocks of companies should not be increased beyond the money value of the property that is exchanged for such increase. When you go over these eight subjects, I think you embrace almost all

the reform which has been demanded by the public, and which every man familar with the subject will admit is needed.

But this report goes further. In the first place, it treats the ownership of property as a crime, not only on the part of the company that owns it, but it descends to the inquisitorial investigation of the individual ownership of each share. In attempting to bring about this reform, however, the committee has reported this article, which, if adopted, will prevent the building of any new works, particularly in certain parts of Pennsylvania, and will render the future prosperity of those portions of Pennsylvania entirely dependent upon the existing railway company that owns the line that is now built.

For these reasons, I think the whole general scheme is deficient. I think it has gone so far, that while it certainly has punished as a crime the ownership of property, and will prevent any future person embarking in such ownership, it has handed over the whole Commonwealth to the tender mercies of the corporations that at present exist.

With reference to this particular section, the objection to it is that it opens a door which heretofore has been closed in Pennsylvania. It permits a combination of the stock exchange that want to get up a "corner" in stocks to procure the preliminary information which it is absolutely necessary they should have in order to do it, and which, but for this amendment, it would have been impossible for them to acquire. Again, it benefits the large corporation that wants to get control of the stock of a smaller one. It places before it the name and the residence of every holder; it enables it to understand their circumstances, to know where they live, to know who they are, and instead of dealing directly with the company for the ownership of the small road, whereby the price paid for it would be equally distributed among all the stockholders, it enables it to go to the particular men whose names they know, and buy their stock and manage the road, to the injury of the minority stockholders. Therefore, with reference to the section now under consideration, the answer to the gentleman from Centre is this, that every stock gambler, and every large corporation will be greatly benefited by its adoption.

Mr. BAER. Mr. Chairman: I wish, at this point in the consideration of this article, to say that, although a member of the committee, I was one of a minority who would have presented a minority report if circumstances had permitted us to have it ready in time to be read. I wish to say now, simply, that many things in this report I cannot endorse, and I shall take the liberty, in committee of the whole, to act independently of the report of that committee. I shall not discuss any question involved now, but simply call the attention of the committee before the vote is taken to the difference between the amendment proposed by the delegate from Centre (Mr. M'Allister) and the amendment to the amendment, proposed by the delegate from Philadelphia (Mr. Stanton.) I am opposed to the section as it stands, with the word "public" in, and in favor of striking it out, and entirely concur with the gentleman from Centre that by inserting the words, "having pecuniary interest," we shall cover all the ground that is necessary. But to leave that out, and put in the words, "by any stock or bondholder" would come short of what may be necessary. There are other persons besides the stockholder and the bondholder who may have an interest there, because the corporation may be indebted to persons who have no bonds. There may be creditors who may be pecuniarily interested in the condition of the corporation, and they should have the right to know how its affairs stand. Therefore the provision contained in the amendment covers the ground, and that contained in the amendment to the amendment does not. For this reason I am in favor of the amendment as proposed by the gentleman from Centre, and hope it will be incorporated in the section.

The CHAIRMAN. The question is on the amendment to the amendment.

Mr. J. PRICE WETHERILL. Mr. Chairman: While I heartily approve of the principal and main points in the article now before us, I cannot entirely give my consent to that part of the section which is now before the committee, and at the proper time I shall move to amend section two, by striking out all after the word "business," and ending with the word "officers," on the eighth line, leaving out entirely the provision alluding to the keeping of stock-books open for public inspection.

I recollect very well, some six or eight years ago, the Legislature of the State of Pennsylvania saw fit to pass a law which should compel banks doing business in this State to keep a list of stockholders, with the amount of stock held by each,

in a public place in the banking house. I remember very well that that gave the officers of the different banks throughout the Commonwealth a great deal of trouble. There were transfers constantly being made, and it was really a source of inconvenience to the officers of the bank, and of no earthly use whatever. I can understand that, if we pass this section, we shall compel every railroad company throughout the State to have a complete and perfect list of its stockholders day by day, and the books open for inspection, not only by the stock and bondholders, but by anybody who may see fit to make application.

Now, let the members of the Convention think for a moment of the vast amount of stock sold at the stock board day by day; hundreds of thousands of dollars' worth of stock of the three or four great roads in the State of Pennsylvania are daily sold, so that it is actually impossible for the directors of the railroad companies themselves to know who the stockholders are unless they close their books for thirty days, in order that a correct list of stockholders may be made up so as to be known by the officers themselves, upon which they can declare a dividend. So complicated is this matter that they must close their books for that length of time in order to perfect their lists.

Now, if this is the case, how could it be possible for any railroad company having a large amount of stock, and that stock operated in enormous sums day by day, to live under this section? I cannot see, for the life of me, how it would be possible; and I do not believe there is to-day a single man in this Convention interested in railroads who could, inside of thirty days, present a correct list of the stockholders of his company to his directors. The stock is changing from day to day; it passes oftentimes in the names of holders who have sold it months before, and therefore a perfect and complete list is impossible. I do not suppose this Convention desires the railroad companies to go to the expense of employing clerks, at a considerable amount of salary, for this business alone, when after all the object to be attained will be but imperfectly secured.

Before closing I will state that I heartily approve of the section which we acted on this morning. I think I understand perfectly well what the interest of this country is in regard to railroad companies. I perfectly understand that we should do something to prevent the excessive charges of monopolies in this country. I know well that in the western country, to-day, it requires four bushels of wheat to bring one to market. That is the evil we should correct. We should look at the transportation interest of the country, and endeavor to check railroad monopolies in this regard; but it seems to me wrong for us to thus persecute railroad companies when there can be really no good result therefrom; and I do not think, by the passage of this section, any good will result, and therefore I shall oppose that part of it.

Mr. MANN. Mr. Chairman: I think every member of the committee must have been satisfied when the chairman (Mr. Cochran) took his seat, that it must be very difficult to give any good reason for the adoption of this section. He certainly has shown himself capable, while we have been in session, of giving the best of reasons for anything that he desired to have adopted, but the most he could say in favor of this section was to ask, "what harm will it do?" Mr. Chairman, I submit to this committee whether that is a sufficient answer to a question asking what good will it do. Is this Convention to adopt every proposition that shall be made, simply because it can be said it will do no harm? We might make a Constitution as big as the Bible on that principle, if we were to adopt every proposition simply because it will do no harm. I think the chairman must have been satisfied himself when he sat down that it was very doubtful whether this section ought to be adopted. If that is the most that can be said in its favor, clearly it ought to be voted down. I listened very attentively to him, and I heard no reason given to show that it would do any good.

What evil connected with railroad operations in Pennsylvania is this section calculated to remove? I have never heard of any. If the chairman can state one I should like to hear it. If there are any evils connected with the operation of railroads in Pennsylvania which this section is calculated to remove, let us adopt it; if there are none, let us vote it down. We have met here, I suppose, to correct evils, not to adopt sections that may possibly do no harm and that may, in the far future, possibly do some good. It seems to me we ought to be satisfied that there is an evil to be remedied, or else we should not adopt the section.

In addition to some of the evils pointed out by the gentleman from the city of Philadelphia, (Mr. J. Price Wetherill,) it seems to me that there are other evils which this section would caeate, instead of removing. I submit that it is an evil to have the business of any man or of a corporation open to every curious individual who chooses to walk into its office, and clearly under this section every individual, at all times of the day, would have the right to go into every railroad office in the State, and to insist upon the inspection of all its books. That would delay business in every office. It would create a vast amount of expense and annoyance, with no possible good.

The chairman asks if any man is ashamed of the interest he has in railroads. Why, I suppose he is not ashamed of the business that he transacts in his own office, but he would not like every idler that goes along the street to come in there and question him about his private business.

I do not feel conscious that I am ashamed of any business that I have ever been connected with, and yet I should feel it a great grievance, a great hardship, if every prying, curious man who walked the street had a right to come into my office and ask me how many clients I had and how much they paid me for services rendered. I should be perfectly willing to answer that question to any person who had the right to ask it; but I should feel it a great grievance to have everybody coming in and asking me such questions, although not ashamed of my business, and I think the gentleman himself would think it so in his own case. I think the section is against the spirit of American institutions and ideas; it is inquisitorial. It is an odious feature, as odious as the inquisitorial visits of the examiners who came to inquire for the income tax, quite as odious; and the reference made to the Constitution of Illinois does not quite bear out the statement as to this section. It is not quite as offensive as the section under consideration. The Illinois Constitution provides that "every company shall have an office in the State where transfers of stock may be made, and in which a public record shall be kept" of certain things. That is the section in the Constitution of Illinois; and it does not say that the office shall be public by any means, as this section does.

Mr. COCHRAN. Mr. Chairman: I beg the gentleman's pardon for interru ting him. I read from the Constitution of Illinois, as I find it on page 320 of the first volume of American Constitutions:

"Every railroad corporation, organized and doing business in this State under the laws and authority thereof, shall have and maintain a public office."

That is what the Constitution of Illinois says, as I read it.

Mr. MANN. Well, the reference which I had to it, and I was reading from the same book, but I suppose in a different place, does not read in the same way. On this point, then, it seems that I was mistaken, although I read from the same volume.

But, Mr. Chairman, the point I was about to make in that matter is, if this general collation of references to the Constitutions of the several States at the close of the book is correct, there is no such a provision in any of the Constitutions of the States of the Union, other than that single one in the Constitution of Illinois; and that is hardly sufficient to be accepted as a precedent.

I do not propose to say very much upon this section, or upon this article, for I do not know much about railroads; I do not know half as much as I wish I did. I have to travel a great distance, when at home, to find one; and we are all exceedingly anxious up there that some of these great, mammoth corporations that seem to be such a curse in this part of the State, would bring some of their branches up to us (laughter). We are exceedingly anxous for it, and I am opposed to nine-tenths of this article, because I believe it will prevent the building of railways, as has been said by the gentleman from Philadelphia (Mr. Gowen.) I was heartily in favor of the first section, and voted against all the amendments and for the section as reported by the Committee on Railroads and Canals, because that section is intended to remedy some evils connected with the mana ment of railroads.

There are some features in this article that I think, in the main, are correct and shall vote for them with great pleasure, for I think that we should treat railroads just as we would individuals, correct them when they need correction, but never treat them as enemies of the State. But there are several sections in this article that do, as the gentleman from Philadelphia says, treat these railways as if they were criminals in the Commonwealth, instead of beneficiaries. Why the adoption of the third section, if it is

adopted, and becomes the law of the State, will be so offensive that, it does seem to me, that no railroad would be willing to increase its line by a single mile beyond that which they have already.

There are various other sections of the report which meet my disapproval, but I confine myself to this second section, and I hope, therefore, for the reasons given, that the amendments offered, which will restrict the right of people to investigate the books of railroad and canal companies to people who have an interest in the companies, will be adopted. Of course every man having an interest in a railroad ought to have access to the books, which ought to be kept in a convenient situation; but what right has anybody else there?

Mr. CAMPBELL. Mr. Chairman: I hope that neither the amendment nor the amendment to the amendment will prevail, and that the committee of the whole will adopt this section as reported by the Committee on Railroads and Canals, and I rise to give one or two reasons why, in my estimation, this section should be adopted.

The design of the section is, first of all, to protect the stockholders of railroad corporations, and next, to protect the outside public. Now, there is one great source of complaint with reference to the management of almost every large railroad corporation, and that is, that neither the stockholders nor the public, nor anybody else, except a very few persons at the head of the corporation, know anything about its affairs or its financial condition. The chairman of the Committee on Railroads and Canals has referred to the Erie railway management in New York, and he has said that if the stockholders there had had some provision of this kind, by which they could have examined the books, or by which the outside public could have examined the books, the great abuses that crept into that management would either never have existed, or would have existed to a far less extent.

One of the gentleman who spoke today has asked, what good is there in this section? I will endeavor to tell him some of the good there is in it. There is good in it to the people of Philadelphia, and to the people of some other localities in the same situation that we are. The municipality of Philadelphia is a large stockholder in one of the large railroad corporations of this State. There have been, time and time again, efforts made to investigate the management of that corporation. Within a few months past there was a committee appointed by the councils of Philadelphia to endeavor to find out why this particular railway corporation did not pay any dividends or any remuneration for the large amount of capital that the city had invested in its bonds, and the result was—no information. They could not find out anything.

The citizens of Philadelphia are interested in having this public inspection of books, so that they can go to the public office of that or any other corporation, see who are the stockholders, and, if necessary, to change the management of the corporation, take steps to have the right class of directors elected, so that the management of the corporation will not be controlled by a certain inside clique. The whole people of Philadelphia are interested in this very thing, and, by the amendment which the gentleman from the city (Mr. Stanton) proposes, they may be prevented from going to the office of the company I have alluded to and finding out the information that may be necessary to protect their interests. That is one good thing that can be accomplished by this section.

There is another: Railroad companies, when they wish persons to subscribe to their stock, issue all sorts of glowing prospectuses, giving accounts of what excellent fields for investment the stocks and the bonds offered are; how everybody should subscribe, and how large dividends will be certain to be returned. Now, it is necessary for the public to have some means of ascertaining if these prospectuses, these announcements of railroad companies are true, so that they will not be placed in the position of subscribing upon the mere faith of the announcements put forth by the corporations themselves, but that they may have something substantial to enable them to ascertain what they are going to do with their money.

There are these two beneficial results to be accomplished by this section. First, it will enable the citizens of any city thus interested in the stock of a railroad company to look into the affairs of that company, or direct their public servants to investigate its condition. The other is, that it will enable all those persons whom the railroad companies wish to induce to subscribe to their stocks or bonds, to ascertain something about the investment

that they are asked to make. As the chairman of the Committee on Railroads and Canals has said, the Illinois Convention has passed a similar proposition without a dissenting voice. It was found necessary there. It has now been tried there, and I have heard of no attempt to have the provision changed; hence there must be some good in it to the people of Illinois. The State of Illinois was a stockholder in one of the large railroad corporations of that Commonwealth, and I have no doubt that that fact influenced many members of the Constitutional Convention in passing that section of their Constitution. The same thing would influence the people of Philadelphia in having some section of this kind adopted so that they could find out how affairs are managed in the corporations in which their money is invested, and whether or not some compensation could not be obtained for the capital furnished by them.

Mr. CUYLER. If the gentleman will pardon the interruption, I presume the corporation to which he has alluded is the Philadelphia and Erie railroad company. I would like to ask him whether the city of Philadelphia is not represented by three directors, elected by itself, who sit at the council board of that company, and if city councils cannot procure from these directors all the information they possibly can have furnished from any other source?

Mr. CAMPBELL. Mr. Chairman: I will answer the gentleman. There are such directors, and the citizens of Philadelphia have requested, through their councils and through these very directors, that some information should be furnished as to why the money of the city invested in the Philadelphia and Erie railroad company was earning no interest, and the directors themselves have been unable to obtain the information they wanted. There is in this body one of those very directors, and we may possibly hear from him on this subject. If he were to speak he would certainly bear me out in that statement.

In further answer to the gentleman's question, I would say that in case the city directors referred to, who are appointed by councils, sometimes through political influence, should neglect the interest of the city and not perform their duties faithfully, then this provision will help the citizens of Philadelphia in ascertaining something about the affairs of the Philadelphia and Erie railroad company, and if necessary enable them to change their directors and put better ones in their places.

Mr. T. H. B. PATTERSON. Mr. Chairman: It seems to me that this section is a more important one than the gentlemen who have been discussing it appear to think. The learned and able advocate on behalf of railroads in this House, (Mr. Gowen,) who so ably argued the question *pro and con*, and all around, and through and over, states that the one great object for which this article ought to have provided, and for which it did not, was the protection of minority stockholders; and yet he fails to see any object whatever in this section. Now, Mr. Chairman, I cannot concieve of a section that more directly goes to protect the interests of the minority stockholders, as well as the public, than a section which provides that they shall have access to the information which is necessary to any step for their protection. The great complaint in this State, and in many other States, and I say this calmly and considerately, has been that all our railroads and canals were managed in such an obscure, underhand way that a man could not find out what his rights were, or who was controlling those public institutions. And when I say this I speak advisedly. Now, the first step to any reform with regard to a corporation, or in order to protect the interests of the minority stockholders of a corporation, is to find out who are the minority stockholders and who are the majority stockholders, who control that stock in the interest of the government of the road, and who are opposed to the government of the road. If we had not this light, how is it possible for us to take any steps as the stockholders or bondholders of a public corporation in order to remedy any evil that may exist in the government of that corporation?

This is the most important question, as the learned gentleman said, on which this committee has failed to act entirely, and yet he objects to a section which provides for the light under which any person must act if he acts at all.

In the second place, outside of the minority stockholders, it is necessary for the people to know who are managing their railroads and canals, in order that they may provide remedies for their mismanagement. The great difficulty in this State, in most of our public corporations is, that they are run by a government, a directorship, or a controlling clique, who get control of a sufficient

amount of the stock of the corporation by under-hand means, or by over-hand means, it does not make any difference how they get control of it, and having got control of just enough to govern the institution, they run it, and they keep everybody else, minority stockholder, bondholder and private citizen, in entire ignorance of the affairs of that corporation, and they do not intend that we shall know who owns the stock, or who runs the road or the canal.

Now, this section looks to providing that every man in this State shall have a right to know who owns and controls the public corporations that are to transport himself and his property, and that is the direct object of this section; and what harm it can be to anybody to let every citizen have that right I cannot understand.

Men may well say, here and elsewhere, that there is no evil to be remedied, but I tell you, Mr. Chairman, there is an evil to remedy. I have heard directors, one in particular of one of the greatest corporations of this State, say to myself that he knew that the largest stockholders in that road could not get the slightest information with regard to their stock, how much they owned themselves, how much extra stock had been declared, what the state of the stock was or anything about the affairs of the company, and yet they were as much entitled to that information as any persons in the whole company, because they owned more stock in proportion than any other individuals in it.

Gentlemen, honestly, is this a state of things that can exist and yet not be an evil? Ought we not to have some method of providing for the knowledge by the people of the affairs and management and control of stock of their corporations? And this is all that this section aims to do

Now, one word in conclusion, in reply to the learned advocate of the railroad interests on this floor. He says that the only persons who would be benefited by this section would be the stock gamblers, who wish to form rings and corners and deal in the stocks of our great corporations. Mr. Chairman, it seems to me clear as sunlight, that those men would be more benefited by keeping the entire control of the information with regard to the state of the stocks and government of the corporations under the control of the cliques that manage them and run them in the dark, and are willing to exhibit their status to their favorites, in order to form combinations in the stock market, and keep the public out, keep the general business interests of the community from knowing how these stocks are managed, and what is the state of the affairs of the stockholders. So far from tending to produce stock gambling and corners in stocks, the adoption of this section would go directly to making information public property, on which all stock gamblers in the stocks of our public corporations must depend, and would enable every citizen and every business man to have all the information that every other man could have by using the proper diligence and going to the proper office and looking for it, and that would directly cut up by the roots any illegitimate and improper speculation and cornering in the stocks of those companies, and would tend directly to the beneficial management of those companies, for the benefit of the people and the stockholders directly, and would tend directly to make these companies account to the stockholders for the profits of the company.

As it is now, the stockholders in the large common carrier corporations do not get one tithe of the earnings of the corporations. They are unable to get an account, because if they go and ask for it they are told that it is none of their business, and they cannot get an account and cannot get the information that is necessary to a fair investigation.

Mr. Chairman, I ask the delegates on this floor if this state of things can exist in Pennsylvania; and yet we are to be told that it is no evil, but that it is all right, and that any attempt on the part of citizens of Pennsylvania to get an opportunity for such legitimate information, with regard to their own institutions, is inquisitorial. I ask delegates on this floor to consider calmly before they vote to adopt either of these amendments, especially the last one, or to vote down this section, on the theory that the idea of this section is inquisitorial. For freemen to ask for the right to inquire into their own institutions, and simply have the benefit of the bright light of heaven for the inspection of their own affairs, to be called inquisitorial on the floor of such a Convention as this! I ask delegates to think calmly over such assertions before they allow them to have any weight with them in deliberating on such a subject as this.

The CHAIRMAN. The question is on the amendment to the amendment.

The amendment to the amendment was agreed to, there being, on a division, ayes thirty-six, noes thirty-five.

The CHAIRMAN. The question now is on the amendment as amended.

Mr. LILLY. I should like to have it read.

The CHAIRMAN. The amendment as amended will be read.

The CLERK. The amendmeat as amended is to strike out the words "and public" in the second line, and insert the word "and;" the word "public" in the fourth line, and insert "the," and after the word "inspection" to insert, "by any stock or bondholder of such corporation."

Mr. BIDDLE. Now, Mr. Chairman, I offer an amendment; after the word "bondholder," to insert, "or any other person having a pecuniary interest therein."

Mr. STANTON. If it be in order, I would accept that.

The CHAIRMAN. The committee having acted upon the amendment, it is not in the gentleman's power to accept an amendment to it. The Clerk will read the amendment to the amendment.

The CHIEF CLERK. It is proposed to insert after the word "bondholder" the words, "or any other person having a pecuniary interest in such corporation."

Mr. CUYLER. I wish to ask the gentleman from Philadelphia precisely what that means.

Mr. BIDDLE. I will endeavor to answer my friend and colleague, and tell him what I think it means precisely. In the various financial operations of many of the great improvement companies of this and other States, there are many modes resorted to of "raising the wind." There is ordinary stock; there is preferred stock; there are bonds secured by mortgages; and there are bonds securred by no mortgages; and there are also loans not secured by anything, not even by the seal of the corporation.

Now, my purpose and object is not to open the door widely to any inquisitorial examination of the concerns of a company where the party knocking at the door has no real right to inquire, but to allow everybody who is either, first, a partner—which I understand to be the meaning of a stock or shareholder—or secondly, a creditor, to know what is going on. I conceive that a man who has a note of a company to the amout of $30,000 has got quite as much pecuniary interest and quite as large a right to demand to see this list as a bondholder who holds a bond of $100. I think the mere form of the security does not make any difference in a man's right of inspection.

Now, I understand this House to have decided two things; first, that they do not intend to open the doors to mere indiscriminate examination or inspection of the books of these corporations, because that might justly be open to the censure that has been bestowed upon it. It would be, if meant for good purposes, useless, and might be turned to very bad purposes by persons such as we have heard described here on the floor. But this House has also meant to say that creditors secured by bonds, and proprietors, or partners, who are the shareholders—the terms being all equivalent—shall know what is going on. Now, when I use the words, "others pecuniarily interested," I mean to cover the man who has not got a piece of paper with a seal to it, but who has as large and frequently a much larger pecuniary interest than the man who has got an instrument technically called a bond. I conceive that a man who lends his money, no matter what the security or evidence of debt he takes, is as much entitled to this right as a bondholder. I want to meet that case. That is exactly what I understand by the amendment.

Mr. DARLINGTON. Mr. Chairman: Allow me to suggest the use of the word "creditor;" "any stockholder or creditor," in the place of all those others. I think that will be better.

Mr. CUYLER. I would ask the gentleman (Mr. Biddle) if he understands that his amendment would cover the case of a party holding a judgment against one supposed to be a stockholder or bondholder in a company, and who desires an inspection of the books to see whether he could lay an attachment. I ask whether his words are not broad enough to cover such a case. I would ask, first, whether he means to cover that, and, second, whether his language would not.

Mr. BIDDLE. I did not mean to cover that, but I see no objection to it. I prefer the broader word. I think if a man is a pledgee of stock he has as much right as the mere nominal holder of stock to know what is going on, because his interests may be as ten to one of the mere nominal legal holder.

Mr. CUYLER. The gentleman does not understand the case I put. I am not putting the case of a pledgee of stock. I am putting the case where a man has an or-

dinary judgment against, say Mr. Smith, and Mr. Smith, against whom he has a judgment, is supposed to hold stock in the Reading railroad company; shall he have the privilege of going to the office of the Reading railroad company, and saying, "I want to look at your stock list to see if Mr. Smith is a stockholder."

Mr. BIDDLE. I do not understand that an attorney at law has any pecuniary interest in a judgment he recovers; but I think the client who has a pecuniary interest should have the right to inspect the books in such a case. I can see no objection to this. I do not wish now to be tied down to strict definitions, but I do say that the same principle which would enable a bondholder, with a bond of one hundred or a thousand dollars, to go and inspect the books of the company, ought, in common justice, to enable the man who has a large indirect pecuniary interest to make the same inspection. He may have an indirect pecuniary interest of thousands of dollars; and do gentlemen mean to tell me that his interest does not stand on as high a ground of equity and justice as the interest of the man who holds a paltry bond of one hundred dollars, or a single share of stock? I hope the language of the amendment will be retained.

Mr. CUYLER. May I be pardoned a single word, and only a word, upon this section. That those who have an interest in a company of that nature, that their action may control, and if it be needed, reform its policy, should have knowledge of who the parties in interest with themselves are, so that they may move them by proper influences to action, is eminently right. It is but reasonable that every stockholder, and if you will, every bondholder of a company, shall know who his fellow-stockholders, and who his fellow-bondholders are, so that if there be anything wrong in the policy of the company, an organized movement between those who are interested in it may take place which may insure a reform. There I take the true line to be. There the public interest comes in and controls; but the moment you extend it so that parties outside of that line may have this right of inspection, then you are, in the first place, at sea entirely as to where you will stop; and, in the next place, you are imposing a rule that, it seems to me, would be very unreasonable.

While it is theoretically true that knowledge of who their fellow-stockholders and fellow-bondholders are, so that there may be concerted action, may work out good, yet, as a practical rule, I do not think it is likely to amount to much. If men are interested in companies of this sort and have indirect or improper purposes, there are so many methods by which they may cover up their interest in the company, and thus render this section practically nugatory, that I do not think it will ever achieve much good. If one is a stockholder in a company and has improper motives or purposes in the use of his stock, it is so easy for him to put his stock in another name or to cover it up, in half a dozen different ways that could be suggested, so that no practical information could be derived, that I cannot see that any good result is to come from putting it in the section; but theoretically it is right that all who can control the policy of a company in any way should have a right to know who stand similarly situated with themselves. Therefore I am in favor of going that far, but I am not in favor of establishing an inquisition. I am not in favor of putting incorporated companies in such a position that you will deter large capitalists or humble capitalists from investing in them at all.

I am in favor of giving information for a reasonable purpose, but not for an unreasonable purpose. I am not in favor of throwing open the books of the company for inspection by one who may chance to have a judgment against a stockholder or a bondholder in that company, to enable him to enforce his execution, any more than I am in favor of arming that creditor with the power of throwing open the ledger of the private merchant, to find out who may owe his debtor money, so that he may lay an attachment. I fail to see the reason why any distinction should be drawn. If it be right that, in individual cases, the creditor of some stockholder or bondholder shall be armed with such inquisitorial power, with reference to a corporation, I fail to see why he should not have an equal power with reference to any merchant or man of business in the community, with whom a debtor may chance to have had business relations.

I think the suggestion of my colleague from Philadelphia (Mr. Biddle) ought not to prevail. As it stands, the section is right. To pass beyond that is to introduce ills to which I see no limit or bound.

The CHAIRMAN. The question is on the amendment to the amendment.

The amendment to the amendment was agreed to.

The CHAIRMAN. The question now recurs on the amendment as amended.

The amendment as amended was agreed to.

The CHAIRMAN. The question now recurs on the section as amended.

Mr. GIBSON. I do not like to vote, either for or against any proposition to be inserted in the Constitution without understanding it. There is one thing here which may be plain to some members of the committee, but I do not understand it. It is provided in the section that a report shall be made to the Secretary of Internal Affairs, including a detailed statement of the receipts and expenditures, assets and liabilities. Then it proceeds, "and such other matters relating to its business as are now or hereafter may be presribed by law." Then follow these words, "or required by said secretary." I should like to understand why a provision like that is put into this section of the article. It would be well enough for the Legislature to provide by enactment that such and such information shall be furnished to the Secretary of Internal Affairs hereafter; but it seems rather too broad for a constitutional provision that the Secretary should have a constitutional right from this time forward to demand, in his own discretion, any information at all. It seems to me that in several of the sections of this article there is too broad a use of language, and it may confer powers which it may be necessary to restrain in some way. I therefore ask an explanation of the meaning of these words, or I shall move to strike them out. I will make that motion now, to strike out the words, "or required by said secretary," at the end of the section.

THE CHAIRMAN. The question is on the amendment of the gentleman from York (Mr. Gibson.)

Mr. COCHRAN. The act of 1858 or 1859, which provides for making reports to the Auditor General, according to my recollection of it, prescribes certain particular things. In the first place, certain heads of information which are to be furnished to the Auditor General, and such other matters as he may require; and this section is neither more nor less than that. It is impossible to frame a statute or any other provision which will include every head of information in the varying circumstances of the times, on which it would be important to have reports made to a public officer. Now, the idea of this clause, as the members of the committee will see, is to make the Secretary of Internal Affairs a sort of superintendent, or give him a visitorial power over this class of corporations. The information which he can demand is information which, by the terms of the section itself, must relate to the business of the corporation, not to anything outside of that; and that is as precise and definite a limit, it seems to me, as we could affix to it. I think there is nothing wrong in the section, nothing wrong in allowing a public officer of this kind to require any information which, in his judgment, as it relates to the business of the corporation, would be necessary for the public benefit.

Mr. EWING. I wished, before the gentleman sat down, to ask him for some information on the section that is connected with this matter, and that is, the object of requiring such reports as are now required to be made by law, to be made to the Secretary of Internal Affairs. As I understand the statutes at present existing, the railroad companies and other corporations of the State are required to make annual, semi-annual, or quarterly returns, as the case may be, to the Auditor General. The principal object of that is for the purpose of ascertaining the amount of taxes tha they will have to pay. It seems to me that that information ought to go to the office of the Auditor General, and not to the Secretary of Internal Affairs. What I want to know is, first, as to whether or not the committee fully considered the effect of that order transferring the accounts of these companies to the Secretary of Internal Affairs from what seems to me the proper office, that of the Auditor General, who is to be the accounting officer of the State, and if so, what were the reasons for transferring it?

Mr. COCHRAN. These corporations make two different reports, which are provided for by different statutes. One set of those reports is made for the purpose of taxation, and this provision does not interfere with those reports at all. There is another general report made under a statute passed, I think, in 1858 or 1859, by which they were required to make annual reports—a new thing, entirely; it was certainly not done before 1859; giving an account of the business of the corporation; an entirely distinct thing, different from those other matters which were connected with taxation. This provision is not intended to inter-

fere with those reports in regard to taxation. It is simply to transfer the reports of the business of the corporations through the year to the Secretary of Internal Affairs.

Mr. EWING. Allow me to call the gentleman's attention to the wording of the section. It provides that all the reports that are now required by law to be made by these companies, shall be made to the Secretary of Internal Affairs. It is clearly directory on the companies hereafter to make all the reports which the law now requires them to make to any State authority, to the Secretary of Internal affairs.

Mr. COCHRAN. The gentleman certainly is not referring to the present section.

Mr. EWING. Yes, sir, the latter part of it. It reads, "shall annually make a report under oath or affirmation, to the Secretary of Internal Affairs, which report shall include a detailed statement of its receipts and expenditures, assets and liabilities, and such other matters relating to its business as are now, or hereafter may be prescribed by law." That clearly will cover it.

Mr. COCHRAN. This clause simply refers, as I said before, to the annual reports made under the act of 1859, not any other act. The other reports are not interfered with by this section at all. They remain as they were. This section simply provides for transferring that class of reports of these corporations to the Secretary of Internal Affairs, to whom, under the last section of this article, the existing powers and duties of the Auditor General are transferred, but it does not include that other class of reports.

Mr. CUYLER. I do not agree with the chairman of the committee. I think it requires a great deal more. The closing words of this section are: "Or required by said secretary." In other words, these corporations, their business, their contracts, anything and everything that pertains to them is subordinated to the sovereign will of a secretary politically created and appointed. There is no limit of any sort suggested upon the face of the section. Whatever the wildest caprice of that officer may suggest is the law of that corporation. Sir, are we living in the nineteenth century, and under a free system of laws? Have not these artificial citizens some rights? They are not to be subordinated to the Legislature; they are not to be subordinated to existing acts of Assembly; they are to be subordinated to anything that may be "required by said secretary," and the Legislature has not the power to limit the will of that secretary. It is not competent for the Legislature to say that the power of this Secretary of Internal Affairs shall have this, that, or the other bound. He points to the Constitution, and says, upon the square words of the Constitution, "whatever I require is your law." Why, sir, to state the proposition is to show its absurdity.

It cannot be that the vast business of these great corporations, who, whatever may be their sins, have their uses to the public, is not transacted under the same general laws that govern that of an individual. Does the merchant who carries on a business uncover his books and expose the secrets of his trade to a competing house next door to his? Are not the lines which are concerned in through transportation carrying on their business in competition with other great lines extending from the seaboard to the west, and are all the arrangements that govern their business to be placed at the mercy of a Secretary of Internal Affairs, who may be reached and controlled, as men have been in the past, by rival agencies operating upon his judgment or affecting his integrity?

I do not know that anything I can say will influence my brethren of the Convention. I have had some opportunities of experience and of knowledge, and I fear that some of my friends here are disposed to convert me into an object of distrust as to the views I hold or express; but I do appeal to the common sense of gentlemen on this floor, and I ask them to say if they are prepared to go before the people of this Commonwealth with a provision that shall subject these companies to the utterly untrammelled caprice of whoever may chance to be Secretary of Internal Affairs of this Commonwealth.

Mr. CAMPBELL. I simply wish to say one word at this point. In committee, I was opposed to this provision upon pretty much the same ground as that stated by the gentleman from York, (Mr. Gibson,) who proposes to strike it out. I was also opposed to it upon another ground. I was afraid that by placing such unlimited power in the hands of this officer, should he, unfortunately, be elected by corporation influence, he might be used as an instrument for breaking up such small corporations as the larger corporations wished to have broken up. I shall therefore vote

with the gentleman to strike out this clause of the section.

Mr. BUCKALEW. I understand that the main provision of the latter part of this section, is simply an incorporation or proposed incorporation into the Constitution of an existing statute of the State. We have a law which requires an annual report of precisely the character mentioned here by each of these corporations, and which is published by the Commonwealth yearly in the form of a book. I am in favor of putting as little unnecessary and statute matter into the Constitution as possible; of putting in no such matter except upon the ground of necessity. Therefore, I shall be in favor of omitting this portion of the section from adoption by the Convention or by the people. Undoubtedly, these reports will continue to be required. The existing statute will not be repealed. If it is imperfect, it will be amended, and these returns called for will be made more extensive than they now are. Therefore, it is quite superfluous to place this provision in the Constitution of the State. It is lumbering the fundamental law with unnecessary and useless matter.

It follows that the only point to be considered upon the latter part of this section, is the discretionary power proposed to be vested in this new officer, the Secretary of Internal Affairs, who may or may not be a reliable and proper officer at any given time in the future. You propose to vest in him, in his discretion, the power to ask any question, to enter upon any investigation that he pleases with reference to any part of the business of any of these corporations; not upon those parts of their business in which the public is interested, in which the revenues of the Commonwealth are concerned, in which the common public interests of the people are involved, but any inquiry or investigation that may be prompted in the interest of rival companies, or in the interest of individuals, or that may be set on foot by the corruption of that officer. Sir, public power exercised by public officers should, as far as possible, be regulated by law. This Secretary of Internal Affairs should have his duties prescribed by statute, and he should adhere to the letter of the law laid down to him. Above all things, I would not repose in his hands discretionary power by the Constitution, power which you cannot regulate by statute. If you put it in here, the Legislature, however evident may be the corruption of this officer or his abuse of this power, cannot correct it, because it is in the fundamental law, and beyond their reach.

Beside all this, I do not understand that any gentleman has been able to point out any utility in this general and vague provision. I do not understand that any one has been able to show to us any reason why this officer will be better able to judge what returns ought to be made by corporations than the Legislature of the State in the enactment of laws on this subject.

Believing then, sir, on these grounds, that the latter part of the section to which I have spoken is objectionable, I, for one, am willing to vote to strike out all after the word "officers," at the commencement of the eighth line, leaving that part of the section upon which the Convention has already passed to stand.

Mr. GIBSON. If it is in order, I will accept the amendment of the gentleman from Columbia (Mr. Buckalew.)

The CHAIRMAN. The gentleman from York modifies his amendment, by accepting the suggestion of the gentleman from Columbia, to strike out all after the word "officers," in the eighth line.

Mr. FUNCK. Mr. Chairman: If this section be fairly read, I do not think it is obnoxious to the criticism that has been bestowed upon it. It will be observed that it is intended to be comprehensive in its character and to confer upon the officer named therein full power to protect the interests of the Commonwealth. It is his duty to see that these companies pay to the Commonwealth whatever may be justly due by them. He has full and complete power over that matter, and it is intended that if reports are made to him, and they are supposed to be defective, he shall have authority to make the necessary inquiries so that they may be verified if occasion requires it. Now, we all know how carelessly many of our acts of Assembly are drawn. They are often drawn by men who have no skill in that particular; they are drawn by men who do not understand the full scope of the subject to which they apply, and their efficiency can only be tested when they come to be applied.

If, then, the Secretary in charge of the internal affairs of the State sees that they are defective, that they do not confer on him power enough to obtain the necessary information, this section gives him the power to inquire of the corporation, and

get it in that way, independent of any legislation. So that I cannot see why any change should be made in it. It cannot be supposed that the officer will use the information he gets in this way for any improper purpose. He is an officer of the government, and performs a very important function, and no doubt will be an honest man, who will be disposed to do his duty, and would be no more likely to abuse the information which he would acquire in this way, than any other member of the government, and for this reason I object to this amendment. I think the section should be adopted as it stands. It is a full and complete provision in itself.

The CHAIRMAN. The question is on the amendment of the gentleman from York, to strike out all after the word "officer," in the eighth line.

Mr. COCHRAN. I hope, sir, that this motion to amend will not be adopted, for although it is very true that we have a statute requiring certain annual reports from these railroad companies, there is nothing to prevent the repeal of those statements, the total withdrawing of them, and the abolition of this whole system of making reports.

Now, sir, if it be objectionable that this officer should be clothed with this power, that is one thing. If it is the opinion of the committee that the officer should not be authorized to require this information, if they cannot trust the officers elected by the people, who act under them and who are clothed with these functions, then take that power away from him, and let it rest with the Legislature to prescribe what other particulars shall be included in these reports; but let us have a provision in the Constitution that reports shall be made by these companies to the Secretary of the Interior, giving the exhibit required with regard to these specified particulars that are here, and then with such others as the Legislature may think proper to add to them.

There is no reason why, because the Legislature has already passed a law of this kind, we should not make that a permanent provision in the Constitution. At the instance of the gentleman from Columbia the very same thing was done within a few days; some provision that he thought expedient was put in the Constitution, although there was a statute regulating it.

What possible harm can this do? It seems to be considered insufficient to say that no harm is to be done, but you must show some positive good. Well, then, sir, the positive good is this, that this is made a permanent provision of the Constitution that these reports must be made annually to this officer on the particulars specified in the section, and on such others as the Legislature may prescribe. I do not see any reason why it should not be inserted here; it adds but three or four lines, and it makes that permanent which now depends upon legislative caprice, or upon legislative, if you please, infidelity. Let us have this part of the section to remain with the other part of it and make these reports obligatory by the Constitution.

The CHAIRMAN. The question is on the amendment of the gentleman from York, (Mr. Gibson,) to strike out all after the word "officers," in the eighth line.

The amendment was agreed to, there being, on a division: Ayes, forty-three; noes, thirty-three.

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

The section was agreed to, there being, on a division: Ayes, forty-five; noes, twenty-one.

The CHAIRMAN. The third section will be read.

Mr. NEWLIN. I move that the committee now rise, report progress and ask leave to sit again.

The motion was not agreed to.

The CLERK read section three, as follows:

"All property, real and personal, of railroad, canal and other joint stock corporations shall be subject to taxation for all purposes."

Mr. DARLINGTON. Mr. Chairman: I confess I do not understand this. Where is it to be taxed; where are you going to tax the property of a corporation? Where does it reside? Which end of the road will you tax, or will you tax it at both ends and in the middle, too? I should like to know something more about this section before I am prepared to vote for it.

Mr. GOWEN. Mr. Chairman: I dislike to trouble the committee so frequently on a matter of this kind, especially as my interests outside of the Convention are supposed to be so connected with corporations as to make it improper for me to speak here as other gentlemen have. I feel like saying, and I think I can do it, however, without egotism, that I have been somewhat astonished at the effect my very appearance has created upon

many of the members of this committee. I want to say that I do not think I am quite as dumb as I look, [laughter,] and I really believe that I do know some little about such subjects as those now under consideration.

This section brings up for consideration a very important subject; it is this: That counties, and townships, and boroughs, and school districts, and each and every petty municipality throughout the State, are to have the right to tax a public highway as a public highway, to tax the road bed and the appurtenances of the road bed for the purpose of raising revenue. The right of taxation necessarily must be followed by the right to enforce the payment of the tax; and you vest in the petty municipalities of this State, the right to lay their hands upon a highway over which the people of any part of the State have a right to travel, and sell it to the injury of the public, to the detriment of the bondholders, and the mortgage creditors who lent their money upon the faith of the Commonwealth of Pennsylvania. It is repudiation in its worst and most ignoble aspect to permit a collector of a two-penny tax for a school purpose to return against an incorporation, an unpaid tax of ten cents upon the highway, over which the commerce of the State is to pass, and sell it away from the corporation to the destruction of those who lent their money upon its securities on the faith of the Commonwealth of Pennsylvania.

Now, I take it, Mr. Chairman, that there are certain broad general views which should govern every question of this kind. I take it that a Constitution for the State of Pennsylvania is not to be framed exactly as a Constitution for a State like Illinois, or a State like California, or a State like Mississippi or Louisiana; but in framing a Constitution for the State of Pennsylvania we have to pay some regard to the character of the State and to the character of the business that is to be transacted in that State which is to render it prosperous.

Now, Mr. Chairman, there are certain periods in the history of every nation; there are certain epochs and cycles which present themsevles alternately and periodically, and which, when once presented to a people and they refuse to take advantage of them, are lost forever. What student of history can fail to note how commerce has spread its wings upon one shore for a century or two centuries and then deserted them forever?

Who does not recall that, during the Middle Ages, when Venice and Augsburg and Nuremburg, and the inland cities of the continent of Europe were the highways through which the commerce of the East passed to the West; and who does not recall the decayed magnificence of those States the very moment the navigation of the seas was properly understood, and commerce went by the ocean? And who can fail to see now that the tunneling of a great chain of mountains, like the Alps in Europe, is again to change the course of commerce, and to build up communities that have been down in the dust for five hundred years?

The axiom that I desire to enunciate here, for I take it it is an axiom which cannot be contradicted, is this: That the empire of the world is to be vested in that State and that community that has the greatest wealth in minerals and fuel. It is the wealth of minerals, and especially the wealth of fuel, that gave to England the supremacy which she has had for five hundred years; and in this very year and at this very time, the people who are conversant with this subject see that that sceptre is as surely passing from her grasp as the sceptre passed from the grasp of the Persians, when Alexander conquered their country. Where is it to go? The people of England admit themselves that it is to come to the shores of America. Where in America shall it come?

Pennsylvania is not the only State that is struggling to secure it. Go to Virginia, and you will see a great highway of internal commerce being built to connect the mineral resources of the western part of that State with the port of Norfolk, which is one of the greatest ports of the Atlantic, and you find people from France and you find people from England investing their money in the internal development of the State of Virginia, and more, Mr. Chairman, you find capitalists from the State of Pennsylvania, iron manufacturers and others, disgusted with the protection which the State of Pennsylvania has thrown around the development of these interests, transplanting their property from Pennsylvania to Virginia and to Alabama. I take it that at this moment the three States of this country that are struggling to secure this supremacy are the States of Pennsylvania, Virginia and Alabama. You have

here in Pennsylvania emissaries from other States begging and beseeching the capitalists of this State to leave her borders and plant their works in other Commonwealths; you have the Legislatures of other States pledging the credit of those States to exempt them from taxation if they do so. Pennsylvania has the best chance of all of them. Pennsylvania has the greatest mineral wealth; she has ports upon the Atlantic and ports upon the lakes, which the others cannot hope to have.

If the people of Pennsylvania, as represented in this Convention, and as hereafter to be represented in the Legislature, will extend the proper degree of encouragement to these enterprises, the time is not far distant, it is within the ken and within the sight of many men in this Convention, who are by no means the youngest among its members, when the State of Pennsylvania will contain a population of ten million people and when the city of Philadelphia will be greater in extent and greater in population than the city of London. It is not the gradual accumulation year after year, according to the percentage of increase, which is to add to this, but it is the extraordinary increase, the unusual accumulation which follows from the fact just having been discovered, that England is no longer the place for great iron manufacturing industries.

Now, I take it that it is no crime to be rich. I take it the people of this State in this Convention assembled are not going to put the brand of their displeasure upon the man who has accumulated money.

As I see this committee in one respect intends to fence all the railroads in, I take it that this Convention is not going to provide for the fencing in of the great Commonwealth of Pennsylvania, and then for the white-washing of that fence so that nobody shall ever rub against it. I take it that all these enterprises that can come here ought to be invited, ought to be encouraged; and when they come here they ought to be protected; and I take it that the large corporations in this State that hold their franchises by a contract with the State, upon the faith of which the widow and the orphan, and the trustee and the foreigner, and the domestic citizen have invested money, are not going to be swept away, either by taxation or by any other power which this Convention can vest in the hands of the Legislature. If the city of Philadelphia ever is to become a great commercial port, that commerce is to follow from the production of our manufacturing industries. It is to follow from the fact that the port of Philadelphia is to be the great export port of this country for the fuel of nearly the whole world. Why, then, at this particular period in the history of the country, shall we tax these corporations more than any other individuals? Why shall we take away, or attempt to take away, as this report does, these franchises which have been vested by solemn acts of the Legislature, and upon the faith of which large amounts of money have been expended?

To come down from these general views, because these general views are necessary, and it is proper to consider them in treating of any other particular subject; to come down to the particular subject under consideration, we find that from year to year, down to the present day, for the formation of these views, the Supreme Court of Pennsylvania has laid down a rule of law upon the subject of taxation, which is equitable, and which is just. It is this: A corporation owning a railroad or a canal controls a public highway. The whole community has an interest in it. It is not proper, and the Supreme Court has said you dare not do it, to tax the roadway of these corporations, or to tax any depot or station, the possession of which is absolutely necessary for the use of the public highway; but all other property is subject to taxation. The court has gone so far as this, to say that where a railway company's roadway ran through the streets of a city, and bordered upon a sidewalk which the municipality had determined should be curbed and paved, that you could file no lien against the roadbed for the curbing and paving; because if you permitted that you would have to go a step further and permit the municipality to sell away the right to the roadbed.

Mr. BARTHOLOMEW. That was decided upon the proposition that the title did not pass to the roadbed.

Mr. GOWEN. Not at all.

Mr. BARTHOLOMEW. Yes, sir. That decision was based upon the ground that the fee simple did not pass to the railroad company.

Mr. GOWEN. It was decided upon the principle that the road is a public highway, and you could not tax it, because if

you do that, a public highway can be sold.

Mr. BARTHOLOMEW. No lien upon the purchase.

Mr. GOWEN. Mr. Chairman: The Committee on Railroads and Canals in this report in one case propose to treat these roads as public highways to the utmost limit of that construction, and in the other they propose to treat them as an estate in fee simple in a town lot, and permit them to be taxed and sold. Why should this be done? The large companies are taxed upon dividends; they are taxed upon their capital stock; they are taxed in a hundred ways that an individual is not taxed; and why should you permit a roadway or public highway to be taxed? In the State of Connecticut there is no taxation whatever upon the business of large manufacturing companies. The result of that is that industry is attracted to that State. The right way, I apprehend, and the position which I have always taken on this floor in anything of this kind is this: To treat the property of a railroad exactly as you would the property of an individual. Where an individual has a right to maintain a public highway do not tax it, but tax every other property outside of it. If a turnpike company has a roadbed you do not tax the roadbed but you tax the real estate which is necessary for the use of the roadway. Do the same with the railroads. Tax them the same as the individual is taxed. Remove these oppressive taxes from corporations in this State, and you will invite capital from other States to come here and from other countries to come here. We certainly want them. We do not want to drive them away. Why should we adopt, as an article of the Constitution of the State of Pennsylvania, a provision which will not only destroy rights which have been long vested, but which will prevent, and largely prevent, capital coming into this State, and most surely drive it into the borders of other States.

Mr. BARTHOLOMEW. Mr. Chairman: I move to amend, by adding to the end of the third section, "at the real value, which value is to be determined by the county commissioners of the respective counties through which the road is located."

Mr. Chairman, I have listened with much pleasure and some chagrin to the remarks of the gentleman who has preceded me. He has floated in Asia, and through the world in an air balloon, but he has failed to meet the proposition that the American people desire to meet, and that is the absorption, not only of the individual rights of the citizen, but of the capital of the country in corporations. Does any man question this? Does any man dare question this? A corporation which has a fixed capital, borrowing money upon the streets at two and a half and three per cent., and which absorbs the capital of the country, and the capital of every individual citizen, flowing into the corporation! Is there any question about that? I ask the gentleman who represents the great corporations of Pennsylvania to go into Third street to-day, or into Wall street to-morrow, and there find out who are borrowing money to-day, taking the money of the people to carry on the traffic which they propose.

I say this, that this proposition is right. We should tax the corporations of Pennsylvania legitimately for the purposes and the uses which the citizens of Pennsylvania, if corporations, would require. That is a proposition, and a simple proposition.

A section was adopted yesterday which limits the amount of indebtedness which a county can assume to two and one-half per cent. of its assessed property. Now, look at the county of Schuylkill, absorbed by a corporation, owned body and breeches by a corporation! Eighty thousand acres of land, with forty or fifty mining collieries located on this land. Are the people there to be deprived of education? Are they to be deprived of that which is required for the sanitary regulations of men, simply because, forsooth, a corporation owns them? Why, it is an absurdity upon its face. This corporation owns it, and shall we be restricted in our taxation to furnish the needs and necessaries of life, because they own the county? Will any man in this body dare to rise and say that because a corporation owns within our limits eighty thousand acres of land that, therefore, we can never tax them above two per cent. to build up our people, to educate our people, and give them the sanitary regulations which they require? Does the gentleman ask for that?

Why, we know there is no intelligent man in this body that does not know very well that the power of the Commonwealth of Pennsylvania to-day is drifting into the hands of corporations, and these corporations, divided not in number by four or by five, but by two and by three;

and that to-day Pennsylvania is distributed, not among a dozen corporations, but under compromises, and under obligations, between two and three. Who dare deny it, that to-day, in Pennsylvania, the Pennsylvania Central railroad and the Philadelphia and Reading railroad own, body and breeches, the Commonwealth of Pennsylvania. [Laughter.] Who dare deny it? Look at your legislation; look at your history! Why, it is an absurdity to deny it.

And you talk about taxation. I say to you, "gentlemen, yes! Own our State, but you will be under our law! You shall obey that which we have conceived to be just." We had based our republican institutions, so help us heaven, whether we are right or not, upon the education of the people. That is a question which, whether it be right or wrong, I do not propose to duscuss. But we have so decided, and having based it upon that fundamental doctrine, I say these corporations, having bought the State, shall pay for the education of our people. That is what I propose——

Mr. HEMPHILL. Mr. Chairman: Will the gentleman yield to a motion that the committee rise?

Mr. BARTHOLOMEW. Yes sir; I will give way.

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

The motion was agreed to and the committee rose.

The PRESIDENT having resumed his chair, the Chairman (Mr. Broomall) reported that the committee of the whole had had under consideration the article reported by the Committee on Railroads and Canals, and had instructed him to report progress and ask leave to sit again.

Leave was granted to sit again to-morrow.

Mr. WORRELL. Mr. President: I move that the Convention do now adjourn.

The motion was agreed to, and the Convention, at five o'clock and fifteen minutes P. M., adjourned until ten o'clock to-morrow morning.

EIGHTY-FIRST DAY.

FRIDAY, *April* 18, 1873.

The Convention met at ten o'clock A. M., Hon. Wm. M. Meredith, President, in the chair.

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

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

PETITIONS AND MEMORIALS.

Mr. WHERRY presented two petitions of citizens of Cumberland county praying for the adoption of a constitutional provision prohibiting the manufacture and sale of intoxicating liquors as a beverage, which was laid on the table.

He also presented a petition of citizens of Cumberland county, praying for the recognition of Almighty God and the christian religion in the Constitution, which was laid on the table.

Mr. EDWARDS presented a petition of citizens of Allegheny county, praying for the recognition of Almighty God and the christian religion in the Constitution, which was laid on the table.

Mr. BROOMALL presented the petition of Obediah Wheelock, of Philadelphia, asking that the right of suffrage be given to women, which was laid on the table.

Mr. WRIGHT presented a petition of citizens of Luzerne county praying for the adoption of a constitutional provision prohibiting the manufacture and sale of intoxicating liquors as a beverage, which was laid on the table.

Mr. FINNEY presented a petition of citizens of Clearfield county, praying for the recognition of Almighty God and the christian religion in the Constitution, which was laid on the table.

Mr. REYNOLDS presented a petition of citizens of Lancaster county, praying for the recognition of God and the christian religion in the Constitution, which was laid on the table.

Mr. CURRY presented a petition of citizens of Blair county, in favor of the recognition of Almighty God, which was laid on the table,

Mr. BANNAN. Mr. President: I offer a petition of citizens of Schuylkill county, requesting the acknowledgment of Almighty God in the city of Philadelphia.

The PRESIDENT. Such a memorial cannot be received; it is not in order.

LEAVE OF ABSENCE.

Mr. J. N. PURVIANCE asked and obtained leave of absence for Mr. Mitchell, for a few days from to-day.

THE LEGISLATURE—MINORITY REPORT.

Mr. D. N. WHITE. Mr. President: I present a minority report from the Committee on the Legislature in relation to the apportionment of the State for legislative purposes.

The PRESIDENT. The minority report will be read.

The CLERK read as follows:

SECTION —. The State shall be divided into fifty senatorial districts, of compact and contiguous territory, as equal in population as possible, and each district shall be entitled to elect one Senator. No county shall be divided in the foundation of a district, unless such county is entitled to two or more members; and no county or city shall be entitled to more than one-sixth of the whole number of members.

SECTION —. The House of Representatives shall consist of not less than one hundred and fifty members, to be apportioned and distributed throughout the State in proportion to the population, on a ratio of twenty-five thousand inhabitants to each member, except that no county shall have less than one member, and the city of Philadelphia, or any county having an excess of three-fifths of said ratio over one or more ratios shall be entitled to an additional member. In case the number of one hundred and fifty members is not reached by the above apportionment, counties having the largest surplus over one or more ratios shall be entitled to one additional member until the number of one hundred and fifty members is arrived at.

SECTION —. As soon as this Constitution is adopted, the Legislature shall apportion the State in accordance with the provisions of the two preceding sections. Coun-

ties, and the city of Philadelphia, entitled to more than one member, shall be divided into single districts of compact and contiguous territory, as nearly equal in population as possible; but no township or ward shall be divided in the formation of a district: *Provided*, That in making said apportionment for the House of Representatives in the year 1881, and every ten years thereafter, there shall be added to the ratio five hundred for each increase of seventy-five thousand inhabitants.

The minority report was ordered to be printed and laid on the table.

RAILROADS AND CANALS.

Mr. D. N. WHITE. I move that the House now go into committee of the whole upon the article on railroads and canals.

The motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Broomall in the chair.

The CHAIRMAN. The committee of the whole resumes the consideration of the article on railroads and canals. The question is on the amendment of the gentleman from Schuylkill to the third section, which the Clerk will read.

The CLERK read the amendment, which was to add to the article the following words:

"At the real value, which value is to be determined by the county commissioners of the respective counties through which the road is located."

The CHAIRMAN. The gentleman from Schuylkill is entitled to the floor.

Mr. BARTHOLOMEW. I was about, Mr. Chairman, to conclude my remarks when the committee rose yesterday. The remarks that I made yesterday were without consideration, but having had the opportunity extended to me by the reporters of reading what I then said, I for one confess that I heartily approve what I then uttered. [Laughter.) "With malice towards none," with a disposition to do "exact justice to all," I stand here a representative of a peculiar district, under peculiar circumstances. I represent the great county of Schuylkill. Reared as I was, among her mountains and her hills, with a heart filled with love for her, I saw her in her glory, and I, like one of Israel's children, have seen the glory depart from her. I have seen two hundred and fifty men whose lives and best exertions had been spent in developing the mineral resources of that grand empire, because an empire she is—I have seen them with bowed heads and broken hearts, leave their county, driven away by the *fiat* of the president of a railroad company, a ukase more imperative than ever the Czar issued. They have gone, purchased, but purchased under compulsion.

On this question of taxation this Convention can readily understand the simple proposition, that there are two parties in this matter of taxation. Taxation means a payment for protection; and can it be said, will any enlightened man say that a railroad company which is absorbing the capital of the country, shall run through our land, and have the protection which she has of her rights and her franchises granted by the generous Legislature of Pennsylvania, until we have left no rights that are worth granting away, and that she shall be protected without the payment of her just burden of taxation that is incumbent upon every citizen? And why, in the name of God, should she not pay her just proportion for that protection under the law which we have given her? Where is the reason for it?

There have been two eras in the history of railroad legislation in the Commonwealth of Pennsylvania. One was that of encouragement when our country was yet in her infancy. When our mountains had to be banded, when our plains had to be gone through, then it was that it was right and proper that the hand of legislation should be generously extended to the help and aid of all aggregations of capital. But another period came, a period when corporations ceased to be the children of the Commonwealth and to need her assistance, and became aggressive, when they attempted to aggregate to themselves the power of the Commonwealth, and that day we have lived to see; and to-day the corporations of Pennsylvania not only extend their power over the legislation of our land, but, nay more, the national government is being absorbed by the corporations of this country.

Reciprocity of interests is the great point. I pay my taxes, becoming a part and parcel of a civil government, that I may have protection, that I may appeal to the courts of justice and of law, so that mere force and physical power shall not determine my rights. For that I pay my taxes. We give that same right to railroad corporations, and therefore I say, protecting them, giving them all the rights that an individual citizen has,

giving them the right to appeal to our courts of justice, the right to call upon the *posse comitatus* and upon the power of the Commonwealth to protect their interests, they should pay that which individual citizens pay for their protection. They are now taxed for State and not for county purposes.

In my county to-day a corporation exists that is withering and blighting the individual industries of our people.

To-day a hundred men make their bread and butter by reason of the sale of that which has been their legitimate traffic and their business. To-day a corporation comes within their midst and leases a store-house, and puts into it goods of all kinds to furnish to the people; and to-day the miner of Schuylkill no longer purchases his shovel and his pick, and his wire-rope, and his oil and his hardware from a store-house, but he goes to a corporation and he gets it at their rate and on their terms; and the man who lived in that county prosperous, rich and happy in the expenditure of his money, believing in his safe investment, is to-day a bankrupt and a beggar, turned out upon the streets.

The CHAIRMAN. The gentleman's time has expired.

Mr. HUNSICKER. I move that it be extended twenty minutes longer.

The CHAIRMAN. That will require unanimous consent.

Mr. HUNSICKER. Then I offer an amendment to the amendment, to insert after the word "persons" the words "except the roadway;" and I will give the gentleman from Schuylkill my time.

Mr. GOWEN. Is there not an amendment pending?

The CHAIRMAN. There is an amendment pending. This is an amendment to the amendment.

Mr. GOWEN. Allow me to suggest to the gentleman from Montgomery the phraseology which I was about to offer, because there is something beside the roadway.

The CHAIRMAN. The question is on the amendment to the amendment.

Mr. BARTHOLOMEW. Mr. Chairman: I do not propose to say much upon the pending amendment to the amendment; but yet in justice to myself, I want it to be distinctly understood that in what I say this day and this hour, there is no personal feeling, no malice, nothing that could actuate me to strike unfeelingly or unkindly at any individual. So far as the gentleman who manages the railroad interests of my county is concerned, he well knows that our relations have been for years of the most intimate, friendly, and kindly character. But, sir, I speak for my people; I speak for what I deem to be the interests of this Commonwealth.

I say, as I have already said before in this Convention, and it is a patent fact, that there never was a land in which there did not exist an aristocracy, and it has fallen to the lot of this great Republic, this free land, and this free people, to have an aristocracy of railroad corporations, soulless and heartless. The peer of England in his pride still has a heart; the marquis of France still has human feelings; but the aristocracy erected in America, is without heart and without soul, and tramples like the car of Juggernaut upon the rights of citizens, and only laughs at the bloody stream it leaves behind.

This is a new question. I take it that all advancements have their corresponding evils. In the days of wooden plows, of carts with cow and woman harnessed to them, in the days of omnibusses and stage coaches, I do not believe the country could have produced a Tweed. It took railroads and telegraphs to produce so magnificent a thief. We have corresponding evils, with corresponding advancements, and whilst we see them leaving behind a mark and a mile-stone upon our past progress, we yet press forward, living under that which was not erected by Christian or Mohammedan, by czar or by citizen, the great temple of justice, the law—the concentrated essence of the wisdom of mankind from the beginning, coequal and co-extensive with God himself—we see contributed to it the Moslem's faith; we see contributed to it the Jews' faith; we see contributed to it the christian's faith. We see dynasties and nations falling one by one, and history shows that they are decaying and are passing away; but yet above all is this grand edifice erected from the intelligence of mankind, the jurisprudence of our land, and to-day the Jew turns from Solomon to Justinian to get justice; he turns from the faith of his fathers to the heathen to get justice.

I have heard in this room sentiments which, to me, were an outrage upon mankind. I have heard it said that charity and all that was good emanated from the faith of the christian religion; and yet the follower of Mahomet does that which

no christian does. He gives unto the poor one-tenth of his clear income that they may be clothed and fed, and where is there a christian in this land who does that?

We come down, then, to this natural question of justice, and, I ask, where is there the just principle of right that will say that a man may dare to cross my land and then call upon me to protect his rights? It is the most monstrous proposition on earth. I live alongside of a railroad. That railroad pays no taxes to my government or my people, and yet to-morrow the sheriff may come along and say to me: "You have got to protect the rights of this railroad," and for my very services I have got to pay a tax, and that railroad company does not pay a dollar; and yet I have got to stand out, at the peril of my life, ready to fight for the interests of that railroad company, and protect the law. Is this justice? Is this right?

Therefore, I say, so far as this section is concerned, if there is to be equal and exact justice, it should be meted out to these corporations, and if they propose to absorb the wealth and the power of this Commonwealth and blight individual industry, they should bear their just proportion of taxation; if they dance that way they must pay the piper, that is all. I say they have got to pay their proportion of what is right. We have said, and we stand upon the great fundamental principle that our people must be educated. Whether that principle be right or wrong, I do not now assert, but they have got to pay their proportion of the cost of securing this great fundamental right. They have absorbed the interests of the Commonwealth, and they have taken that which before was a garden that bloomed as the rose, and they have made it simply a platform, upon which they shall put down the bed of a railroad. They have made it merely a way-station to transport the commerce of the continent, and I say to them, "having done this you shall pay what is right and what is just."

I say this because I feel that to-day we are in the infancy of this question, and as a matter of wisdom, we should look a few years before us; and we can see now that the interest of the Commonwealth are being absorbed; and not only that, but to-day we know that the National Congress is under the surveillance of corporations. We have seen it; we have read it. The Credit Mobilier was an emanation of the great State of Pennsylvania, and we know something of that. Therefore it is for us to be on our guard for the future, and to tell those corporations: "You must do exact justice to all men. You receive our protection; you must pay us for our protection. I, as a citizen, having no more rights than you, must pay for mine; therefore, you shall pay for yours. You have an addition to your rights, the assumption of an unlimited tariff; and to-day the corporations of this country are taking and absorbing and consolidating the wealth of the nation."

They are becoming "the State," they are taking its whole wealth. The aggregated capital of the whole nation is being concentrated in corporations. If that be true, why should not the aggregated capital of the corporations pay something to the expenses of the government, not only of your State, but of your county and your town?

My amendment goes no further than that. I would have some central point fixed where the rolling stock of every such corporation should be taxed, where its valuation should be fixed, and I would have the proper proportional part paid into the county treasury of the respective counties over which its road runs, independent of the simple local taxes. But that I leave to the wisdom of this Convention. I have said sufficient to indicate my views.

The CHAIRMAN. The question is upon the amendment to the amendment.

Mr. NEWLIN. I ask that it be read.

The CLERK. The amendment to the amendment is to insert after the word "personal," in the first line of the third section, the words, "except the roadway," so as to make the section read: "All property, real and personal, (except the roadway,) of railroad, canal and other joint stock corporations, shall be subject to taxation for all purposes at the real value, which value is to be determined by the county commisssioners of the respective counties through which the road is located."

Mr. MCALLISTER. Mr. Chairman: I should like to hear from the chairman of the Committee on Railroads and Canals, the reasons which make this section necessary, and the evils which are intended to be remedied by it. If I have correct knowledge upon this subject, railroads and other corporations, particularly railroads, have been taxed and are now taxed in this State to the full extent justice requires. I do not think that any complaint has come up from the people that

railroads have not been sufficiently taxed. As I understand the well settled law of Pennsylvania, all property owned by the railroads, outside of that which is absolutely and indispensably necessary to the running of the road, is subject to local taxes of all kinds, to the school tax, to the township tax, to the county tax. That which is absolutely necessary to the use of the franchises of the company, such as the passenger offices, the rolling stock and all other property used in the working of the road, has not been subjected to local taxation but has been subjected to taxation for State purposes.

Now, I should like to know from the chairman of this committee, where and by whom the rolling stock is to be taxed for local purposes under this section. It may pass through fifty townships in a day. It is in one place at one time, and in another place at another time; and how is this rolling stock to be valued so as to be rendered subject to these small municipal taxes? I cannot conceive how it can be done.

Mr. Chairman, if I am correct in the assertion, that the workshops, the great shops in which the machinery of a railroad is manufactured, and all the unused stock are liable to taxation for all these purposes—and we have no complaint upon that ground—it brings us down to the inquiry whether there is any just complaint of the exclusion from local taxation of the franchise of the company, and that amount of property which is absolutely and indispensably necessary to its enjoyment. Now, it may be well, probably, for the information of some of the members of this committee, who are not lawyers, to refer briefly to the decisions of our own Supreme Court upon this subject, so that these distinctions may be brought to their minds.

The first case to which I would refer, decided by our Supreme Court in 1847, was the railroad *vs.* Berks county, in which it was decided that "it is only such property belonging to a railroad corporation as is appurtenant and indispensable to the construction and preparation of the road for use that can claim to be exempt from taxation, such property as is only indispensable to the making of profits. Hence water stations and depots, by which latter is to be understoood the offices, oil houses, and places to hold cars, and such places and buildings as may fairly be deemed necessary and indispensable to the construction of the road, are not taxable, whilst warehouses, coal lots, machine shops, wood yards, and the like are liable to taxation for all purposes."

Again, in 1858, there was the case of the West Chester gas company *vs.* the county of Chester, in which it was ruled that "the works of an incorporated gas company are not taxable as real estate, for city and county purposes, but dwelling houses erected by them for the residence and occupation of their workmen are liable to taxation."

And again, in 1861, in the case of the Carbon iron company *vs.* Carbon county, it was decided that "corporations are not exempt from taxation as such, but only the *public works*, held by them as *public morks*, with the necessary appurtenances. Lands held by corporations for private purposes are taxable, as the lands of individuals are, unless exempt. The tax for State purposes, payable at the Auditor General's office, is a tax for the value of the corporate franchise, and is not intended as an exemption from ordinary taxation."

Now, this is a reasonable distinction. It submits for general taxation all property belonging to these corporations except the corporate franchise, and that amount of property indispensable to its use. Corporations are again taxed upon these corporate franchises, and they are taxed in other ways; the holders of the stock are taxed; the dividends are taxed; so that it seems to me these corporations are sufficiently taxed, and if they are not sufficiently taxed they are liable to taxation by the Legislature, and unless there is an evil to be remedied, an evil which the Legislature will not remedy, no further restriction, injunction or provision is necessary. I would like to hear from the chairman of the Committee on Railroads and Canals upon that subject.

This is a provision that was not discussed while I was present with the Committee on Railroads and Canals, and, therefore, this being a proposition introduced after sickness compelled my absence from the committee, the chairman may be able to show that I am wholly mistaken. If so I shall most heartily support the section; but it seems to me, as at present advised, that this section is wholly unnecessary and inexpedient.

Mr. DARLINGTON. Mr. Chairman: I do not know whether we sufficiently bear in mind what has been the policy of Pennsylvania for a long series of years. It has been to secure her revenues by taxing corporations. Just before the creation of

national banks a large portion of revenue was derived from taxation upon banks, and the State never permitted taxation upon banks by the localties in which they were placed, save only the banking house.

Mr. EWING. I would like to ask the gentleman if he ever read the case of the Iron City Bank *vs.* the City of Pittsburg. He is entirely mistaken in that view.

Mr. DARLINGTON. I am not mistaken as to the general policy of the State. I do not remember the particular case cited by the gentleman from Allegheny; but the general policy of this Commonwealth was well indicated by Senator Darsie, of Allegheny, when he was in the Senate, that the State reserved to itself, as a source of revenue, taxation upon banks. Subsequently to that, upon the introduction of national banks, we again applied the same means to produce revenue from that source to the extent to which they are liable to it. We have, furthermore, applied to railroad, canal and other corporations the same general policy of taxation. We tax them for the support of the government. We tax their gross receipts; we tax their stock in the hands of stockholders; we tax the debts they owe by requiring the tax to be deducted from the interest and paid over to the Treasury of the Commonwealth. We tax their gross receipts, and we tax their net earnings in various ways.

Mr. NEWLIN. If the gentleman will excuse the interruption, I will state that the tax on gross receipts has just been removed by the Legislature, as has also been the tax on debts.

Mr. DARLINGTON. Very well; that still does not interfere with my argument. I say this is the source to which this State has looked for her revenues. When the State finds herself in possession of a revenue more than is necessary, more ample than her needs require, so that our Legislature is in danger of spending it too lavishly in various ways, then it is just that the revenues should be reduced, and it is perfectly proper to withdraw such of its burdens as they wish to withdraw, and such others as they may, from time to time, think may be withdrawn. But still, taxing the shares of corporate stocks in the hands of individuals, taxing the capital stock for five per centum on its dividends; taxing tonnage which passes over the road, and the gross receipts, and a percentage upon the interest they pay; all these are sources of revenue for the Commonwealth, and have been; and the result necessarily is, that the public are relieved from paying so much into the State Treasury, by just so much as we get from corporations. Hence, as a people at large throughout the State, we derive all the benefits that we should derive from this taxation of corporations by the State, for her own uses.

Then the next question is, is there any danger that the State will not tax these corporations sufficiently? Look, sir, to the Auditor General's report of the amount received from these sources, and you will find that only last year the amount of tax on corporation stocks received at the Treasury of the State was over one million three hundred thousand dollars; that the tax on loans, of which the loans to railroads and canals are a part, amounted to over three hundred and forty-eight thousand dollars, and the tax on gross receipts to four hundred and fifty-seven thousand dollars, making an aggregate of over two millions, probably two millions and a half of dollars, of the revenue of the Commonwealth derived from these sources. And just to that extent is the whole people relieved. All taxes upon real estate have been removed since these taxes have been imposed on corporations.

Now, is there any danger, does any gentleman apprehend any danger of the Legislature not putting a sufficient tax upon these corporations? Surely not. I think no corporation would complain, nor do I think any individual has a right to complain, that the property of corporations and the franchises and gross receipts and net earnings are not sufficiently taxed. If so, then why attempt the impracticable thing as it has been justly pronounced by the gentleman from Centre (Mr. M'Allister) of taxing all real and personal property of corporations in every township over which any part of their railroads pass.

How could it be carried out? There would be no possible justice, no possible equality, in such a mode of taxation.

The gentleman from Schuylkill (Mr. Bartholomew) says it should be regulated by the assessors of the different townships through which the road shall pass; and thus you have a varying standard for the taxation of the same thing from one end of this railroad to the other, whether that be the Reading or the Pennsylvania or whatever else the railroad may be, within the Commonwealth. Every assessor with his assistants, in every township

and ward through which it may pass, is to put his own valuation upon it, in order that the locality may receive some taxation from it, forgetting that it receives benefits otherwise, by the State burden being put upon the railroads and canals, and thus taken from the people, and equality is produced in that manner.

Now, every corporation is obliged, under the present laws, to pay taxes for all these things, and, further, to pay taxes upon all the real estate it holds that is not immediately connected with the business for which it was chartered. The money of a corporation, its capital stock and the money it borrows, is invested in its right of way and rolling stock, and in its superstructure. In other words, all the capital is invested in the improvement, and in the means of carrying on its trade, and it is taxed accordingly. Now, would it not be the rankest injustice, when you tax in this manner the money, the capital, the receipts of the company, to tax also the property in which that money is invested, whether it be rolling stock or the right of way of a railroad? I take it, Mr. Chairman, that nothing could be more unjust than to do this. Nay, I go one step further, and say that no provision whatever ought to be inserted in the Constitution upon this subject. It is a thing which may be safely left to the Legislature of the State. The power of taxation resides in government, and is not to be construed away, I admit, and it may safely be trusted to the representatives of the people to impose taxes upon property, in such manner and to such extent as the public necessities shall from time to time require.

Is there any necessity, has there ever been, for any interference in a constitutional way with this right of the Legislature to impose such taxes when and as they think proper for State purposes?

Not detaining the committee further, I propose, when it shall be in order to do so to move an amendment which I will now indicate, to this section, which is to strike out all after the word "taxation," in the second line, and insert "for such purposes and in such manner as the Legislature shall by law prescribe." The section, if so amended, would read:

"All property, real and personal, of railroad, canal and other joint stock corporations, shall be subject to taxation for such purposes and in such manner as the Legislature shall by law prescribe."

Mr. KNIGHT. Mr. Chairman: If I understand this section aright, it not only applies to railroad corporations, but to other corporations. Its language is:

"All property, real and personal, of railroad, canal and other joint stock corporations, shall be subject to taxation for all purposes."

Recently the Legislature of Pennsylvania granted to the American steamship company a charter for the purpose of building a line of steamships, to ply between the State of Pennsylvania and Europe. In their wisdom they relieved that company of all taxes, either on their capital stock or their bonds, it not being customary to levy any tax upon vessel property afloat. I fear if this section passes in the shape in which it is here reported, it may interfere with the interests of that company. Our flag, so far as floating at the masthead of a steamship in foreign countries, for many years has been quite unknown, and we are now trying to introduce it again, that it may be known in foreign countries, and I take it for granted that no member of this Convention feels disposed to pull it down; but I fear that the adoption of this section will have a tendency to do so. I may be mistaken in my views of the reading of this section, and I hope I am. But as I have the floor I will take occasion to make a remark or two upon the railroad question.

We have already limited the future debt of cities, towns and boroughs, and the State debt will be very greatly reduced under the operation of what we have agreed upon. The railroad companies, I believe I am safe in saying, are now more heavily taxed in this State than in any State of the Union. When Ohio authorizes railroad companies to issue its bonds and stock, there is no taxation upon them. The interest of all bonds created by our railroad companies are taxed at five per cent., and the dividends on all stock at the same rate. A party receiving two thousand dollars interest on railroad bonds, issued by a corporation in the State of Pennsylvania, is obliged to pay into the State treasury one hundred dollars of that money. If you have an income of two thousand dollars from bonds issued by a corporation in the State of Ohio, you are exempted from that tax of one hundred dollars.

I fear, sir, that we are now framing a section that will discriminate against our own people. We propose to tax the franchises, the road beds, the rolling stock, and, I believe, about everything pertain-

ing to a railroad corporation. The State of New Jersey or the State of Ohio may incorporate a railroad company, whose cars and locomotives have a right to run through our State, with passengers and freight, and the rolling stock of these companies is exempt from taxation. But if the same kind of property happens to be owned by a corporation in the State of Pennsylvania, we propose that it shall be taxed. The national government may incorporate a railroad in the District of Columbia, starting to run to New York, or any other point. Certainly the rolling stock of that company would have a right to go over any road in our State, and would go over it without taxation. Thus we propose to discriminate in favor of people outside of the State and against our own citizens.

I think this section entirely out of place. I do not think we require it, in the first place, either for the support of the State or of the counties, and, as the gentleman from Chester (Mr. Darlington) remarked, the Legislature have a right to put on taxes necessary for all purposes as they are required. As we are over-taxed at present, beyond what any other State is exacting from its corporations, I hope the whole section will be voted down.

Mr. ALRICKS. Mr. Chairman: We require money to carry on our government, and it must be raised by taxation. This must either come from the real and personal property of natural persons, or it must come from corporations. Now, we have just been informed by the gentleman from Chester that corporations in this Commonwealth have paid a tax of over two million dollars into our treasury within the last year. "Coming events cast their shadows before." We once had, in Pennsylvania, what was known as the tonnage tax. I should like to know what has become of it? We have a tax on gross receipts and net earnings of corporations. I believe the Supreme Court of the United States has lately decided that one of these taxes is unconstitutional. We are just informed that the Legislature of Pennsylvania, at the last session, repealed two of these sources of taxation. Then, Mr. Chairman, we have on the franchises of corporations two existing taxes. What assurance have we that the next Legislature, or some future Legislature, at no great distance hence, will repeal those taxes, and then I would inquire of the gentlemen of this Convention, from what source are we to receive the money which is necessary to carry on our government? It must come from some source, either from your real property or your personal property or from corporations, and it is within the power of the Legislature, at their next session, to repeal the two existing corporation taxes, one on capital stock and the other on dividends; and if we come to that, where will the State stand?

Mr. Chairman, we very well knew before the amendment was offered here, that there could be no tax on the mere use of railroads as highways. I apprehend that such a thing was never contemplated; and I would say to my friend, the gentleman from Centre, it was never contemplated, as I suppose, to tax the rolling stock of a railroad company any more than it would be contemplated to tax the carriage owned by an individual, in which he passes from one connty to another without a special law on that subject. I apprehend a tax could only be laid on that species of property by a special law. But there are certain appurtenances to corporations that are now exempt from taxation, and it appeare to me it is perfectly proper they should be subject even to local taxation. We have nothing to do in this connection with the tax on the franchise which is imposed by the Legislature. If we could, by any general provision in this section, secure a proper tax on the franchises, we might then dispense with this provlsion, making their property subject to taxation.

Is there any reason, can any reason be offered why a machine shop, why, if you please, the house in which the toll-gatherer lives, should not be taxed, or why a depot should not be taxed? I believe you cannot tax the machine shop, and you cannot tax the depot as the law now is; but why should they not be subject to taxation?

I am no Trojan, but a classic reference may not be out of place; I confess that I listened calmly to the concessions made yesterday by the distinguished gentleman in front of me from the city of Philadelphia, (Mr. Gowen,) with regard to the restrictions that ought to be placed upon corporations. I listened to him with pleasure, like the Trojans, but I am always suspicious when the Greeks bring presents. So it is now that I apprehend there is something here which it is necessary for this Convention to guard with proper care, and that we should be careful to provide that corporations shall pay their due proportion of taxes, and no more.

I grant you, Mr. Chairman, that the wealth of England was in her mines. The wealth of our country is in our mines—in that coal which produces steam. What would the muscles of a thousand men, or ten thousand or one hundred thousand men amount to, when with a few tons of coal you can generate power, not a hundred but a thousand horse-power? It was the power of steam that gave England her claim to empire on the land and on the sea, and it is the coal that we own that is to give to this country the glory which, I trust, at no far distant day is to be hers.

Mr. Chairman, when we are protecting our manufacturers and our corporations who have to use that coal, we must not forget the natural rights of citizens; we must not forget that we are to protect natural persons in the first place, and if we give these corporations an exemption from taxation, we must carry on our government at the expense of the natural persons. I must confess that I feel it my duty to vote for the amendment and the section as reported by the committee thus amended.

Mr. LILLY. I do not wish to be considered as an apologist or defender of any railroad company here; but I am opposed to this section as it stands, and to the amendment, even as the gentleman from Montgomery (Mr. Hunsicker) has proposed to amend it.

I listened with a good deal of attention to the speech of the gentleman from Schuylkill, (Mr. Bartholomew,) and if it had been founded on facts all the way through, or if it had contained the full facts, I should probably have thought more of it than I do; but he studiously kept out of sight the amount paid into the State Treasury by the great corporation he spoke of in Schuylkill county, the Reading railroad company. That company last year paid into the State Treasury four hundred thousand dollars, while the whole of Schuylkill county, exclusive of corporations, paid but twenty-seven thousand dollars all told. Now, if you tax the Reading railroad company for county and municipal purposes, in common justice you cannot impose on them this great amount of State tax, because it would be over-taxing them beyond what would be just, and I suppose the State does not desire anything but justice toward its corporations. The consequence would be that there would be a large deficit in the State Treasury, by reason of the amount of money which would be kept away from it, nor received from these corporations. I conceive that the only way to get at these corporations properly, is to tax them fully and roundly for State purposes, and exempt them from all other taxes.

For the reasons I have given, and others which might be assigned, I am opposed to this section as it stands. The corporations should be taxed for State purposes and not for local purposes, except on property built for the residences of officers and employees. Of course that kind of property should be taxed the same as any other property.

But, sir, there is another reason. We have heard in every speech that has been made this morning the impossibility or the impracticability of getting at the property of these corporations in the different localities for the purposes of taxation. When it is altogether in the hands of the corporations, the State can reach out its arm and tax it and collect the tax from it; but if a local assessor along a railroad seeing an engine running along may say: "This is in my territory, and I require so much tax for this locomotive," in a few minutes it runs over his bounds, and somebody else may make the same claim; and so if you will follow it along from end to end you will find that it is impracticable to tax a railroad corporation in that way; it is impossible to get at it; but the State as a whole can tax the company on its capital, on its receipts, on its loans; and I am perfectly willing to see these corporations taxed to the full extent which justice will require them to pay. I want them to pay their just proportion of taxation, but I do not think it is possible to assess them for municipal purposes. I am, therefore, opposed to the section as it stands, but I should be very willing to see an amendment adopted providing that all property of this kind should be taxed for State purposes. I believe such an amendment is not in order now.

The CHAIRMAN. There is an amendment to an amendment pending.

Mr. LILLY. My amendment, if in order, would be to strike out the word "all," in the second line, before the word "purposes," and insert "State." I think that is the only just and fare way that we can get at the taxation of railroad companies. The idea should not go out to the public, as might be inferred from the remarks of some gentlemen here this morning, that these corporations pay nothing. The truth is, that the corporations of the

Commonwealth of Pennsylvania pay almost two-thirds of the whole amount of income that goes into the Treasury of the State. I think it is proper that they should pay it. I think it is altogether fair that they should pay it, because they enjoy privileges from the State. When I put my money into a corporation I expect to pay a part of the taxes on its corporate powers. I thereby get clear of municipal taxes, county taxes, school rates and the like; but the takes ought to be paid by the corporation, and the only fair and feasible way by which you can possibly get at the taxation is to tax them for State purposes alone, and thereby relieve other people and their property from State taxes, and by being thus relieved from State taxes, they will have the funds to pay their municipal taxes.

Mr. J. PRICE WETHERILL. In this debate I have heard no reason why railroad and canal corporations should be taxed in any other way than as taxes are imposed on the individual citizens of the Commonwealth. I can easily understand how anything of value can be assessed, and that, therefore, will answer the argument as brought against this proposition by the gentleman from Carbon, (Mr. Lilly,) that it would be impossible properly to assess railroad property. I cannot, for the life of me, see any very great strength in that argument. The great trouble and difficulty of lumping taxes, and allowing railroad companies to pay only one tax in the lump, is clearly illustrated by the present tax paid by the Erie railroad company for running through the northwestern portion of this State. As I understand it, that railroad corporation only pays into the State Treasury some $10,000 per year, whereas if it were properly assessed, and if it paid its proper proportion of taxes, it should pay into the State Treasury and to the county of Erie a sum not less than $50,000.

Now, sir, I cannot understand why railroad companies should be considered in any better light than individuals. I cannot understand why a roadbed should not be taxed just as much as a house. If I own a house, and it is subject to a State tax and a school tax and other county and city taxes, I do not understand why I should be compelled to pay taxes on my property if a railroad company is not compelled to pay them on its. For that reason, at the proper time, I shall offer the following as a substitute for the section:

"That the property of railroad or canal corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals, and not otherwise."

I give notice of that amendment, and at the proper time I shall offer it.

Mr. NEWLIN. The tax just alluded to by may colleague from Philadelphia, (Mr. J. Price Wetherill,) as paid by the Erie railway is hardly a tax in the ordinary sense of the word. It is a mere license to cross the State; a mere tax for a right-of-way, and does not prohibit the State from taxing that railroad in other ways. That, however, is not the subject to which I propose to call particularly the attention of the Convention. It has been argued here that, inasmuch as the property of railroad companies can now be taxed by the Legislature and under its direction, therefore there is no necessity of putting a mandatory provision in the fundamental law to compel the property of railroad companies to be taxed. In answer to that I simply call the attention of the Convention to the action of the last Legislature. The gentleman from Dauphin (Mr. Alricks) has already alluded to the subject. There are three taxes to which I call attention: A tax known as a tax on personal property, which produces about five hundred and sixty thousand dollars per annum. That is a tax which is paid by the counties, and it is raised in this way: The local assessors assess moneys at interest in the hands of individuals, mortgages, &c., and they also assess furniture and other personal property. The State board of revenue commissioners, every three years, fixes the probable amount, the approximate of the value of personal property in each county, and then each county is obliged to collect that tax from its individual citizens. It happens just in this way that a great part of that tax is lost and cannot be collected by the counties, and has to be paid out of the local treasury, and the tax on real estate of one individual pays what is lost on the tax on the personal property of another, so that a great part of what is called this personal property tax is really paid by a tax on real estate out of the treasuries of the various counties.

The Legislature saw fit to reduce the revenue of the State, and the question arose, where the reduction should be made, and what taxes should be taken off? The Legislature took off the tax on gross receipts, which produced very near-

ly half a million dollars a year. That tax had just been affirmed by the Supreme Court of the United States to be a valid tax, and yet, on the heels of that decision, the tax was repealed by the Legislature. The tax on net earnings of corporations was also repealed, which tax produced $348,000 per annum. But the tax on personal property, which is paid by the individual tax payer, which is a tax on moneys at interest in the hands of individuals, and reduces the interest which is already lower than in the neighboring States, was retained. I think, sir, in view of these facts that there is some propriety in making it mandatory upon the Legislature to tax the property of corporations; otherwise we do not know when more of these corporation taxes will be taken off, and the deficiency made up by a direct tax upon the people.

Mr. COCHRAN. Mr. Chairman: The gentleman from Centre calls upon me to make some explanation with regard to this section. In trying to discharge my duty in connection with this report, I have endeavored to confine myself, as far as I could, to a simple, practical explanation of the sections as they were presented. I have not rushed off into a wide discussion of the general question. I have not been alarmed by the appearance of the gentleman from Philadelphia (Mr. Gowen) on the floor yesterday afternoon, nor was I particularly enlightened by his declamation with regard to the great and wonderful benefits that were to accrue from the growth, power and extension of these corporations in the State. I was almost led to exclaim when I heard him:

"Visions of glory, spare my aching sight,
Ye unborn ages, rush not on my soul."

I simply propose here to answer in good faith, the questions which are presented in good faith. This report of the committee has met with strong condemnation from several quarters. I have heard it stated by gentlemen who are largely conversant with the operations of railroad and other corporations in the State, that if this article were adopted, there is not a railroad company in the State that would continue to exist for six months. That declaration came from a gentleman entirely conversant with the subject, and very closely related to one of the very largest corporations of this character in the State. Indeed, I was told that all that was necessary to make this a complete and perfect system, was to insert in the article an iron-clad time-table, and then the whole thing would be complete, *teres atque rotundus.*

On the other hand, we are told by one gentleman from Philadelphia, (Mr. Gowen,) that this article, if passed, will throw the whole of this State under the entire control of one or two great corporations, and hereafter none others can exist in the Commonwealth. Now, these gentlemen are of equal authority on this subject, they are equally conversant with it; they are equally connected with large corporations, and yet, "who shall decide when doctors disagree."

On the whole, I am led, therefore, to conclude that this is not the monstrous proposition which gentlemen say it is, but that if it should be adopted by this Convention, it would operate beneficially and well for the public interests, which we are sent here to guard and protect.

With respect to the present section, I propose to speak to it in reference to the inquiry made by the gentleman from Centre. That gentleman has stated correctly, as I apprehend, what property of railroads is chargeable with taxation and what is not. The only question is whether that distinction which has been drawn between certain property owned by railroad and canal companies, and certain other property owned by them, shall continue hereafter to exist, by which one is made exempt and the other is made subject to taxation.

Now, sir, in reason or common sense, why should the depots or other real estate of railroad corporations be exempt from the tax which individual citizens in this State are compelled to pay?

They occupy a place, and enjoy all the benefits of all other parties in the several communities where this property lies. They enjoy the benefit of police; they enjoy the benefit of protection; they enjoy the benefit of our courts of justice; they go thither and take their suits where their property is trespassed upon, or where they have received injuries, either civil or criminal, and yet the property which they own in these communities does not contribute one dollar towards the support of this government where you find it. And permit me to ask here, Mr. Chairman, what justice is there in distinguishing between the property of this kind, situated in the city of Philadelphia, and property of this kind situated in any other part of this Commonwealth? The argument of the gentleman from Centre, if thoroughly sound and good, is just as

strong against taxing property of that kind in this city, as it is against taxing it in the county in which I live, or in the county in which he resides.

I call the attention of the committee to the first section of the act of the 21st of April, 1858, which says:

"The offices, depots, car-houses and other real property of railroad corporations situated in said city, the superstructure of the road and water stations only excepted, are, and hereafter shall be, subject to taxation by ordinances for city purposes."

Now, that is the law for the city of Philadelphia, and that very same kind of property where I reside, and where the gentleman from Centre resides, is, under those decisions of the Supreme Court to which he referred, exempt from taxation. Is there justice, is there equity, is there equality in that?

Mr. Chairman, I am not actuated on this subject by any disposition to make improper impositions or restrictions upon these corporations, but I do think that where they own property within the several communities of this Commonwealth, they should pay taxes for it just as individuals pay taxes, and on that footing I am content to rest the case with regard to that class of property.

The diffiulty has been started here with regard to where the taxes on some classes of this property shall be laid. There can be no difficulty on this subject with regard to the taxation of real estate. It is a uniform rule, recognized by everybody, and known to everybody, that real estate is taxable in the place where it is situated. With regard to personal property, what difficulty is there in taxing the personal property of corporations, just as you tax the personal property of individuals? You tax the personal property of the individual, though it may not be situated in the same locality, if it is not permanently situated elsewhere, in the place where that individual resides. A corporation has its residence, its headquarters, and its property for these purposes, would be taxable, as I apprehend, wherever its location is, wherever it is situated. It would put them on no other or no different basis from that on which the personal property of individuals stand.

Mr. M'ALLISTER. May I ask the gentleman a question?

Mr. COCHRAN. Yes, sir.

Mr. M'ALLISTER. I ask whether it would be just or right that the small municipalities, the school district, the township and the county in which the office of the railroad company is situated, should have the benefit of the tax on all the rolling stock?

Mr. COCHRAN. Mr. Chairman: In reply to that I say, that I see no reason why it should not if its location is there. These things equalize themselves over the whole Commonwealth. If one gets a little more from a certain corporation, another school district in another part of the State will make it up from a corporation situated within its limits. It is the same way with individuals. An individual may have a large amount of personal property not locally situated in the particular district where he lives, and yet he pays his tax on it. Why should it not be the same in the case of a railroad corporation? I am unable to see the difference.

But the gentleman from Chester (Mr. Darlington) suggests that this taxation—I suppose he refers either to real or personal property—will be laid by the assessors of the several townships and districts, and will therefore not be uniform. Why, sir, it stands precisely in the same position with the property of individuals. You cannot always reach exact equality; but that is the system of taxation in Pennsylvania, and an assessor is just as competent to assess the real and personal estate of a corporation within the limits of his district as he is to assess the real or personal estate of an individual.

I am unable to see the difficulties which are raised on this question. I am unable to see the injustice or the inequality of the section. Gentlemen talk to us about the amount of taxes which are laid on corporations by the Legislature, for State purposes. Sir, that taxation can be removed any day, and then they go scot free of tax on all this property. Part of it has been removed, and in point of fact a large portion of that taxation was imposed rather for temporary than permanent purposes, and those temporary purposes, being in part fulfilled, much of the taxation has been removed.

Sir, I plead here for nothing, more than the equity and justice and fairness of making corporations stand on the same relative footing with regard to their real and personal property, that individuals stand on. If I am wrong in that, I am unable to see it. I believe that the principle is correct and right.

I wish, in passing, incidentally to refer to the difficulty which was suggested by

the respected gentleman from Philadelphia, who sits near me, (Mr. Knight,) with regard to taxing, for instance, the American steamship company. He says they have been relieved by statute, as an encouragement to that enterprise, from being taxed on their capital stock and bonds. Now, sir, the company is not taxed on the capital stock and bonds. The capital stock is taxed in the hands of the stockholders, and so are the bonds in the hands of the bondholders. We are not imposing any additional tax upon the corporation. If those taxes are laid by the Legislature, this does not affect it, because they are laid upon the individual, and not upon the company, as I understand, and therefore I apprehend that there is no difficulty arising from that subject in regard to this particular section of the report.

Mr. Chairman, I amexceedingly reluctant to occupy much time on these questions. I have endeavored now, hurriedly, to explain, as far as I am capable of doing it, exactly what I understand this section to mean, and what its effect is, and to meet such objections as I have been able to catch in the course of the discussion, which are directly relative to the section itself. I do not wish to go beyond that. I shall therefore say no more upon the subject at present.

Mr. BIDDLE. Mr. Chairman: I conceive that the time which has been occupied in this discussion has not been at all wasted. It has enabled us to compare our views upon this most important subject, and to find by this comparison that there is no substantial difference of opinion between the members of this Convention in regard to it. What we all desire is to do equal justice to the community and to these bodies. If we fail in either regard, we do wrong. Now it is abundantly clear to my mind, and I think it must be to the body of this House, that if we attempt to go at all into details upon that which is the most abstruse and complicated of all political subjects—the subject of taxation—we shall err.

All that we are called upon to do; all that we can properly do, is to enunciate some general principle of equity upon this subject, leaving the details to be fashioned hereafter by that body to which the subject properly belongs. No doubt great inequality exists. No doubt in some aspects of the case these corporations are unduly and unfairly dealt with, and in other aspects they are treated too tenderly; but we cannot here, by any detailed system, remedy this. What we ought to do, it seems to me, is to assert substantially, what will be said when it comes to be offered as the amendment of my friend and colleague from Philadelphia, (Mr. J. Price Wetherill.) Not attempting here to grapple with the question of whether a locomotive, which is in a state of transit all day, shall be taxed at the place it starts from, or at the place in which it is placed at night, (because we cannot very accurately settle that here,) by a general and fair proposition that we intend to treat these bodies just as we intend to treat the rest of the community.

We have already said, and I think equitably said, that in regard to the limitation of time in bringing suits, the limitation of amounts to be recovered, and with similar subjects, we mean to treat these bodies as individuals are treated. Undoubtedly this is a fair principle. Now let us say something in regard to this subject. Let us announce that their property—using the broadest language you can, which will cover the road-beds, if you please, or a locomotive, without saying "road-bed or locomotive"—shall be reached by taxation just as the property of individuals. It is unfair where you do not tax the surplus profits of an individual partnership, to tax the surplus profits of a railroad or a manufacturing company. We are bound to do them justice. They are valuable; they are the most valuable aids in our civilization, and we have no right because occasionally they do transgress in their aim at power—in which they are only following the great law which induces all that possess power, to attempt to keep and increase it—to make any distinction between them and individuals. We must treat them fairly, not letting them on the one side avoid the burdens which justly belong to them, nor on the other unduly put upon them that which they cannot fairly, doing their duty to the public, carry, and which, in the end, will break them down.

Do not, however, let us be misled by appeals to sentiment. Every gentleman here sympathizes with what was said by my friend from Philadelphia (Mr. Knight) who holds at present the honorable and responsible position of head of a great experimental company. But, anxious as we all are to see carried out what, with him, is the cherished, and honorably cherished, project of seeing our flag at the

mast-head of many steamships, do not let us depart from principle in order to carry out that project. If this project, as I believe it will be—as I fervently hope it will be—is to be commercially successful, it is not to be successful by reason of exemption from the burden of taxation, that it ought to bear along with the rest of the community.

It is too great an enterprise to be dependent on such miserable crutches as these exemptions are. Let it be treated fairly; let its property be treated as individual property; and if there is merit in it, as I believe there is great merit, it will succeed. But I believe the very worst thing you can do to any of these enterprises, proper and laudable as they are, is to embarrass them by wrapping them in the swaddling clothes of mere infancy, by treating them as children, and then expecting them to exercise the vigor and strengh of full manhood. I hope the amendment which will be offered by my friend from Philadelphia, (Mr. J. Price Wetherill,) when it will come properly before the committee, will prevail, because in that way I think I can see a fair adjustment of this subject. We all have really in view, or we all ought to have in view, but a single end, and this the amendment will secure; while we shall be spared that which it is impossible for us to do correctly here, the going into details upon a subject where detail has no proper place.

Mr. GOWEN. Mr. Chairman: I think it is proper that I should state here the objection which I intended to urge to this section yesterday, and which, it seems, was not understood. I did not claim that because property was owned by a corporation it should therefore be exempted from taxation. In other words, I did not claim that the exemption should result from the ownership, but that the exemption should follow the purpose for which the property was used.

Now, if this amendment were added to the section as originally reported, it would cure all the objection I find to it in its present shape, namely: Insert after the word "personal" these words, "other than such as constitutes part of any public highway, and such as is necessarily incident to and used for transportation upon any such public highway."

It seems to me that a system of laws which has grown up in the course of two generations, and which is based upon the decisions of the Supreme Court, is entitled to great respect. If law is the perfection of human reason, the people of Pennsylvania have no right to say that the Supreme Court of this State have not been its proper exponents. What are the reasons given by the Supreme Court of Pennsylvania against taxing the roadway of a railway company or its rolling stock? They are these: That the road is a public highway; that every citizen of the State is entitled to travel over it; and that the owners of that roadway have no right to permit that use to be taken away by their neglect in paying the taxes upon it. That is the reason and the only reason.

Again, a man exercises a right for twenty-one years, and his title by prescription becomes conclusive, and as good as any which is created by a grant. But the Supreme Court has said that a man, who for twenty-one years, without any antecedent right, but without molestation or opposition, exercises a right of way over a public highway, if any part of the estate of a company, which is a public highway, acquires no right at all. Why? Because this public highway owned by the particular company, is to be used by all persons, and the neglect of the managers of that company to stop this trespass, is not to be used to take away from other people the right which the Legislature intended they should have upon the public highway.

Now, if the amendment that I suggest should be adopted, it would cure all the objections I have to this. Of course, to the amendment suggested by the gentleman from Philadelphia, (Mr. J. Price Wetherill,) there can be no objection, on the part of any corporation, but there might be a very grave objection to it on the part of people outside of the corporation. If corporations are not to be taxed in any other manner whatever, than as individuals are, the State will loose a very large amount of revenue. When gentlemen get up here and say that these great corporations must pay their share of the taxes, that it is wrong for them not to do it, it is well for us to know that the corporations of the State of Pennsylvania pay not less than sixty per cent. of the entire revenue of the Commonwealth. The entire receipts of the Commonwealth of Pennsylvania, during the last year, were $7,100,000, of which $600,000 or $700,000 was not income, but was partly principal re-paid, some of it being the proceeds of the public land which the general government gave to the State for agricultural

college purposes. This would reduce the actual income of the State to about $6,500,000, and the corporations of the State of Pennsylvania alone paid nearly $4,300,000.

Certainly they will pay their share; they are paying more than their share. I believe I would advocate an amendment, whether offered by the gentleman from Philadelphia or by any one else, by which the corporations would be taxed as individuals are. But I cannot see the propriety of encouraging one man to invest his money in the State, giving him all the encouragement you can, and the moment he associates two others with him, and forms a corporation of hurling upon him, the condemnation of this State. Where is the difference? I know that some corporations have abused their trust. I know that acts have been or may have been committed which may arouse a feeling of indignation against corporations; but do not mix up the mere fact of the ownership of property on the one hand with the abuse of corporate power on the other. As far as any gentleman in this Convention will go to correct that abuse, I will follow and go one step farther. If the swift lightning of God will not blast the public wretch who violates his trust or wither the hand of the corporate officer who presents a bribe, let this Convention do whatever in its power it can do to make the crime a hissing and a scorn. Turn the guilty wretch out of the pale of society, brand him with the mark of Cain, send him out through the darkness of oblivion and into the night of infamy. But whatever you say shall be done. I will go one step farther in this Convention and say something more shall be done; but do not let us say here, that the mere ownership of property is a crime the moment the ownership is vested in more than one person.

I cannot reply to the remarks of the gentleman from Schuylkill, (Mr. Bartholomew,) because he dealt in a great many facts which only exist in his own imagination, and when you have to reply to such arguments as those, there are certain forms of parliamentary courtesy which prevent your making the answer which, otherwise, you would be obliged to make. I desire to say to the gentleman from Dauphin, (Mr. Alricks,) who referred to me as "the Greek bearing presents," that if he intended by that to refer to my ancestry as entitling me to the appellation of a modern Greek, I have no objection whatever; but if he used it in the sence in which the sentence has been generally used, I will only ask him, and other gentlemen in this Convention, not to lay the flattering unction to their souls, that when this great universe was convulsed by the throes which gave them birth, the Almighty exhausted and vested in their persons, all the ability, and all the integrity which, but for their birth, would have sufficed for the whole succeeding generations of mankind. [Laughter.]

Mr. T. H. B. PATTERSON. Mr. Chairman: As one of the members of the committee, who are responsible for this section, I should like to disclaim any perturbation or terror at the appearance of our learned friend from Philadelphia (Mr. Gowen) on the floor of this House; and I would say that, however, some men may assume to themselves all the brains and ability to which humanity falls heir in the course of human events, it does not become any member of this Convention, on the floor of this House, to assume that his presence and august port will strike terror to the heart of any other delegate to a free Convention of a free people; and furthermore, the simple general enunciation that any delegate in this body understands the whole subject, and the simple general enunciation that he can see through the whole report, and the whole action of any committee, or of this Convention and the general denunciation of principles, or of propositions as absurd, are not likely to carry great weight as arguments with any sensible man on the floor of this House.

Now, for myself, I have to say that there is no gentleman in this assembly whom I am more glad to see, or more happy to hear argue a question in his inimitable and beautiful and theatrical manner, than the learned gentleman from Philadelphia, but I do not know that his appearance strikes terror to my heart, or to that of any other member of the Convention, or of this committee that were so unfortunate as to have displeased his honor, by reporting the article now under consideration.

There are some general principles involved in this section, which I think it would be well for the delegates to consider carefully. In the first place, the arguments on this question by some of the gentlemen who have argued against this section have assumed, as matter of history, that the course of commerce and the rise and fall of various great commercial marts

of the past history of this world, have been due, not to the various causes which the sages of history have attributed them to, but due entirely to errors in taxation. This arbitrary way of accounting for the fluctuations of commerce and the rise and fall of great cities has really been refreshing to me, as a student of history, and I think would cause some of the great sages of the past to turn in their graves with astonishment. And further than that, assuming all that has been said with regard to the importance of taxation, and the great effect of taxation on our corporations and on our commercial and business interests, it seems to me that it would be well for the people of Pennsylvania, and their delegates, to remember the old fable of the alliance between the horse and the man, in order to overcome their mutual enemy, the stag. And it would be well for us to remember, that after we have securely carried our commercial corporations to success, and to the empire of the world, the people of Pennsylvania and their representatives, may find when it is too late that they are saddled, bitted and bridled, for the purposes of their rulers, and they may find, when it is too late, that it would be well for them if they had looked, not simply to the glorious successes of commercial achievements, but to their homes and their firesides and their own substantial rights and the substantial enjoyment of their own property, and to see that they and their children enjoy equality of taxation and equality of protection before the law, with common carrier and other commercial corporations as well as with each other.

Now, is seems to me rather singular that we are called upon here to abandon our taxation on corporations in order to encourage the investment of foreign capital in our commercial enterprises, and in order that foreign capital may come in here by the million, use our franchises, use our government, and use our institutions in order to make dividends for the people of other lands. Our institutions, our courts, our governments, our common school system are to be run for their benefit and their protection; and yet they not pay an equal share of taxation with the citizens of this Commonwealth for the benefits which they derive, and which they carry away in their pockets to other counties. This is just simply nothing more nor less than the proposition so ably argued by the able advocate on the other side of this question from Philadelphia.

Mr. GOWEN. Will the gentleman permit me to ask him a question?

Mr. T. H. B. PATTERSON. Certainly.

Mr. GOWEN. Does the gentleman refer to me?

Mr. T. H. B. PATTERSON. Certainly.

Mr. GOWEN. I made no such argument, asked for no such exemption. I asked simply that what is now exempted should continue to be exempted.

Mr. T. H. B. PATTERSON. I refer to the report of the gentleman's argument yesterday, in which he argued that the State of Pennsylvania, in competing for the commercial empire of the world, should extend to foreign capitalists the inducement of exemption from taxation in order to induce them to invest in our commercial enterprises. And in that argument the learned gentleman stated that we had two other States in this country to compete with, the State of Virginia and the State of Alabama, and that in order to compete with them to advantage we ought not to tax capital invested in commercial enterprises and corporations. I have taken the trouble carefully to examine the Constitutions of those two States, and I find not only that the State of Virginia and the State of Alabama tax their corporations equally with the other citizens, the people of those States, but every State in this Union, whose Constitution I have examined extends the same rule of equal taxation to its corporations, with the exception of certain religious and educational institutions, that it does to other citizens; and the corporations, commercial and common carriers, and all public corporations of this character are equal in taxation before the law with all other citizens of the various States of the Union.

The object of putting this clause in our Constitution is not because we claim that corporations may not have heretofore been fully taxed in this State, but simply because we wish to put the question of taxation upon a principle of fundamental equality in our fundamental law, and in order to prevent the tampering with this question by the Legislature, and constant changing and shifting, so that it has become a question of accuracy and learning on the floor of this House as to what the state of taxation in this State is today.

The object of adopting this section is to put the thing on a fundamental basis of certainty, not but what the corporations might have more advantages under a system of uniform taxation than they

have now, and here I proclaim that as far as I am concerned, and the majority of the committee who reported this article are concerned, there is no hostility to corporations, one or any, in this State. On the contrary. We consider them the benefactors of the State, and we consider that those corporations which the gentleman from Philadelphia so ably defends have done more to build up the prosperity of Pennsylvania than all the rest of the commercial enterprises perchance in existence, and therefore we wish to foster them, but we wish them fostered equally and fairly and squarely on principles of equal justice to all. And the only object of putting the basis of taxation into the Constitution is to fix it on a basis of certainty and equality, and take it out of the control of those political influences which are constantly changing and constantly exempting this kind of taxation and that kind of taxation and making it a mere question of power in the Legislature from year to year as to how our taxation may be laid.

Now, I ask the gentlemen to consider this question carefully before they vote for either of these amendments. What reason is there in principle why the property of a corporation used for business purposes, and to make money, whether for the capitalists of this State or the capitalists of other countries, should not pay an equal just tax as it does in other States along with the capital and enterprise of the individual citizens of the State. Why should there be any exemption or discrimination? Why should not all citizens of the State be equal before the law in taxation, in paying for the institutions and for the government that maintains their rights and their privileges.

Mr. HOWARD. Mr. Chairman: It seems to me that this is a very simple proposition. It is only recognizing a general principle whereby the Legislature, when it comes to arrange the details of taxation in the Commonwealth, will be bound to treat the property of railroad companies, real and personal, as it treats the property of other citizens. That is all there is contained in this section.

Some gentlemen seem to think that this section would require the roadway of a railroad to be taxed in every school district and every township in the State. Now, is that true? In the first place, the railroad company does not own the real estate; it has nothing but an easement, nothing but a right of way, and that right of way or easement is neither real estate nor personal property.

Mr. GOWEN. Let me say to the gentleman that there are a great many of the older corporations in this State, especially those incorporated before the year 1833, that have the fee simple of their roadbed.

Mr. HOWARD. It may be, so; but the corporations that complain on this floor, there is not one that has the fee simple in the soil over which it passes, unless it has bought it.

Mr. GOWEN. A number of them.

Mr. HOWARD. They may have bought the right of way, but where they have taken it—as they generally have taken it under proceedings by appraisement, &c., exercising the right of eminent domain—they have got simply the right of way; and in that case it is neither personalty nor is it real estate, nor would it be subject to taxation as such.

But, Mr. Chairman, what is this section, after all? Delegates here all seem to be agreed that railroads should pay upon the property they have, the same rate of taxation that is paid by individuals. Nothing more is expected, nothing more is exacted; and gentlemen magnify difficulties; they raise up mountains here, where there are none. How is this to be executed? This and that and the other difficulty, it is said, will rise up in the way. I can see no trouble at all in it. It is nothing but a simple proposition declaring that all property, real and personal, of railroads and canals, or other joint stock companies, shall be subject to taxation for all purposes. That is perfectly right; it is entirely proper; it is precisely what we do to all citizens of this Commonwealth. And now I should like to know upon what principle of justice a corporation owning property, no matter what it is, if it is property, should not pay a tax upon it the same as every private citizen pays on property? Every individual in the Commonwealth, every man engaged in business, has to pay a tax, first, upon every dollar's worth of land he owns, and then upon every dollar's worth of personal property he owns, and then upon his trade or profession, for his particular business is taxed, and it is taxed for all purposes.

A few years ago an act of Assembly was passed whereby real estate was exempt from taxation for State purposes, but it is liable to greater taxes. State taxes are

but a flea-bite compared with the taxes in this Commonwealth. What are the four and a half million dollars, paid by these corporations, compared to the other enormous loads that have to be carried by the people in sustaining their local institutions? Look at the school tax, look at the municipal taxes, here in Philadelphia, for example. Suppose the capital stock of the railroads represented real property, as they ought to represent it if that capital stock was honestly issued; the Pennsylvania railroad, if she paid a tax equal to that paid by the property holders of Philadelphia, instead of paying the paltry sum of $184,000, that she pays upon her capital stock, would pay $2,000,000 into the State Treasury. She has gone on increasing capital stock until she has got her capital up to over $100,000,000. The tax assessments in the city of Philadelphia are two per cent. upon the valuation of their property; and if that capital stock represents property as it ought to do, what should it pay? Every dollar that does not represent real value is a cheat and a swindle. It ought to represent real value; it ought to be worth dollar for dollar; and if it is real property, that corporation does not pay the tenth part of the tax that it ought to pay to the people of this Commonwealth. Four and a half millions! It is a mere bagatelle. It is not a quarter of what the corporation ought to pay for the immense property that they have acumulated in this Commonwealth. If that capital stock does not represent real property, then it is a fraud and a cheat; and I apprehend very much of it, Mr. Chairman, is a fraud and a cheat.

And right here I desire to say that I am not opposed to railroads; I am not opposed to corporations. I am in favor of them; but I want them to do what is right by the public. I do not want them to go on increasing their capital stock and doubling it up until they make a road cost four times as much as it ought to cost, and that capital stock then is spread abroad amongst stockholders, and then they must go on and charge the community sufficient prices for passengers and freights to pay handsome dividends upon that enormous capital stock that has been watered without any real basis on which to stand; but if they will water it in this manner I say tax it. If they call it property the Commonwealth should call it property, just the same as they call the property of an individual. They want to earn money off the public; they want to put their tariffs high enough to pay dividends upon this large stock, whether it represents real *bona fide* honest property or not.

Why, Mr. Chairman, nobody else asks to be exempt from taxation. The manufacturer of iron is taxed; his iron in every stage is taxed. That iron is as much made for the public and for the public benefit as railroads are managed for the public benefit, and yet no man is asking to be exempt from taxation. Why should the rolling stock of railroad companies be exempt? Why, every man's horse, and every man's wagon and carriage in this city, and every other city, and, I presume, in every town in the Commonwealth, is taxed. I know we have to pay our vehicle tax, our horse tax and our cow tax. Everything is taxed, and the taxes that these corporations escape are the great taxes. They pay the small tax, and that is the State tax. Our taxes are over seventy mills, and when they paid all their taxes they never paid over seven mills; and this winter they have rolled the majority of that off their shoulders, and now they have got down so that they do not pay more than about three and a half or four mills.

But, Mr. Chairman, I would not do them injustice. I would not ask them to carry any greater burdens than they were able to bear; but I want them to bear the same burdens as other citizens bear for the like amount of property, because we tax property. We cannot afford to have relieved from taxation this vast amount of property, which is earning more money, perhaps, for its real value than any other. In other words, we may say that it is the most productive of all property; in fact, it is the very property of all others that States look to to yield taxes. I say it is the most productive for the real cost of it. The trouble is, that it has cost too much. The people are interested in this question. They have got to open their eyes to this business of watering stock and making a railroad cost four times as much as it ought to. They have got to look to the question of compensation. They have got to see that officers are not paid immense, princely incomes, which are to be paid out of the earnings of the roads, that must be gathered from the people. We are interested in all these questions. Whenever they water their stock, increase it, send it abroad and sell it in a foreign country, we have got to gather the gold here, and after all it is a tax, and a

grinding one, upon the people of this State and upon this nation.

Sir, the day is coming when the people will see that the national debt is nothing compared with this enormous railroad debt that has been swelling and swelling, and in many instances dishonestly swelling. Look at the New York and Erie road, and the manner in which over sixty million dollars have been piled upon it in a very few years, without any real property to represent it at all. They may call this a fancy arrangement, but it is a real one when you come down to the people. They have got, after all, to provide the money to pay the dividends upon it. It comes from the pockets of the people of this country; and if those interested in these corporations do not get dividends, no matter how unfairly they have increased their debts, they are not satisfied.

Now, Mr. Chairman, this simple proposition, laying down a general prineiple that the property of railroads, real and personal, shall be taxed the same as other people's property in the Commonwealth, is met with a storm of opposition, and great troubles and difficulties are suggested, as though they were going to be gobbled up in some unheard of way; that some great injustice was to be done to them. What difficulty is there about it? Do we not suppose that there is wisdom enough in the Legislature to provide a mode for assessing and collecting that tax? We do not, in this proposition, provide any mode whatever for the assessment or collection of it. The difficulties raised by gentlemen must be met by the Legislature when they come to provide the mode for collecting the tax upon things like railroads, with their cars running through the State, and out of the State. I do not suppose that every borough can stop the cars and tax them in that borough. It is simply ridiculous to talk about such a thing. It seems to me no sane man, looking at this fairly and squarely, could, for a moment, honestly suppose that any such thing as that was contemplated, or could be fairly inferred upon a section like this, a section providing nothing more than that their property, real and personal, shall be taxed as other real and personal property is taxed. The Legislature must, by law, provide the means. They must say how this tax upon the personal property of the railroad shall be assessed, how it shall be collected, how it shall be distributed. They may say that some of it shall be distributed to the counties, that it shall go to swell the school fund.

Gentlemen say that railroads do contribute, and their taxes now do go to swell the school fund. So they do, and so do mine. I pay taxes on personal property, and so, perhaps, does every delegate in this Convention, and every dollar of tax that we pay on our personal property goes to swell the fund out of which is appropriated the $750,000 or $1,000,000 to the common schools of the Commonwealth, just the same as these corporations; and yet, in addition to that, we have to pay what they do not pay. We have to pay for keeping up the organization of these magnificent cities; we have to pay for keeping up the schools and educating the children of the State. We have got to pay all these other expenses, that I say are ten times the amount of the State tax, and therefore it is not right to let them off with the State tax. They ought to be made to pay in proportion to the value of their property, and contribute to all the expenses of the Commonwealth. That is fair and just and right and honest, and we do not ask anything more of them. We ask that. The people demand it, and the safest way for the corporations is to cease their opposition to what is fair and just. Let the people have justice. Let the corporations yield before they demand more. The people of this Commonwealth now only demand justice, but if this thing continues, it may go on until they may demand something that they will consider more than justice. I hope not; but now let these corpopations do what is fair and right; let them submit their property to the same rate of taxation to which the balance of the Commonwealth is subjected.

The CHAIRMAN. The question is on the amendment to the amendment, to insert the words "excepting the roadway" after the word "personal," in the first line.

The amendment to the amendment was rejected, there being, on a division, ayes twenty-eight—less than a majority of a quorum.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Schuylkill, (Mr. Bartholomew,) to add at the end of the section: "At the real value, which value is to be determined by the county commissioners of the respective counties through which the road is located."

The amendment was rejected.

Mr. J. PRICE WETHERILL. I desire to offer the following amendment: Strike out all after the word "all," in the first line, and insert: "The property of railroad and canal corporations, and other joint stock companies, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals, and not otherwise."

Mr. WHERRY. I move to amend the amendment by striking out the words, "the same as the property of individuals, and not otherwise."

Mr. WOODWARD. I desire to inquire of the mover of the amendment whether he includes the roadway?

Mr. J. PRICE WETHERILL. I most assuredly include the roadway, for this reason: I doubt very much the propriety of a railroad company taking my property from me, *nolens volens*, which pays not only a State, but also a county and municipal tax, and that, when it is thus taken, that property shall be exempted from paying any local tax or State tax. I think that property should pay a tax just as much as, when it was taken from me unwillingly, it paid a tax.

Mr. WOODWARD. Mr. Chairman: I have not entered into the discussion of this subject at all, nor do I intend to do so now; but I think the Convention is under a mistake, a very great mistake, when they treat the roadbed of a railroad as either taxable or leviable property. I believe it has been decided by our Supreme Court that you cannot levy a debt upon the roadway of an incorporated railroad company, and that for the most obvious of all reasons; and if you cannot levy upon it for the payment of their debts, how are you going to enforce the payment of a tax upon it? The truth is, the principle at the bottom of this attempt to tax and seize the roadway of railroads is destructive of the corporation. The corporation is created by the legislative power of the Commonwealth for purposes that are supposed to be honest and fair, and it has a franchise, or that which is called a franchise, in so much ground as is necessary to sustain its rails and enable it to accomplish the public objects in view when the corporation is created. If you can take away the foundation of those rails, you take away the franchise instantly. If you can tax it, you can tax it away. It seems to me the Convention has not considered the extent and scope of this proposition to tax the roadway of our railroads.

I am in favor of holding railroads and all corporations with an exceedingly tight rein. I am in favor of protecting the people of this Commonwealth in all possible forms from the aggressions of corporations; and I will say now, (because I am going to say now all I propose to say on this matter,) that there is no subject on which so many people in Pennsylvania have spoken to me in connection with this Convention as the subject of restraining corporations. There is a general feeling, in the public mind, of distrust and suspicion and alarm at the growth and magnitude of the power of these corporations. It is believed that they control the legislation of the country, and sometimes it is said that they control the judicial tribunals of the country, and the people of Pennsylvania have been looking to this Convention with a confidence that they feel in no other public body for some protection against the real or imaginary dangers to them and their rights by corporations in general.

But, sir, as I had occasion to say some days ago, when we had up the question of limiting the verdicts of juries in damage cases, I am in favor of bridling these corporations from the front, honestly, fairly, not of picking them to pieces by hawking at them as mousing owls do at their game. It is not my fashion to attack anybody in that way. I would attack them in front. I would restrain them, mark out the course they may pursue, and hold them to that course with a strong hand. But to steal away the foundation on which the rails of a railroad lie, under the pretence of taxing them, is a species of petty larceny that I do not feel willing to engage in. I am sorry to see that this Convention proposes to entertain any such propositions.

I voted for the amendment to strike that out from this section just now, but as I understand that amendment was voted down by a considerable majority, so that if that vote can be taken as intepreting the mind of this body, we are determined to subject the roadway, the foundation of all the railroads in Pennsylvania, to taxation, either general or local. If so, then they must be seized on an execution. A justice of the peace will issue an execution and a constable will levy on the roadway of railroads, and what becomes of the franchise, what becomes of the commerce of the country that depends so largely on these railroads, if such principles as these may be recorded in our juris-

prudence? They have been kept out heretofore. I am extremely alarmed at seeing a disposition to introduce them, and I feel that alarm not as a railroad man—for I am no railroad president, thank heaven, as my friend over there (Mr. Gowen) is.

Mr. GOWEN. I will exchange places with you.

Mr. WOODWARD. And I am no counsel of a railroad, like my honorable friend who sits in front of me (Mr. Cuyler.) I never owned a share of stock in a railroad but once in my life, which I assisted in building, the Lackawanna and Bloomsburg railroad, which nearly ruined me. I was on paper enough during the building of that road to have ruined me and every other director in the concern. I got out of it as soon as I could, and have never owned a share since, and never mean to own one again. I am therefore as true a representatives of the people on this subject as on all others, not at all dependent on railroads, except for safe transportation on them from one place to another.

Mr. ARMSTRONG. Have they not sent you a pass?

Mr. WOODWARD. Yes, since I have been a member of this Convention they have sent me a pass, and I suppose every other gentleman has had the same compliment from them. I suppose that was not intended to bribe us, to buy us, or control us, but was intended as a recognition of the fact that we are not so largely paid in this body as to make it expedient to tax us with our traveling expenses throughout the Commonwealth.

I think very well, in general, of the report of the gentleman from York, (Mr. Cochran,) and have voted for it thus far all the way through; but we have come now to a point on which I think the Railroad Committee lost sight of the true principle that underlies this whole subject; and I think we ought to stop this attempt to tax railroad corporations out of existence, which we, through our representatives, have been at such pains to bring into existence.

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

Mr. WOODWARD. Yes, sir.

Mr. ALRICKS. I ask whether his construction of the amendment would authorize them to levy on the bed of a railroad?

Mr. WOODWARD. Mr. Chairman: Perhaps not. I do not say that; but I say the principle on which you tax the bed of a railroad would entitle you to levy on it for a debt. It is absurd to say that the bed of a railroad can be liable to pay the public taxes, and yet not liable to pay the private debts of the corporation.

Mr. ALRICKS. Mr. Chairman: I do not understand the amendment to say so.

Mr. J. PRICE WETHERILL. Mr. Chairman: I am very sorry to hear my colleague from Philadelphia (Mr. Woodward) speak of an attempt to compel a railroad company to pay its just and proper State and municipal taxes, such as every individual is compelled by law to pay, as petty larceny. I do not believe in any such doctrine. Now, if we should decide that the bed of a railroad, which formerly, when held by individuals, paid a tax should, in the possession of the railroad company, pay a tax—if we say that shall be the law—I should suppose that the easiest way for the railroad company would be to pay the tax, and not subject itself to a suit and to inconvenience, and the deprivation of property. That seems to me to be the plain business way of settling a fair debt, to pay it, and not try to wriggle out of it, and in the wriggling out of it have great inconvenience accrue.

It is well enough for us to consider supposed evils that may exist; and I present as an offset to the proposition of my colleague (Mr. Woodward) as to the supposed evils which would occur under his imagination, the fact that they have not occurred in the State of Ohio, where this same provision exists. We have heard to-day from a prominent director of the Pennsylvania railroad company (Mr. Knight.) He tells us that the Constitution of the State of Ohio, with the railroad law under it, is just as it should be; that there railroad companies are taxed as they should be; that there fair and equal justice to railroad companies and individuals is shown. Taking that as a hint, I have presented this amendment, word for word, as the provision exists in the State of Ohio, where it has worked well; where railroad beds have not been seized by tax collectors; where railroad companies have not been put to inconvenience. Experience has shown in that State that the supposed evils which have suggested themselves to the fertile mind of my colleague do not exist in that State; neither will they in ours.

Mr. MINOR. Mr. Chairman: I think, perhaps, a word further should be said as to the workings of the provision adopted

in Ohio. The difficulties that have been pointed out by gentlemen here are avoided in that State, not by the provisions of the Constitution, but by the provisions of the act of the Legislature, establishing a tax system. In that State the railroads, their rolling stock, roadbed, &c., are not cut up into sections, limited by borough, and ward, and township lines, as they might be in this State under our system, so far as what we have may be called a system. But in the State of Ohio, the president or other officer of the company makes his return to the auditor of the county, of all the property of the company within the county, distributing the rolling stock in the manner prescribed by the statute; so that the railroad officer, when he desires to know what his assessment is, or to pay his tax, does not go into the ward, or borough, or township, but he goes to one place, namely, the county seat of the county; and by going to the county seat of each county through which the road passes, he finds the whole thing there; he finds the tax assessed upon the rolling stock, upon the roadbed, upon the depots, and upon all the other property of the railroad, assessed in the manner provided by the statute.

The Constitution itself merely says that the stocks of the companies, and all money, real estate and personal estate belonging to individuals and corporations shall be taxed by a uniform rule, and then the Legislature have made the provision to which I have adverted. This is the way the matter stands there. Now, I think, it will be for our Legislature, if we adopt this rule here of taxing railroad companies as individuals, to correct our tax system, and avoid the detailed evils to which gentlemen have referred. If they do not, surely the railroad companies will be in great trouble.

But, sir, I rose principally to present another point, and that is this: We must be careful that we do not have two inconsistent rules in the same instrument. The report of the Committee on Taxation, of which you, sir, were chairman, has been presented to us, considered and adopted. Now, as to joint stock companies, so far as they are manufacturing companies, that article in section four provides a certain rule for taxation. The section now proposed, as well as the amendment offered by the gentleman from Philadelphia, proposes a rule that will embrace those same companies and some others. We ought to be very careful, lest for the same companies we get two different rules. Then, passing on to railroad companies, this section provides that they shall be taxed for all purposes whatever. The report of the Committee on Taxation undertakes to provide that all taxes shall be uniform. It then goes on further to provide in the second section that all laws making exemptions of property, other than those mentioned in the first section, shall be void. Now, as long as that article stands, we cannot, by making either specifications of property or exemptions in this article, it seems to me, change the rule. If we do, we have two different rules in the same instrument.

That brings me to the main objection to this section and all the amendments, which is this, that we ought not to undertake to divide up our tax system into parts. In this State, heretofore, we have had nothing that was worthy the name of a system, so far as taxes are concerned. The report of the committee, made through the present chairman of this committee, undertakes to give us a system, and I say, as we provided there, let us place railroads and other corporations and individuals, as soon as possible, upon the same basis, and provide for the whole matter in a single article. It is done in that way in Arkansas, in Mississippi and in Florida, and in several other States, and they have been working under such simple provisions as this for years. My impression, therefore, would be in favor of voting down this section and its present amendments, and if the ground is not covered by the article on taxation, let such words be introduced as shall cover it.

Now, a word further. The report of the Committee on Taxation says: "All taxes shall be uniform on the same class," &c., and it then goes on in the next section to forbid all except certain exemptions. If anything further is needed to cover all the property of the State, either by way of taxation or exemption, let it be put there on the second reading, and I think all the time we have spent, and that we shall spend, in higgling over applications to different corporations, to different things, is providing a set of special rules that will lead us astray from where we ought to stand. Let us come right to the article on taxation, make it complete, covering all property and all persons, whether natural or artificial.

Mr. COCHRAN. I always appreciate the full force of what comes from the gentleman from Philadelphia who sits near me

(Mr. Woodward) in regard to any subject, and especially on this subject of the taxation of the roadway of a railroad. I have listened to him attentively. I must say, however, that I am not fully persuaded that there is any difficulty or anything wrong in the matter as he has described it. Let us look at this question of the roadway of a railroad company. I believe that there are some railroads in this State which have probably bought out the title and right to the land on which their road is laid. They are the owners of that land. Then there is another class of railroads that, in the exercise of the power conferred on them by the Legislature, have obtained the right of way or passage over the land used by their road. Now, this singular state of things exists in the Commonwealth, as I apprehend, that the individual owner of that property, who still continues to be the owner of it, subject to that right of way, is every day paying taxes on all that land, from which he derives no benefit, and has nothing but the most indefinite and improbable, I was going to say impossible, chance of ever recovering it again. He is paying taxes on that land; it is part of his farm, and the tax is assessed on that property over which the railroad runs, from which the railroad company is making its money and its profit, and that railroad company pays no taxes on that land.

That is the existing inequality and injustice, and I do not think it is right. I think the railroad company deriving profit and benefit from the use of that property, ought to pay for it, and where it owns the land in fee simple, ought to pay its tax on that land, just as the individual farmer or land owner pays tax upon it.

Now, with regard to the manner of collecting that tax, it is like a tax on any other property. As I understand our method of collecting taxes in Pennsylvania, you would not, when you tax that roadway, levey on that roadway by a warrant in the hands of the tax collector. The tax collector collects his tax off the personal property of the corporation or the individual. He does not go to that specific acre of ground of the man who owns real estate and levy on that acre of ground and collect the amount of tax, but his warrant authorizes him to levy on the personal property of the individual to collect the tax therefrom, and it only becomes a lien under very special and exceptional circumstances; it is made a lien on the real estate.

In this case, if the roadway is taxed under the circumstances which I have stated, the warrant to the collecter authorizes him to collect and to levy upon the personal property of the defaulting corporation. It is very easy for the corporation to pay that tax and to relieve itself from all this difficulty; but if it declines, it must stand on the same footing with the individual and be subject to the same rights and remedies that the property of an individual is subject to. I cannot, for the life of me—the more I think of it—see the justice and propriety of the tax on the roadway of corporations. It is in them a valuable interest and valuable property, and why they should not pay a tax upon it, just as individuals pay a tax upon their land, I cannot comprehend.

Mr. BUCKALEW. Mr. Chairman: I desire to say a few words on this subject, but as the hour for taking the recess has almost arrived, I move that the committee rise, report progress and ask leave to sit again.

The motion was agreed to, and the President having resumed the chair, the Charman (Mr. Broomall) reported that the committee of the whole had had under consideration the article, No. 17, reported by the Committee on Railroads and Canals, and directed him to report progress and ask leave to sit again.

Leave was granted, and three o'clock this afternoon fixed as the time at which the committee should have leave to sit again.

Mr. DARLINGTON. I move that the Convention now take a recess until three o'clock.

The motion was agreed to, and (at twelve o'clock and fifty-seven minutes P. M.) the Convention took a recess until three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

RAILROADS AND CANALS.

Mr. DARLINGTON. I move, Mr. President, that the House resolve itself into committee of the whole, for the further consideration of the article reported by the Committee on Railroads and Canals.

The motion was agreed to, and the Convention resolved itself into the committee of the whole, Mr. Broomall in the chair.

The CHAIRMAN. The article reported by the Committee on Railroads and Canals is before the committee of the whole. The question is upon the amendment to the

amendment to the third section, on which the gentleman from Columbia (Mr. Buckalew) is entitled to the floor.

Mr. BUCKALEW. Mr. Chairman: The first and most important question in this debate has been mostly overlooked. That question is this: What is the present power of the Legislature with reference to taxing incorporated companies in this State? My idea is that that power is general, comprehensive, unlimited, excepting so far as limitations have been imposed upon it by grants to the government of the United States, or by particular provisions in the Constitution of this State. The general grant of legislative power to the General Assembly of the State carries with it complete authority over this whole subject, except so far as its jurisdiction has been curtailed in either one of the two ways mentioned.

Therefore, it follows that there is no necesity for any provision in this article in order to confer upon the Legislature the power, or any portion of the power, to tax incorporated companies in this State. That exists, whether we act upon the subject or not, by way of a declaratory section; the power will exist hereafter, and be exercised from time to time at the discretion of the Legislature, under the varying circumstances of future times. This proposition is not doubtful; but if it were, it would be settled by what the Convention has already done in its consideration of the article upon the subject of revenue, taxation and finance. That article, in its first section, as already agreed to, reads as follows:

"All taxes shall be uniform on the same class of subjects within the territorial limits of the authority making the tax, and shall be levied and collected under general law."

So that property in the hands of individuals and of partnerships and associations cannot be taxed, while property of the same class and description in the hands of corporations escape taxation. The laws must be uniform and apply to whatever class of subjects shall be selected for revenue, and apply to them alike, whoever may be the owner.

Then in regard to exemption, what property will hereafter be exempt from taxation in this State? That is settled also by the same article, in the second section, which says: "All laws heretofore passed or hereafter to be passed, exempting property from taxation, other than the property above enumerated, shall be void." The property "above enumerated," that is, in the first section, is as follows: "Public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity." With the exception of those, it will be impossible for the Legislature to surrender, by way of exemption, the exercise of its power of taxation over any object whatever within the State, to which that power may properly apply.

Why, then, have we this provision now under consideration, introduced to our attention by another committee? I will turn to that clause, and let us see what it is. The section under consideration reads as follows:

"All property, real and personal, of railroads, canals and other joint stock corporations, shall be subject to taxation for all purposes."

What does that mean? As I understand the language, it means that the property of incorporations shall be *liable* to taxation for all purposes. That is precisely the existing Constitution. If my construction of the section be true, and my view of the existing Constitution be correct, this will add nothing whatever of constitutional sanction or injunction to those provisions that now exist in our fundamental law. If the word "subject" is intended to signify what would be conveyed by the word "subjected," that is, that all property of incorporations shall, as a matter of course, be subjected to taxation by the Legislature, that is quite another question and a much larger one, and I take it for granted that after due consideration the Convention will find that there is more difficulty in it than some gentlemen may suppose at first blush. But I take the other construction, and that is that the section means merely that all incorporated property shall be liable, shall be subject to the tax power of the State, wielded by the Legislature of the State; and I insist that it is precisely the existing Constitution. Now, sir, in my view, what can be done by the Convention usefully and properly will be this: Not to place a provision in the Constitution, which, if not nugatory, will be entirely useless; but to add a provision that the Legislature shall not have power, by a contract or by grant, to surrender its taxing power over any portion of the corporate property within this State. There is a reason for that.

Some years since—a good many years ago, an important cause was heard and determined by the Supreme Court of this State with regard to the power of the Legislature to tax incorporated property. It was the celebrated case of Mott *vs.* the Pennsylvania railroad company, sometimes referred to as the case of the canal commissioners *vs.* the Pennsylvania railroad company, and it arose out of the legislation for the sale of the main line of the public works. That act provided that the works should be sold at a minimum price of $7,500,000; that any organized incorporation might bid, under the terms of the act, for those works, or that any voluntary associations combined together might bid, and, if they purchased the works, provision was made for their organization as an incorporation; and it was further provided that the purchasers of the works should hold their property forever exempt from taxation by the State. That was the extraordinary act which was carried into the Supreme Court of this Commonwealth; and on behalf of the State, the President of this Convention, now venerable in years, but then in the full possession of physical vigor, was heard before the court, and with him were associated other counsel, myself among the number. When that great case was argued, the court said, and said properly, that it was not competent for the Legislature of the State, by contract, to surrender its power which had been conferred upon it by the people; that it was a power necessary to the existence of government, and having been granted by the people and lodged with the Legislature, their agents could not surrender it by any absolute agreement for all future time. But they said that the Legislature would be competent, by contract, to suspend for a temporary period the exercise of this power; that they might, upon due consideration of a pecuniary character, or of any other character involving value, agree with an individual or a corporation, that property, more or less in amount, should be exempted from the exercise of this authority. In other words, they might, in this sort of way, commute the tax and relieve the party from the ordinary yearly contribution. And that opinion was expressed in view of many decisions of the Supreme Court of the United States, which were then produced in the argument. I do not know, sir, in the course of subsequent judicial experience, what views the Supreme Court of the United States, or of our own, or any other State, may have taken on this subject; but I cite the case as it then stood, when this great question was heard, and thoroughly and fairly heard, in the highest court known to the Constitution and laws of this Commonwealth.

Mr. CUYLER. Mr. Chairman: I beg the gentleman's pardon for interrupting him. In the argument of that case I was concerned on the other side, opposed to my friend from Columbia. The very question had been decided in Ohio and New Jersey opposite to the conclusion arrived at in our own courts; and since then the Ohio and New Jersey doctrine has been held in many of the States of the Union and in the Supreme Court of the United States.

Mr. BUCKALEW. In order, then, to settle this question of power within our State, and for our own State alone can we act, I think it will be eminently proper to incorporate a provision in this, or in some other article, preventing the Legislatiue from bartering away the taxing power under any circumstances whatever; the entire power, with all or any of the incorporated companies of this State now existing or hereafter to be formed.

A word on another point, sir, and I will conclude. The fallacy pervading this debate on the part of gentlemen who have argued in favor of this section in its original form is this: They appear to assume that it is necessary that this Convention should give to the Legislature power to tax corporations, completely and exhaustively, and that there is some limitation upon them at present, which this Convention can remove. I have already spoken on that point and given my reply to it. But consider that no matter what provisions you put in this article, you must leave to the Legislature, first, the selection of the objects of taxation and revenue; and next, the fixing of the particular rate of contribution in any case upon any common species of property. Now, suppose, as some gentlemen desire, that you can get a provision shaped so that you can subject these corporations to local taxation without limit, in each and every part of the Commonwealth, where their works or property may be located; suppose you may increase the amount of contribution by them to local objects by constitutional amendment, what will be the result? It does not follow that you will increase the sum total of the taxation which these corporations

will pay. Not at all. Gentlemen will not secure that object. They will only secure the re-distribution of the contributions which these corporations make to tax purposes without adding to the aggregate sum contributed.

Suppose, for instance, you can increase their contributions in the aggregate in this Commonwealth to the extent of two millions of dollars to local objects. Do you not see that, in the same degree to which you will tax them locally, it will follow, almost of necessity, that they will be liberated, discharged, or relieved from contributions generally; I mean of the whole or a part of these several taxes which hitherto they have paid directly into the Treasury of the State? If you, by a constitutional provision, compel the Legislature to tax these corporations locally to the extent of two millions of dollars, you would have an almost irresistible argument furnished to them for appealing to the Legislature to reduce those taxes which they pay to the State in the form of stock tax; or if it should be desired to renew such a tax, the tax on gross receipts, or the tax on net earnings, or any other form of taxation for general purposes, or State purposes, to which corporations have been heretofore subject.

I suppose the better plan would be to leave this subject to the discretion of the Legislature entirely, without touching it at all. Gentlemen do not know where they are striking. They do not know what results they will produce. They cannot tell what embarrassment to the finances of this State will result from the action here proposed. I would leave this tax power in the hands of the Legislature without any limits whatever, except those which have been heretofore imposed upon it by constitutional provisions, subject always to the fundamental condition that taxes shall be equal and uniform upon the same species of property, whether held by individuals or corporations, and that we have here in the article on revenue, taxation and finance.

Consider, Mr. Chairman, what is the result at which you aim. At present, as has been said here, over sixty per cent. of the State revenue is derived from corporations. That is of common advantage to the whole State. That relieves all the people of the State equally. That is a relief and an advantage to every man who owns an acre in this Commonwealth, because in consideration of these large corporation contributions to the State taxes you have been able to relieve land altogether from State taxation. As it is now, land pays county taxes and other local taxes, but it pays no State tax. On the other hand, the corporations pay the State taxes, and the major part of them by general contributions to the Treasury of the State. Now, suppose you should dry up all this source of revenue, or reduce it largely, then you must look to some other source of revenue for State purposes. You must go back to the land, or to some other object which now escapes, and observe what the advantage would be as among the people themselves. Suppose you could get increased revenue locally in the city of Philadelphia, where capital is aggregated, and at other points in the State where corporate capital is aggregated. Suppose you get rich, fluent streams of revenue tapped for these local purposes in Philadelphia and other leading points where corporations are located; all the advantages of corporation taxation would be enjoyed by those localities where the improvements are located, where property has been increased in value by the making of these improvements—where men are best able to pay them. By this section all the taxation that you shift from the State will be transferred to these localities. It will be lost to the State generally, and it will be left to the localities where the corporate property is located, and the people will be called upon in some other way to pay that portion of the State taxes which has hitherto been paid by these corporations. You will only succeed, therefore, in shifting this burden from one class of people to another.

Mr. CORSON. Mr. Chairman: If I understand the gentleman from Columbia (Mr. Buckalew) correctly, and I defer very much to his opinion in matters of this kind, he admits that we ought not to allow it to be in the power of the Legislature, at any time, to surrender the right of taxation. Now, it occurs to me that if we desire to preserve that power in the Commonwealth, it would be better to assert it in the Constitution. And it appears to me that, notwithstanding all these amendments, the report of the committee comes right square up to the work. If the amendment proposed by the gentleman from Philadelphia (Mr. J. Price Wetherill) is to be adopted, then it ought to be adopted with the amendment of the gentleman from Cumberland (Mr. Wherry.)

Now, let us see where we stand. The committee say, "all property, real and

personal, of railroad, canal, and other joint stock corporations shall be subject to taxation for all purposes." That is very good. I am willing to admit, with the distinguished gentleman from Philadelphia, (Mr. Woodward,) that we ought to except the roadway, and will vote for that; and, I understand, in due time an amendment will be prepared and offered to accomplish that. Then the gentleman from Philadelphia, to my right, (Mr. J. Price Wetherill,) offers, what I understand to be, the clause adopted in the Constitution of Ohio, with a few words which the gentleman from Cumberland proposes to strike out. He offers this:

"The property of railroad and canal corporations and other joint stock companies, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals, and not otherwise."

The amendment of the gentleman from Cumberland proposes to strike out the words "the same as the property of individuals, and not otherwise. The question now pending is on his amendment to strike out these words. We ought not to lose sight of the question immediately before the House, which is on that motion to strike out. If that should be agreed to, then the amendment proposed by the gentleman from Philadelphia would read:

"The property of railroad and canal corporations and other joint stock companies, now existing or hereafter created, shall forever be subject to taxation."

Certainly the Legislature then cannot barter it away; certainly then there can be no surrender, because there is a direct assertion of the power. I rose not to make a speech, but merely to favor the amendment of the gentleman from Cumberland to strike out the last sentence, "the same as the property of individuals, and not otherwise." We all seem to be agreed that corporations, like individuals, should be taxed, and, as was said this morning by a distinguished gentleman to my right, if there is one question upon which the people of Pennsylvania above all others are agreed, it is upon this, that we shall make these corporations pay their just proportion of the taxation which the people of Pennsylvania have to pay to carry on their government.

Mr. MACVEAGH. Mr. Chairman: I sincerely trust that this section will not be adopted, even to reach the very desirable end that the gentleman from Montgomery (Mr. Corson) has in view. It is quite clear, I think, that this Convention would be ready to adopt a section forbidding the Legislature from contracting hereafter that certain property should not be taxed, to prevent the Legislature from parting with the right of taxation in any instance; but that provision certainly ought not to be limited to railroads or canals. That would be a general provision limiting the power of the Legislature, and should be either in the article upon legislation or in the article reported by the committee on this express subject of taxation. There is no more reason in the world why the Legislature should not barter with a railroad company to part with its right of taxation than with any municipality or any person or any other interest. There is nothing in the nature of a railroad or a canal, or of the corporation engaged in managing either, that makes it specially obnoxious to this objection. The Legislature ought not to be authorized to barter away the right of taxation. That is clear; but that will not be reached by this provision, and this provision, as I read it, if it have any effect whatever, can only have the effect of creating doubt as to the power of the Legislature to tax these companies. The real and personal property of the corporation is to be taxed for all purposes; but I submit that it would be very unwise to say that only, as this provision does say it, even as amended by either proposition.

I trust, therefore, the committee will vote down the amendments and vote down the section. Then where shall we stand? Then, either when we come to the second reading of this report at the next stage, or to the second reading of the report of the Committee on Taxation, if it is not found there, we can insert a section prohibiting the bartering away of the right of taxation, in any instance, by the Legislature; and when that is done, where then shall we stand? Then the franchises and the property of the corporations will be liable to taxation at the will of the law-making power, and that is where they ought to be.

I trust that the gentleman from Columbia (Mr. Buckalew) does not mean what his words would seem to have us imply, that because the corporations pay certain State taxes, therefore the people do not pay them. My objection to making the franchises and the valuable property of corporations taxable for local purposes is on a totally different theory. I believe in making the railroad companies and the large corporations tax collectors for State

taxes, because they can be used in that way more efficiently, more economically and more wisely than any othes species of tax collector you can find; but not that you thereby change the source from which the tax flows. The payment of the tax is regulated not at all by your statutes, but regulated by laws of political economy which your statutes have not created, and which they are utterly incapable of repealing. You can appoint collectors of taxes by your Constitution and your law, and you ought to appoint those collectors which, with the greatest economy, the greatest efficiency and the greatest certainty will do their work. And for State taxation the best collectors you can find are your large carrying corporations. But if you attempt to make them collectors of your local taxes, you incur the very great injustice of requiring them to do a work for the benefit of certain localities when they do not owe their franchise to those localities at all.

I grant you have a perfect right to tax their real estate; you have a perfect right to tax their tangible property within the locality; but it is not right for any municipality, for the city of Philadelphia or the county of Dauphin, because a great Commonwealth grants a franchise whereby a highway is created within her borders, to make the owner of the franchise the tax-collector for every local purpose. It does not seem to me that it would be wise to do so, that it would be economical to do so; but, on the other hand, I think it would work a great injustice to attempt anything of the kind. But that is a question which may safely be left to the legislative wisdom of the State; and I trust, therefore, that we shall leave the property of these corporations where it ought to be left, liable to taxation as all other property within the Commonwealth.

Mr. NEWLIN. Mr. Chairman: I desire to say a single word. The amendment proposed by the gentleman from Philadelphia (Mr. J. Price Whetherill) is to a certain extent plausible in its phraseology, but I think it has an effect which he has not considered. The proposition is to limit corporation taxation to the same kinds of taxes as individual taxation. Now, the principal way of taxing corporations is by taxing their gross receipts or their net earnings, or their capital stock or dividends; and if this proposition was adopted the result would be simply this: That no tax could be levied on the gross receipts of a railroad company, unless, likewise, a tax were imposed on the gross receipts of individuals. So also a tax could not be imposed upon the net earnings of a corporation unless an income tax, by the State, was imposed upon individuals. It seems to me that that is an objection of such a serious nature as renders it advisable to vote down the amendment.

Mr. MINOR. Mr. Chairman: Great difficulty seems to have arisen in the minds of many about the application of this tax provision, because of the danger of roadbeds of railroads being cut up piece-meal, and sold out for taxes that may be a lien upon them. I refer to that in connection with the amendment which has been offered by the gentleman from Philadelphia. That amendment is copied, I see, from one of the articles of the Ohio Constitution. Now, sir, under that article, and another that I find in the same instrument, the Legislature of Ohio, perceiving this difficulty, obviated it by passing a statute declaring that the roadbed, water stations, and other appurtenances, used in connection with the regular running of a railroad, should be regarded as personal property, and hence taxes on them are there now assessed against the railroad company, just as taxes on any property that is personal in its nature, without reference to its becoming such by virtue of an act of the Legislature. So the taxes there are not a lien on the roadbed, that are assessed on account of it; but they are simply a debt of the corporation, just like a tax upon a car, upon money in its treasury, or upon any other personal property that it may own, and is collected as such.

Now, sir, if it was competent for the Legislature of Ohio to do that—as was decided some time ago in an opinion delivered by Chief Justice Thurman, now in the Senate of the United States—it would be competent, under this same clause, for the Legislature of this State, it seems to me, to do the same thing; unless there are vested rights in the past beyond their reach.

I have made this explanation of what has been done in Ohio, because it indicates that there is a way of getting along with these supposed difficulties. I will say, further, that the same court decided that the special clause which is contained in the amendment now before us was entirely unnecessary; that the same thing, precisely, was covered by the general language in the article preceding, and that

general language is in the few words I read:

"Laws shall be passed taxing by a uniform rule, all moneys, credits, investments in bonds, stocks in joint stock companies, or otherwise, and also all real and personal property, according to its true value."

I say the Ohio Supreme Court held that the clause which is embraced in this amendment, meant nothing more nor less than the general clause which I have read, so that the Legislature, taking them both together, acted upon the subject and treated it in the way I have described, so that they tax all the property, whether belonging to individuals or corporations, by a uniform rule, but treat the roadway and rolling stock as personal property for the purposes of taxation. and they have thus avoided the difficulties which otherwise might have arisen.

Just a single word further. I would be in favor of an exception as to property like roadbeds and things of that kind, did we know where it would stop; but if we begin with the work of exception in that respect, there is no telling where we may land. The subject of other corporations will come up; other difficulties will arise. Let us make our work uniform as far as possible, and trust to the wisdom of the Legislature and those that come after us to make the machinery work, as it has been working well in other States where they do not have these exceptions. They are entirely unnecessary. Nobody, I believe, has heard of a difficulty in the State of Ohio. It may be obviated in the way I have indicated, or in some other mode. I think then, sir, that we ought either to adopt an amendment such as I have indicated, simply parallel with the general clause reported by the Committee on Taxation, covering the whole ground, or vote down the section itself, leaving the question in the clause reported by the Committee on Taxation, covering, as I stated this forenoon, the whole ground.

Mr. EWING. Mr. Chairman: The subject of taxation is always a vexatious one, either as matter of fundamental law or as matter of legislation. It is always an exceedingly odious one to those who are the subjects of it. "Publicans" and "sinners" have been synonymous terms in popular acceptation from time immemorial; and I presume there never was a class of persons who had to pay taxes that could not find good, substantial reasons, satisfactory to themselves at least, why they especially should be exempt from taxation. I have no doubt that a large majority of this Convention could be easily satisfied with an argument showing that lawyers should not pay taxes.

Mr. CORSON. It is wrong. [Laughter.]

Mr. EWING. It is wrong, of course. I do not wonder that our friends here who are interested in some of these large corporations object to paying taxes. It is human nature. For one, I should be in favor of the broad proposition that is contained in the Ohio Constitution, subjecting all property to equal taxation; but we do not propose to do that. I can see no reason why the property of corporations should pay any more taxes or any less taxes than other property of the same value. I would tax a railroad corporation, a bank or any other corporation precisely to the same amount that we would tax the same property in the hands of private persons. I can see no good reason for making any substantial distinction. As a matter of policy I think that it can well be taxed in a different form.

Mr. MACVEAGH. Will the gentleman allow an interruption?

Mr. EWING. Yes, sir.

Mr. MACVEAGH. Does he maintain that a private individual who has received no franchise from the State whatever, no gift, no special privilege, should be taxed in the same way as a company which has received a franchise worth many millions of dollars?

Mr. EWING. No, sir; I did not say so, and I expect to make myself understood in the end. I say, the same property, whatever that may be, whether it be a franchise, a rolling mill, real estate, or whatever it may be, should be taxed according to its value. The gentleman perhaps will find I am much nearer his views in the end than he now imagines.

I may take the liberty of saying, Mr. Chairman, that in the committee of which you are chairman, and of which I have the honor to be a member, (Taxation,) there was very considerable discussion of these matters, and we supposed we had left this subject in such a shape that the Legislature would have a right to tax all species of property whatsoever, and I did not suppose, until very recently, that any man in this Commonwealth seriously contended that the Legislature had not the right to subject any class of property to taxation. I understand the gentleman from Philadelphia, to my right, (Mr. Gowen,) to claim that they have no right

to tax the roadbed of a railway. I may misunderstand him.

I heard another gentleman, who "does not represent a railroad corporation on this floor," Mr. Cuyler, claim that there was no constitutional right to tax many of these franchises of roads. I do not believe any such doctrine. I believe that as the article has been adopted on taxation, that that right would exist and should exist. I have not yet been able to see the necesity for introducing the article now before us in this place. It properly comes under the head of taxation. I think the Legislature ought to have the right to tax the roadbed, the franchise, the business of a railroad corporation, a canal corporation, or any other corporation, and it is a question of expediency as to how and for what purposes that taxation shall be imposed.

Some gentlemen cannot see why a roadbed should at all be the subject of taxation. Let me give them an example that I think will show where it would be proper that there should be taxation for the value of the roadbed or in some way the equivalent of it. Suppose the Reading railroad should come to the conclusion that it wanted the entire range of blocks of building and lots on Chestnut street, from the Delaware river to the Schuylkill, on either side, and should, by the power given it in an act of Assembly, take that property, either by condemnation or purchase, from the private owners, and should tear down the buildings on it, that property worth many millions, twenty or thirty millions of dollars, and put their railroad tracks upon it, and own it as separate corporate property in fee simple; would it not be right that that should be taxed in some way, in some form, for some purpose? And would it be right that the Legislature should be prevented or prohibited, in any way, from so taxing it? The Reading railroad has not done that; it is not likely to do it; but that is precisely similar to what a railroad corporation has done in this State, and it now holds many millions of property just in that way, covered largely with tracks, a part of it with some of its stations and other property.

But I conceive that there are reasons for taxing that sort of property for some purposes and not taxing it for others. Corporations may be fairly divided for taxation into two general classes, *industrial corporations* and other corporations holding valuable franchises and grants from the State. A manufacturing corporation, purely industrial, transacts no other business, has no other rights or privileges than private individuals engaged in the same business. We have, I think, very properly, said that the property and business of such corporations shall not be taxed in any other way, or at any other rate, than that of private parties in the same business. I would prefer extending that provision to all industrial corporations; but so far as we have gone, it is all right. There is no reason why they should pay a State tax, or any particular tax, more than the property of private parties.

But there are certain other corporations whose business and property, I think, should be subject to State taxation alone, and I think the railroads are a very fair example of those. Take, for instance, the Pennsylvania railroad merely as an example. It has its roadbed through some eight, ten or twelve counties in the State; it has millions of property in the city of Philadelphia, in the city of Pittsburg, and various places along the line of its road. It is true that it does take up property which, if it was not occupied by the railroad buildings and tracks, might be the subject of taxation for local purposes, but it has also extended the business and prosperity of those very places, and it draws its business, not from the localities where it has this property, but from the entire State. I can see no injustice to the city of Philadelphia, or the city of Pittsburg, or the city of Harrisburg, in providing that the entire taxes paid by the railroad company shall go into the State Treasury to the relief of the tax-payers of other sections of the State. I think it is entirely proper, and the Legislature should have that power, and should exercise it.

Of a similar nature, I should say, would be the tax on banks. I believe that it ought all to go into the State Treasury. They should not be subject to local taxation, but all these corporations should be taxed for State purposes, to an amount that would be fairly equivalent to what taxes would be levied on them if they were subject to local taxation in the various counties and townships.

I think the amendment offered by the gentleman from Philadelphia (Mr. J. Price Wetherill) is subject to the objection that it would prevent the State from so taxing the property for State purposes. I may say here also, in regard to the matter of taxation, that in the committee it was carefully considered, and we came to

the conclusion that it was not necessary to put in a special provision saying that the State should have power to tax certain property for State purposes alone, to the exclusion of local taxation; that under the sections we reported they would have that power.

If this amendment should pass in the form offered, or if the section as reported by the Committee on Railroads should pass, I shall offer as an addition to it a section which is contained on page one hundred and forty-three of suggestions made in committee, which gives a list of the different corporations that the Legislature might tax for State purposes alone, to the exclusion of local taxation. I do not think it is necessary to have it, unless we adopt the section as reported here. If that is adopted, then I think we should adopt some such provision to make it entirely clear that the Legislature may exclude from local taxation the property of these corporations, but requiring the Legislature to tax it for State purposes to the full amount that it would otherwise be taxed for all purposes.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Cumberland, (Mr. Wherry,) to the amendment of the gentlemen from Philadelphia, (Mr. J. Price Wetherill,) to strike out the words, "the same as the property of individuals, and not otherwise."

The amendment to the amendment was agreed to, there being, on a division, ayes, forty-six; noes, twenty-two.

The CHAIRMAN. The question now recurs on the amendment as amended.

Mr. MOTT. I move further to amend the amendment, by inserting after the word "corporations," in the second line, the words, "or other corporations of similar character doing business in this State."

Mr. LILLY. I should like to have some explanation of that amendment. I do not understand it.

Mr. MOTT. There are many corporations doing business in this State that belong to the State of New York and other States. We have, in my district, a large railroad corporation, to wit: The New York and Erie railroad company, which runs through my county some thirty odd miles. We think they should pay a portion of the taxes for the local governments and the local interests of the sections through which they pass, and therefore I have offered this amendment.

The gentleman from Philadelphia (Mr. J. Price Wetherill) was mistaken when he said that the amount paid by the New York and Erie railroad company of ten thousand dollars to the State, released them from all other taxation. That certainly is a mistake, and if I had at hand, so as to be able to refer to it, the book containing the statute that confers those privileges upon them, I could make it manifest that it is not so. I desire all corporations doing business in the State to come under the same taxation as corporations created by our own State.

Mr. LILLY. Allow me to ask the gentleman a question before he takes his seat. Has not the Supreme Court of the State of Pennsylvania decided that that is the case, that that road is not taxable beyond the ten thousand dollars?

Mr. MOTT. No, sir.

Mr. WOODWARD. I see that the Supreme Court decided, so far as I remember, in the case alluded to, that by reason of the bonus which that corporation paid to the State, they were exempted from taxation under our ordinary tax laws of 1844, or of whatever year it was. The attempt was to impose a tax in Susquehanna county for county purposes upon the New York and Erie railroad, which runs through, not only Pike county, but Susquehanna county, in our State. It appeared that when they asked the Legislature of Pennsylvania to let them go through those two counties, they stipulated for the payment of a bonus to the Treasury of the State, which was to be in lieu of taxes. That bonus was paid, and when this attempt to tax them in defiance of that compact came before the Supreme court, it was decided that the government of Susquehanna could not impose taxes upon that railroad company for county purposes; but it was not decided, as far as I remember, (it is some time since I have seen the case,) that the State might not tax them according to her pleasure. It was simply decided that they were not taxable, under the general law of the land, for county purposes. That is my recollection.

Mr. LILLY. I had the idea that it was decided that they were not taxable, from the fact that I was in Harrisburg on different occasions when the borough of Susquehanna was there, by its representatives, asking to be relieved from all State taxes, for the reason that it could not tax the property of the Erie railroad company for school or other purposes, and conse-

quently the people there had to pay that money, and therefore they thought they should be relieved from all State taxes.

Mr. M'ALLISTER. In corroboration of what the gentleman from Philadelphia (Mr. Woodward) has stated, I will read the syllabus of the case to which he has referred, reported in 2 Casey, 242:

"Where the Legislature have exercised the power of taxing all the property of a corporation in a specific manner, and have intimated no design to subject it to further burden, its property will be exempt from taxation under general law."

The CHAIRMAN. The question is on the amendment to the amendment, offered by the gentleman from Pike (Mr. Mott.)

The amendment to the amendment was agreed to, there being, on a division, ayes, thirty-nine; noes, thirty-six.

The CHAIRMAN. The question recurs on the amendment as amended.

The CLERK read the amendment as amended, which was to substitute in lieu of the section reported by the committee, the following:

"All the property of railroad and canal corporations, or other corporations of similar charactor doing business in this State, and other joint stock companies now existing or hereafter created, shall forever be subject to taxation."

Mr. LILLY. As I heard the amendment as it now stands read, I think it will cover a great many of the objections raised on the floor by members of the Convention to the section now before us. I think it is even better than the original proposition of the gentleman from Philadelphia. I think it is in clearer and more concise language, and will suit the Constitution better in this case. I hope, however, that it will not be hurried through; that gentlemen will understand it fully before they vote upon it. I should like to hear the gentleman from Chester (Mr. Darlington) explain it.

Mr. DARLINGTON. I desire to propose an amendment to this amendment, if in order, and I will read it for the information of the committee:

"Railroad and canal companies, and all other corporations, shall bear their full share of the expenses of government in proportion to the amount and value of their property and franchises; and the Legislature shall impose such taxes upon them as shall ensure this result."

The CHAIRMAN. That is not an amendment to the amendment. The question is on the amendment.

Mr. HAY. As I heard the amendment read there is an objection to it, in my mind, which I should like to state. I can see no propriety in the insertion of the words, "and other stock companies," in the article on railroads and canals. It seems to me it would be more appropriate in the article on taxation and finance. I do not see why any other provisions are inserted in this article than such as are applicable alone to railroad and canal corporations, and I should propose to amend the amendment, by striking out the words, "and other joint stock corporations."

The CHAIRMAN. Those words have just been put in.

Mr. HAY. The chairman is mistaken.

Mr. DARLINGTON. The gentleman can accomplish his object by just voting down the amendment, and then mine will come in. [Laughter.]

Mr. HAY. I think a difficulty will arise in the construction of the Constitution if these words are put in this article. I think they ought to be in some other place.

Mr. COCHRAN. For my part, Mr. Chairman, as an individual member, according to the best of my judgment, I cannot speak for anybody but myself, I do not see why the amendment, as amended and now pending before the committee, should not be adopted. I am not strenuous about the terms and language of the proposition of the committee, and I am prepared myself to vote for the amendment as amended.

Now, with regard to the objection of the gentleman from Allegheny, (Mr. Hay,) it seems to me that, although it is not strictly and literally, I suppose, within the sphere of the Committee on Railroads and Canals to introduce this section, yet still it is *in pari materia;* it comes in here; it fits here as well as it would anywhere else, and when our work goes out to the world, it does not go out as the work of any special committee, but it goes out as the work of the Convention itself.

Mr. HAY. Will the gentleman permit me to ask him a question?

Mr. COCHRAN. Yes, sir.

Mr. HAY. As I understand it, this article is proposed to be insterted as the article upon railroads and canals, and certainly there should be no provisions in that article which are not applicable to

railroads and canals only. Ought we to be obliged to refer to this article for provisions upon joint stock corporations, other than railroads and canals?

Mr. COCHRAN. If necessary they can be arranged anywhere. It is unnecessary to put a title to the particular article. I do not think there is any difficulty about the construction. The matter is perfectly germane, one part of it to the other, and I think it may as well remain.

The CHAIRMAN. The question is on the amendment to the amendment, to strike out the words, "and other joint stock companies."

The amendment to the amendment was rejected, there being, on a division, ayes thirty—less than a majority of a quorum.

The CHAIRMAN. The question recurs on the amendment as amended.

Mr. WOODWARD. Mr. Chairman: I beg leave to offer the following amendment, to come in after the word "companies," and if the committee want any information on the subject I refer them to my friend from Philadelphia (Mr. Gowen.) I move to insert the words, "other than such as constitute part of any public highway."

Mr. STANTON. Is that an amendment to the amendment, Mr. Chairman:

The CHAIRMAN. It is; and the question is upon its adoption.

The amendment to the amendment was rejected.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Philadelphia, (Mr. J. Price Wetherill,) as amended.

Mr. DARLINGTON. I wish to know whether it is in order now to move to substitute a section for the amendment?

The CHAIRMAN. It is not unless it be an amendment to the amendment.

Mr. DARLINGTON. But it is a substitute for the section and for the amendment.

Mr. MACVEAGH. I submit that that is not in order until we have voted on the amendment.

Mr. DARLINGTON. It will be too late after it is put in to move to amend it.

The CHAIRMAN. The substitute of the gentleman from Chester is in order, and will be received. The Clerk will read it.

The CLERK. The words proposed to be inserted as a substitute are: "Railroad and canal companies and all other corporations shall bear their full share of the xpenses of government in proportion to the amount and value of their property and franchises, and the Legislature shall impose such taxes upon them as shall ensure this result."

Mr. WHERRY. Does the Chair rule that to be in order?

The CHAIRMAN. The Chair rules it to be in order.

Mr. LAWRENCE. Is it a substitute for the amendment or for the section?

Mr. DARLINGTON. The proper motion is to strike out the amendment and insert this.

Mr. WHERRY. The amendment has not yet been adopted.

Mr. DARLINGTON. I do not want it adopted. It will be too late after it is adopted to amend it.

The CHAIRMAN. It will be considered in order at this place. The Chair rules that it is in order, and the question is upon the amendment of the gentleman from Chester. As proposed it is in the nature of a substitute, but it is really an amendment to the amendment.

The amendment to the amendment was rejected.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Philadelphia (Mr. J. Price Wetherill) as amended.

Mr. T. H. B. PATTERSON. I ask to have it read that we may know what it is.

The CLERK read as follows:

"The property of railroad and canal corporations, or other corporations of a similar character doing business in this State, and other joint stock companies now existing or hereafter created, shall forever be subject to taxation."

Mr. BUCKALEW. The way that amendment is drawn it is confined in the first part to domestic railroad and canal companies, and to foreign corporations of a similar character. It will not apply to foreign corporations generally, although it does apply in its latter part generally to all corporations within the State. I should like to have it, as to the foreign corporations, made as extensive as it is in reference to domestic corporations, that is: That any foreign corporation doing business in this State, and, of course, having property within it, shall have its property subject to our general rules of taxation. Certainly we ought to make the provision uniform, as to internal and external corporations.

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

The amendment as amended was agreed to, there being, on a division: Ayes, forty-five; noes, twenty-two.

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

Mr. STRUTHERS. Mr. Chairman: Taxation for the purposes of the Commonwealth has always been exercised, and always will be exercised without any provision of this kind in the Constitution. The object, as I suppose it to have been, (and I think it was a very proper one,) was to make all property subject to taxation in the same manner, to provide that all property should be taxed according to valuation, no matter of what kind or to whom it belonged, whether to an individual or to an aggregation of individuals, as a corporation is. In the one case, the property is held by a body of individuals; and in the other case, it is simply by the individual. I think the taxation ought to be laid in proportion to the relative value of the estate to one and the other; and it ought to be laid in the same manner. It ought to be made precisely equal in the one case as in the other. It ought not to be allowed to the Legislature to assess a tax, at a different value, upon one class of the community, and one class of property in the State, and apply a different rule to another class of property and another class of individuals. My opinion is—but I do not know whether it could come in or not—that the clause should be made to read: "As the property of individuals." If it is in order, I would move to add that as an amendment.

The CHAIRMAN. That is hardly in order. Those words have been voted out.

Mr. STRUTHERS. Perhaps I was misunderstood. "Not otherwise," I believe, was voted down. It appears to me, therefore, it may be in order to add: "As the property of individuals."

The CHAIRMAN. Will the gentleman state where he proposes the amendment to come in?

Mr. STRUTHERS. At the end.

The CHAIRMAN. The gentleman from Warren moves to add as an amendment the words, "as the property of individuals."

Mr. T. H. B. PATTERSON. I raise the question of order on that amendment. The words stricken out were, "the same as individuals, and not otherwise." These words were voted out of the section. The proposed amendment is to insert, "the same as individuals." Now, I submit to the Chair that "the same as individuals," means the same without the words "not otherwise" as with them.

The CHAIRMAN. That would not make it out of order.

Mr. T. H. B. PATTERSON. For the reason that the force of the sentence, "the same as individuals," in its legal meaning, is as full as if the words "and not otherwise" were added. The idea is exactly the same, and I submit to the Chairman for decision that they are exactly identical in idea and in legal effect.

The CHAIRMAN. The wording is not the same.

Mr. T. H. B. PATTERSON. Not the wording, but the sense is the same.

The CHAIRMAN. The meaning is somewhat similar, not precisely the same. The Chair rules it in order. The question is on the amendment to the amendment.

Mr. STRUTHERS. On the subject of taxation, which lies at the foundation of all our institutions, the very idea of it is equality, and equality depends, as much as on any other one thing, perhaps, in the whole organization of our affairs, on taxation. Every person is entitled to equal protection. Every person is entitled to bear his equal proportion of the expense of that protection over the property of the Commonwealth. No matter in what shape or form it may be, it ought to be subjected equally to the bearing of the common burdens of the whole.

Now, the individual has his farm, he has his machine shop, he has his works, of whatever kind they may be, and he is taxed in a particular way because he is not a corporation, because he can only live a natural life, because he cannot live infinitely, or beyond a natural life, as a corporation can. A corporation has a franchise conferred upon it by which it is enabled to continue its existence, notwithstanding the original corporators may all be gone; and shall it be, because they have that extraordinary privilege, because they are longer lived, though in other respects they are just an aggregate of individuals and individual interests—shall it be because they have the right of continuing their existence for a greater length of time, that therefore they shall be relieved in part from the taxation that is necessary to bear the common burdens, or shall it therefore be held as a reason that they should pay more?

The only way to get at this is to put it upon the valuation of property, and make

that as nearly equal as may be throughout all classes of property, in whatever industry it may be. The attempt to place a tax upon profits, upon incomes, upon net earnings, or anything of that kind, is not at all equal, because in the one case great industry, extraordinary application, economy and good management will produce much larger income, much larger receipts from the very same extent of capital invested in a certain manner, in manufactures or otherwise, than in other cases. In the one case you are taxing parties because of their great industry. You are taxing them not for their property, but for their industry, their application, their good management. If they are extraordinarily gifted in that way, and apply themselves in that way, and make a great deal more than others do upon capital invested, certainly there is no reason why we should tax them more. The tax ought to be upon their property, upon its fair value, and that ought to be made equal; and when you attempt to tax the property of corporations in any other manner than you do the property of individuals, you are at sea altogether; you have no landmark; you have nothing by which you can reach it and make it anything near equal.

The CHAIRMAN. The question is on the amendment of the gentleman from Warren (Mr. Struthers.)

The amendment was rejected, there being, on a division, ayes twenty-seven, less than a majority of a quorum.

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

Mr. BUCKALEW. I move an addition at the end:

"And the power to tax the same shall not be surrendered or suspended by any contract or grant to which the State shall be a party."

That will put in form the idea of which I spoke. The section will then, in the first place, declare a general liability to taxation, and then the added clause will prevent the Legislature from surrendering this power to tax, at any time hereafter, by contract or grant.

The CHAIRMAN. The question is on the amendment proposed by the gentleman from Columbia.

The amendment was agreed to.

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

(SEVERAL DELEGATES. Let it be read.)

The CLERK read it as follows.

"All the property of railroad and canal corporations, or other corporations of a similar character doing business in this State, and other joint stock companies now existing or hereafter created, shall forever be subject to taxation; and the power to tax the same shall not be surrendered or suspended by any contract or grant to which the State shall be a party."

Mr. AINEY. Mr. Chairman: I move to strike out the word "forever."

The CHAIRMAN. The question is on the amendment of the gentleman from Lehigh (Mr. Ainey) to the section as amended.

The amendment was agreed to, there being, on a division: Ayes, forty-three; noes, twenty-three.

Mr. DARLINGTON. I move to amend, by striking out the word "subject," and inserting "liable."

The CHAIRMAN. The question is on the amendment of the gentleman from Chester.

Mr. COCHRAN. I move to amend, by striking out the word "liable," and inserting the word "subjected."

Mr. DARLINGTON. "Liable" is a better word.

The CHAIRMAN. The question is on the amendment to the amendment, moved by the gentleman from York, to insert the word "subjected."

Mr. BUCKALEW. I submit that that is not an amendment to the amendment. It is a substitute for the entire proposition.

The CHAIRMAN. The Chair rules it out of order. The question then is on the amendment of the gentleman from Chester (Mr. Darlington.)

The amendment was rejected.

Mr. W. H. SMITH. I move to amend, by adding after the word "taxation" the words, "for State purposes only."

The amendment was rejected.

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

The section as amended was adopted, there being, on a division: Ayes, fifty-five; noes, thirteen.

Mr. CORSON. I move that the committee do now rise.

The motion was not agreed to, less than a majority of a quorum voting in favor of it.

The CHAIRMAN. The Clerk will read the next section.

The CLERK read as follows:

SECTION 4. No railroad, canal or other corporation, nor the lessees, purchasers or managers of any railroad or canal cor-

poration shall consolidate the stock, property or franchises of such corporation with, nor lease, purchase or in any way control any other railroad or canal corporation owning or having under its control a parallel or competing line; nor shall any of the officers of such railroad or canal corporation act as an officer of any other railroad or canal corporation owning or having the control of a parallel or competing line; and whether railroads or canals are parallel and competing lines shall always be decided by a jury in a trial according to the course of the common law.

Mr. HEMPHILL. I move to strike out the section and insert the following in lieu thereof:

"There shall be no consolidation in stock, property or franchises, by lease, purchase or otherwise, directly or indirectly, of railroads or canal companies owning or controlling parallel or competing lines."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Chester.

The amendment was rejected, there being, on a division, ayes seventeen, less than a majority of a quorum.

The CHAIRMAN. The question recurs on the section.

The section was adopted.

The CHAIRMAN. The Clerk will read the next section.

The CLERK read as follows:

SECTION 5. No railroad, canal or other transportation company shall consolidate its stock, property or franchises with any other corporation engaged in the business of a common carrier, nor purchase the property or franchises, directly or indirectly, of such company or corporation, nor in any case lease or contract for a lease thereof at any one time exceeding twenty-five years, without the consent of a majority of two-thirds in value of its stockholders, ratified by act of the Legislature; and no such ratification shall be made without proof that reasonable notice has been given to the stockholders personally, when practicable, and publicly at least sixty days in other cases before any such application to the Legislature, nor without full consideration by the Legislature of the rights and interests of all the stockholders and the public.

Mr. EWING. I move to amend, by striking out all after the word "Legislature," in the eleventh line, viz: "Nor without full consideration by the Legislature of the rights and interests of all the stockholders and the public."

Mr. KAINE. I move to amend the amendment, by striking out all after the word "stockholders" to the end of the section.

Mr. COCHRAN. That is not an amendment to the amendment, as I understand it.

Mr. KAINE. Why not? I do not see, Mr. Chairman, what necessity there is in this section, for the provision which, by my amendment, I have moved to strike out. Without it the section will read:

"No railroad, canal or other transportation company shall consolidate its stock, property or franchises with any other corporation engaged in the business of a common carrier, nor purchase the property or franchises, directly or indirectly, of such company or corporation, nor in any case lease, or contract for a lease thereof, at any one time exceeding twenty-five years, without the consent of a majority of two-thirds in value in favor of its stockholders."

I think that is entirely ample and complete within itself, without going to the Legislature to have it ratified afterward.

Mr. EWING. Mr. Chairman: Eventually I shall vote for the amendment of the gentleman from Fayette, (Mr. Kaine,) because I believe that this provision ought to be stricken out. But I am afraid that will not carry. I would like to withdraw the amendment which I offered, at least for the present, and allow action to be taken on the amendment moved by the gentleman from Fayette, to strike out the whole concluding clause of the section.

The CHAIRMAN. The Chair will suggest that the same result will be brought about.

Mr. EWING. By accepting the amendment of the gentleman from Fayette?

The CHAIRMAN. No; but by simply voting on the amendment. If it is adopted, it answers the purpose of the gentleman from Allegheny, (Mr. Ewing;) if it is rejected, then the gentleman from Allegheny still has his amendment.

Mr. COCHRAN. Mr. Chairman: I hope this motion will not prevail. I base the desire upon what I consider to be a just foundation, which is that there are always two parties to be consulted in measures of this character. I have endeavored to express my view with regard to the particular character of these corporations. They all, however they may be in one aspect of the case, private in their character

have also large and important relations to the public. It is as important to the public to have a voice in the determination of the question of consolidation of railroads as it is that the stockholders of railroads should have that voice. Let the public be heard; and how can they be heard except through their representatives in the Legislature?

Mr. Chairman, railroad companies, of course, as we all know, receive their life simply through an act of the Legislature. They could not exist without the act of the Legislature creating them. This is a public act, and it is done in the discharge of a duty to the public by their representatives. They authorize a railroad to be constructed between two certain definite points, within their jurisdiction, because they believe that such a railroad, so constructed, will be productive of benefit to the public, whom they represent. Now, sir, no railroad, so constructed and completed under the authority of an act of the Legislature, could consolidate with any other railroad company unless it had power from the Legislature to do so, except that power be contained in its charter. I believe that there has been legislation granting some general authority of that kind, but it does seem to me that in every case of this nature the Legislature should be called upon to determine whether it is for the public interest that this consolidation, or this lease, or anything of the kind, should take place. It is for the Legislature to determine whether two railroads, separately constituted by their acts of incorporation, shall be allowed to consolidate, and it is not a question merely for the private stockholders to decide.

I want to combine, I desire to combine, in this, as well the private as the public interest. That was my idea. If the private stockholders desire it, there is one of the parties. If the public say it is right that it should be done, you have the consent of the other party; but that consent must be obtained under the provision of this section, after due public notice, so that both parties may be allowed an opportunity to be heard before the Legislature, and to have the matter determined whether or not it is beneficial that this consolidation should be done or this lease should be made.

We cannot throw off from our minds in this connection, with propriety, the idea of the relations which all these institutions bear to the public; that they are constituted for public uses and purposes, and that the general public has an interest in the manner in which they are conducted and managed. Unless we ignore that proposition entirely, I cannot conceive how it is that a corporation of this character should be allowed, by a mere vote of a portion of its stockholders, to consolidate with another corporation in the State, of the same kind or of the same character. Why, sir, these railroads may have been constituted in the first place for the purpose of keeping up and sustaining diverse interests and to maintain rival relations. If this was the object of their creation, then by this consolidation into one interest it would be perfectly and entirely defeated. But apart from that, in any case where a special privilege has been granted to a corporation, and I use this word in no invidious sense, because these roads are all constructed by corporations. Why should that privilege be enlarged or two privileges of that kind be combined together, unless with the consent of those who represent the will and sentiment of the people of the State, by whose act they have been brought into existence?

Mr. MACVEAGH. Mr. Chairman: I am very sorry to trespass upon the time of this committee, but I cannot allow the vote to be taken upon this section, as I did upon the former one, without at least saying in a few words what I think of this policy. I accept, to the fullest possible degree, the statement of the gentleman from York, (Mr. Cochran,) that the railroad corporations particularly are public creatures, getting the breath of their lives from the State, owing great duties to the public, to the sovereignty that creates them, and always to be kept in subordination to that sovereignty. And whenever a question arises between the interests of the State that creates the corporation for public purposes, and the interests of the private stockholders of that corporation, of course the public interests must prevail. But I beg leave to assure the gentlemen of this committee, that it is as futile as to issue bulls against the comet, for us to insert here and now, that every ten miles of railroad and canal must not only be built by a separate organization, but must remain in the hands of a separate organization, be run, managed and controlled by it.

It is contrary to everything in the age in which we live. It prevents a free railroad law being of the slightest possible advantage to anybody.

Sir, the only way in which great enterprises can be started is to start them a little at a time; and if all these multifarious organizations are to be kept up, if a little company that starts and builds thirty miles here, and if another company that builds fifty miles there, and other companies doing the same thing in the same general direction are all to preserve their separate organizations, then not only will the growth of public improvement be crippled, but we still force them to buy a Legislature to remove the restrictions. If we adopt this section we shall not only prevent the consolidation of these enterprises, but we shall compel them to go to the Legislature for a special law—just one of the special laws that has given rise to more corruption in this country than any other class of special legislation in it.

And we are to do this in the name of the popular interests! Who is to pay the expenses of these separate organizations? We are to pay them. The people who use these highways pay them. We do not do it in anything else. No other country is doing it. Every other civilized nation in which a railway exists to-day is tending, and has been tending, rapidly toward amalgamation and consolidation. Why you do it in every department of effort. You do it even in your charities. Your Christian Commission, and your Sanitary Commission were so efficacious in the late war because they were economically administered. If, for instance, all the railways owned by the leading corporations of this State or any of them, the Pennsylvania Central, the Philadelphia and Reading, or the Lehigh Valley, should be reduced to their original limits with so many different presidents, with so many different boards of directors, with so many different systems of management, with so many different changes of cars, with so many different transportations of baggage, all the advantages which we have fought for, and gotten slowly, would be thrown away or would be denied for the future. The provision amounts to that; and it seems to me to be utterly contrary to the spirit in which the Committee on Railroads and Canals should desire to address itself to this question. It sees certain great evils. That is true. But I do insist that a correction for these evils will not be found in this method. It is simply putting more burdens upon the people who pay into the treasuries of these companies their receipts. Everything that tends to simplify organization, everything that tends to remove a multiplicity of high officers, everything that tends to consolidation in such enterprises as these, tends to cheapen the article and tends to benefit the people that use it.

But it may be that there are very grave counterbalancing disadvantages in the growth of monopolies of this character. I do not at all deny it. I know it would sound very extraordinary here, but I have not the slightest doubt in my own mind that the government of this country could administer these monopolies in the interest of the people quite as well as private enterprise can do it. And I believe the American people will, before very long, be forced to the conviction that the monopoly of transportation of persons and property is of such a character that it is their duty to administer it in the common interests of all the people, and until then to ask that every corporation shall do what? Why, it simply means this, if you choose, that the same people shall hold stock in different corporations, but that the formal consolidation of their stock shall not be effected. I confess I do not think this is the remedy, and therefore I cannot vote for this section.

Mr. HUNSICKER. Mr. Chairman: I am glad the distinguished gentleman from that side of the House has called a halt. I think it is high time that somebody, especially from that side, should sound the alarm, because it appears that in this wild chase in which we are engaging after railways, we are in danger of smashing the whole machine. Is it to be understood by the section under discussion that the consolidations that have already taken place are to be destroyed? Are the various railroad corporations which now own nearly all the other railroad corporations in the State, to be dismembered? Are all these contracts to be annulled? I expect not. I do not believe that any member of this Convention thinks so for a moment. Are the various charters of incorporation which the railroad companies now hold, which have been declared to be contracts between the State and the corporations, to be annulled by this Convention?

Mr. MACVEAGH. Mr. Chairman: I will say that I have no doubt whatever that the contracts that have been entered into are perfectly valid, and beyond the power of the Convention to affect. My objection to this section is, that it prevents, in the future, anybody or any corporation rising into competition with corpora-

tions that have already attained their present gigantic growth; that is, that no future corporations can ever compete with the Pennsylvania Central, or the Philadelphia and Reading, or the Lehigh Valley, or any of the other great corporations of the State. No such corporation will be possible as a competitor if this section be adopted.

Mr. HUNSICKER. You are exactly on my side, and if you had waited, I would have made exactly that same speech, only not in as good language. I say that if this Convention adopt the report of the Committee on Railroads and Canals, the result will be that the large corporations which now exist will forever hold and possess all the power of this Commonwealth, and smaller corporations can never come into existence because they cannot compete with them.

But there is another section in this report which is part of the same system, which will allow the Pennsylvania railroad, for example, or any other leading road, through its stockholders, to absorb a bare majority of the stock of a competing line, and then, by means of that power, elect a board of directors, whose management shall be such as to render it obnoxious to the provision; and then, under its operation, the charter and franchises of the company may be taken from it. Thus all competition will be destroyed. If we could have an entirely new deal, giving the power to annul all contracts, and start on this race fair and even, I might be willing to vote for this provision. But I think the halt has not been sounded soon enough.

Section four, already adopted, in the article submitted by this committee, seems to me to do all the mischief which has already been explained. The fifth section proposes additionally, that whenever you do consolidate any railroad company, after having the consent of a majority of two-thirds of its stockholders, you shall go to Harrisburg and buy legislation for the purpose of effecting that consummation, for if the stories of legislative corruption recited here are true, no such measure will ever be passed at Harrisburg until it is secured by purchase. I therefore am glad to welcome the indications from the other side of the House, that judgment is resuming its proper place and that passion is subsiding.

Mr. CORSON. Mr. Chairman: Gentlemen are just beginning to see that they ought to have adopted my motion made a few moments ago, that the committee should rise. [Laughter.]

(SEVERAL DELEGATES. Make it now.)

Mr. CORSON. A large number of us are prepared for a halt on this question, one of the most important questions ever brought before the Convention, or that will come before this Convention. On Monday we go to work at the Judiciary Committee's report, by a resolution already adopted. We were at the fourth section when I proposed to halt, but we have gone on now until we have run against the enemy's pickets, and all have come to a halt, and it looks very much as if we were about to beat a retreat.

Now, I am in favor of the report of the committee, and I believe that if this committee of the whole has time to carefully examine this report they will not do as they did a few moments ago, adopt a new section proposed by the gentleman from Philadelphia, which, after it was all gone through with and rehashed and twisted around, amounted to the same thing that the committee reported—just because it was found in the Constitution of Ohio and did not emanate from this committee!

I think it would be a pretty good plan for this Convention to have a rule that so many should speak on one side and so many on the other, because half the time we do not know, unless we ask the question, on which side a gentleman is. Therefore I announce at the start that I am in favor of the report of the committee, so that there shall be no misunderstanding. We found that the gentleman from Harrisburg (Mr. MacVeagh) and my colleague from Montgomery (Mr. Hunsicker) were on the same side, but they did not know it until they had to ask each other; and I had to ask the gentleman from Allegheny on which side he was, and he promised to tell me but forgot it. [Laughter.]

I could understand the gentleman from Schuylkill, (Mr. Bartholomew,) who wandered through the wilderness with the Israelites this morning; I could understand my friend on the left from Philadelphia, (Mr. Gowen,) when he replied to him; but I cannot understand why it was that a distinguished member from Philadelphia (Mr. J. Price Wetherill) should insist that the phraseology of the section should be changed, to accomplish precisely the same result. That, it seems to me, was a work for the great committee about which we have heard so much, called the Committee on Adjustment and

Revision. The gentleman from Columbia, (Mr. Buckalew)—I intend to speak until you are all ready for my motion [laughter]—the gentleman from Columbia started out by urging upon the committee the importance of rejecting the whole section, a while ago, and wound up by voting for it. I watched him carefully, because, as I said a while ago when I was up, I always defer very much to him; and then comes the gentleman from Dauphin, who says that if we do adopt any such section as this which is now under consideration, it will be a mere *brutum fulmen;* it will be harmless thunder. I do not believe it.

Mr. GOWEN. I beg the gentleman's pardon. I hope he will not use that quotation, for I used it once and they put in "*crutum fulmen.*"

Mr. CORSON. The State Printer has done us all a great deal of service, because he has so crippled every Latin quotation that none of us will ever hereafter suffer, because people will say he never got a Latin quotation right at any rate, and therefore he must have been a good Latin scholar; it was only a mistake of the printer. [Laughter.] I understand that a resolution will be adopted that when the Convention adjourns all the Debates shall be burned anyhow, so that it will not make any difference. [Laughter.]

I do not know that it is wrong to stop these corporations from buying up each other. Sometimes it accomplishes great good. I believe that it was a great improvement to my own town. I believe that we are indebted to some gentlemen perhaps who are on this floor for a great improvement in the line of communication between Norristown and Philadelphia; and I will now inform the gentleman to my right (Mr. J. W. F. White) that Norristown is not a portion of Philadelphia, [laughter,] and I can inform the gentleman who made the assertion, and who is from Sewickleyville, that I have been examining the map and find that Sewickleyville is in Ohio, and he has no right on this floor at all, [laughter,] and the next time he attempts to speak I intend to call him to order.

Now, I desire to bring my remarks to a close by moving that the committee do rise, report progress and ask leave to sit again.

The motion was not agreed to, thirty-three voting in the affirmative, not a majority of a quorum.

Mr. HOWARD. Mr. Chairman: So far as I am personally concerned, I have no idea of permitting this section to go by the board by the opposition of those that I know are opposed to it. We expect certain gentlemen to oppose this report. We should be very glad, of course, to have them support it, but we expect them to oppose it.

This is a good section, and because one big snake has gobbled up nearly everything, until she has got full, gentlemen think that the rest of the snakes should go on and gobble until all get full. I think there is a time to put a stop to this business of gobbling up railroads. I believe the people of the Commonwealth, and the people of the United States, have an interest in railroads, and they have an interest in keeping them in the hands of separate corporations; they have an interest in keeping up some kind of competition; they have an interest in putting down monopolies, and we believe there are two sides to this question of leasing and contracting away and selling railroads.

If any two railroad companies can agree to lease one to the other, their works, then we say that the public are interested in that question; we say that for all the purposes for which they were created, they are public corporations. They are private in their management merely, and they are private in pocketing their earnings; but their life, their existence, their franchise, they get from the public, and upon the consideration that they would serve the public in return for these favors. Now when we have chartered two corporations as transportation companies, independent companies, before one should swallow up the other, the public that created them should have something to say upon that subject. How can that public speak, how can they have a voice in the transaction by any better means than through the voice of the Legislature, men who are elected by the people annually, and responsible to their constituents, some gentlemen say the courts. So far as I am personally concerned, I prefer the Legislature to the courts. Judges are put on the bench for ten or fifteen years, perhaps it may be for life. Under this Constitution members of the Legislature will be elected annually, or at most, bi-ennially, and the people will have some control of them. They will be, in some respects, their agents, and I say if corporations created by the legislative power of the Com-

monwealth, created by the people to be their servants, before they shall be allowed to consolidate their interests either for twenty-five years or for any term the public should have a voice in that transaction and say whether it will be for the public benefit or otherwise.

Mr. Chairman, there are minorities of stockholders in this State, standing out and shivering in the cold, who have been stripped of their rights by a bare majority; sold body and breeches, over to another corporation, transferred by a board of directors by some little line or two of an act of Assembly, snaked through for the purpose. There are minorities of stockholders in corporations that they do not know to-day even that their road has been leased for ninety-nine years.

This is a very serious matter. It is one that has attracted a great deal of public attention, and one tha. the people of the Commonwealth will demand that this Convention shall consider, and that something of this kind shall be placed in the Constitution to prohibit this practice in the future. Why, it is a monstrous proposition. Men combine together to obtain a charter from the State; they get a grant of power from the people for the purpose, by a particular company and in a particular way to serve the public. It is true they do it, because they expect to realize personal profit, the money that may be made in that service; but at the same time, so far as they appeal to the public and so far as the public are concerned in the grant, it is upon the express condition that they are to serve that public, and I say that no two such created corporations have any right to go together and make a private bargain without consulting the same public that created them. They have no right, without the public consent, to consolidate, either for all time or for a term of years.

The public should always be consulted, and they should say whether it will be for the public interest to permit this or not. Why, every railroad from the west, every railroad leading to the west has been gobbled up but one; they have left simply the Connellsville railroad, and they got a corrupt Legislature even to forfeit the charter of that so as to have the entire control of everything leading west and leading south.

Mr. Chairman, the time has come when the people demand that there shall be a stop put to this thing, and that they shall be heard on this question of consolidating and leasing and bargaining away the rights that have been granted to corporations for a special and particular purpose. They did not obtain their charters for the purpose of trafficking in them and swapping them like swapping horses at a cross roads. If you can devise any better plan by which the people may be protected than by submitting it to the Legislature for its approval, I shall certainly be willing to accept it; but I am willing to refer it to the Legislature because I know of no better place where we can refer it in order that the public side of this question may be fairly considered.

I know perfectly well, in considering one branch of this subject, that these are private corporations. When they come to take your property, when they come to exercise this law of eminent domain by which they take any man's land against his will, they are public; but when they are taxing that public then they are private. They have their two characters. Now, the people want to come in and say, "gentlemen, we are going to have our side of this question represented, and whenever you come together to make bargains, we intend to see whether this bargain is going to be for the public benefit or not, and the same power that created you, that gave you the existence that you have and all the power you have, shall say whether it is for the public interest that you shall consolidate these powers or not."

Mr. KAINE. I made the motion to strike out this portion of the section, because I thought it was unnecessary. If there has been any one thing complained of more than another from the commencement of the deliberations of this Convention to the present time, it is special legislation; and no gentleman on this floor, I believe, has been louder in his denunciation of special legislation than the gentleman from Allegheny, (Mr. Howard,) who has just taken his seat. Now, sir, if this provision in the section is not a premium for special legislation, I do not know what it is. It was suggested by some gentleman in my hearing, when this motion was made, that that provision in this section was nothing else than what has been known in the Legislature, as a "first-class pincher;" that after two railroad companies had made an arrangement to join their interests together, they should then go to the Legislature and get the Legislature to ratify it, thereby enabling parties to go there and get members of the Legislature to say, "We

will not do this unless you pay us for it;" and that would just be the effect.

The gentleman wants a remedy for something of this kind. If there is to be a remedy, let it be a general law on that subject, upon which he and others have talked so much this session. Let there be a general law regulating the union of railroad companies, where it has been agreed upon by the companies ratifying it by a vote of two-thirds in value of the stockholders. I look upon this provision as being a premium for the very worst kind of special legislation, and therefore I have made the motion to strike it out; and I hope it will prevail.

Mr. HOWARD. Will the gentleman from Fayette allow me to ask him a question?

Mr. KAINE. Yes, sir; as many as you like.

Mr. HOWARD. How can it be determined by a general law, so far as the public are concerned, whether the consolidation of a particular railroad or the leasing of a particular road will be a public benefit or not?

Mr. KAINE. There need not be anything of that kind. Let a general law be passed, providing that when particular railroads consolidate, it shall be done thus and so, and let the Legislature throw around that law all the guards that their wisdom can devise.

Mr. COCHRAN. I desire to say a few words more in regard to this amendment before the vote is taken, because, although I am exceedingly reluctant to trespass upon the time of the committee, I consider this an amendment of very great consequence and importance, and am very unwilling that it should be adopted if it can be prevented.

I do not at all call in question the motives or the purposes of the gentleman from Fayette in offering this amendment, but I do think that it is impossible for this matter to be regulated in any other way than it is regulated in this section. I am free to say I would myself prefer not to submit a question of this kind, in any particular case, to the Legislature. I admit at once, and candidly, that it has the objection of taking the phase of special legislation. But, sir, there are cases in which it is impossible to obviate that difficulty, and I take it this is just one of those exceptional cases. I ask gentleman to consider the matter coolly, and see whether it is not so.

Now, sir, it is not denied, and it cannot be denied, that this matter of the consolidation or the leasing of railroad companies is one in which the public is interested, and in which the public has a right to be heard. It is not a mere matter of private concern. It is not a mere matter in which the stockholders alone are interested.

Mr. KAINE. Will the gentleman from York allow me to ask him a question?

Mr. COCHRAN. Yes, sir; with pleasure.

Mr. KAINE. I want to know of the gentleman if he thinks now that the Legislature is the proper place to go to be heard on a question of this kind?

Mr. COCHRAN. I say to the gentleman from Fayette, that it is the only practical way that I know of; and further than that, Mr. Chairman, I do think that it is the fit and proper one, the only one representing the public interests of the Commonwealth.

Mr. KAINE. Allow me to ask the gentleman another question. Would it not be much better to go before the courts of the county in which the railroads are situated on a matter of this kind?

Mr. COCHRAN. No, sir; I think not, because the courts of the county simply represent the local interest. The Legislature of the State represents the public interest of the Commonwealth. You cannot, Mr. Chairman, by any device or contrivance you may resort to, wipe out the Legislature as a branch of the government of this State. You cannot exclude them from the position which they hold as representing the people of the Commonwealth, and there are certain subjects which you must leave to their disposition in spite o every device to which you can resort.

I am, myself, to as full an extent as any gentleman in this Convention, in favor of doing away with special legislation, where it can properly be dispensed with; but here is a case in which I respectfully submit, if the subject matter of the section is at all proper, then it is proper that the Legislature should be the party to act upon it and determine it. If a company were formed under the law as it now exists, the Legislature would be the agent in giving the character. Even under any general railroad law that may hereafter exist, the charter will still come under some provision of law. Now, when it is asked that these charters shall be changed, and changed in that most important par-

ticular of combining and confederating two artificial bodies, which have been created by the legislative power for the purpose of advancing public interests, is it not right that they should go to that Legislature and ask them whether they, as representing the people of the Commonwealth, will consent that that should be done? I submit that consideration, in all candor and fairness, to the gentlemen of this committee. If I could avoid it, I say I would willingly do it; but it is a question of great importance.

Mr. Chairman, a part of this section was drawn for the very purpose of protecting, as far as it is possible in the judgment of some to protect them, the interests of certain local railroads in this State, and that was by providing that there should be at least an opportunity and time given in which the stockholders of railroads, however embarrassed temporarily, might after a while come out of those embarrassments and get possession of their property and use it for their own benefit. That was the reason why the leasing power was confined to twenty-five years. That was my purpose in trying to fix it at that time; I would rather have made it shorter; but I repeat that was the purpose, hoping that by confining this leasing power to twenty-five years without going to the Legislature, (for the company can do it for one term of twenty-five years without going to the Legislature,) when that time should have expired, the railroad would have obtained such a position that the stockholders would be able to get possession of their property and work and operate it for their own benefit.

Now, sir, having that purpose in view, and only desiring to prevent these consolidations in cases where the public interest, as well as the private interest, did not call for them, this section was drawn with a view of accomplishing that object. There is nothing sinister, nothing of evil design in the section. Its purpose is perfectly plain on its face, and it is just exactly what I have declared it to be; and I do hope that the members of this committee will not allow renewals of leases which have already run twenty-five years, or consolidations between railroads in this State to be made without the voice of the people of the State being heard on the subject before the thing is consummated.

Mr. BUCKALEW. As I understand this provision, existing leases as they expire, may be renewed by the officers of these incorporated companies for any period not exceeding twenty-five years, or any new lease made by the officers of the companies for a less period than twenty-five years without the consent of the stockholders. If that be the construction of this language, and it seems to me so, it really looks as if the limitation was vague, or, at all events, insufficient for the purposes for which the gentleman has addressed the Convention.

I beg leave to say, further, that we have now most extraordinary laws on this subject on the statute book, allowing any corporations of any sort to combine themselves in almost any way, and, of course, they will remain in force, and executed by a mere majority of the officers of the companies. Now, if this provision is to leave those very extensive and extraordinary powers in full force as to railroad and other companies, to be exercised for any period of time less than twenty-five years, it seems to me the provision is of very little consequence.

Mr. COCHRAN. Let me say, simply, I do not wish to detain the committee, and were I not called upon, I should not say another word, that the object of this section was to restrain and not to enlarge, and its language must be very unfortunate if the effect of it be such as the gentleman from Columbia indicates.

Now, sir, in order to give the gentleman from Columbia, and everybody else who wishes to look into this question further, an opportunity of seeing whether the section meets the view which he has presented, as the hour is already late, and we have had a fatiguing session, I move that the committee rise, report progress, and ask leave to sit again.

The motion was agreed to.

The committee accordingly rose, and the President having resumed the chair, the chairman, Mr. Broomall, reported that the committee of the whole had had under consideration the article reported by the Committee on Railroads and Canals, and directed him to report progress and ask leave to sit again.

Leave was granted.

The PRESIDENT. At what time?

["Monday."] Monday is named.

Mr. STANTON. Monday has been assigned for the report of the Committee on the Judiciary.

Mr. T. H. B. PATTERSON. I will name Monday week.

Mr. W. H. SMITH. I beg leave to offer a resolution at this time.

The PRESIDENT. It is not at present in order.

Mr. T. H. B. PATTERSON. I will state that under a resolution adopted a day or two ago the report of the Committee on the Judiciary was fixed for Monday at eleven o'clock.

The PRESIDENT. It was.

Mr. T. H. B. PATTERSON. And therefore there will be a conflict if we fix Monday for this report.

Mr. DARLINGTON. May I be allowed to ask a question for information? Suppose that we vote for Monday, and this article not finished, would it not be competent to proceed with this?

The PRESIDENT. The Chair has nothing to do with it, and is very sorry to see the practice introduced here; but the effect of making a special order at a particular hour is, that at that hour the House are to be asked if they choose to proceed to the consideration of the article. If they do not choose to do it, of course they are not bound to do it; but if the House at that time should be in committee of the whole there can be nothing done with the special order until the committee rise.

Monday week is named, and Monday. The question will be put on the longest day first—Monday week.

The day was not agreed to.

The PRESIDENT. No other day being named, the committee has leave to sit on Monday next.

Mr. BROOMALL. I move that we adjourn.

Mr. W. H. SMITH. I move to amend the motion by saying that when we adjourn, we adjourn to meet to-morrow at ten o'clock.

Mr. BROOMALL. Is that amendment in order?

The PRESIDENT. It is not in order.

Mr. W. H. SMITH. I ask leave to offer a resolution to that effect.

The PRESIDENT. The gentleman from Allegheny asks leave to offer a resolution. Shall he have leave?

["No!" "No!"]

Mr. BROOMALL. I object unless I know what it is.

The PRESIDENT. Leave is not given to offer the resolution.

Mr. J. W. F. WHITE. I move that the Convention adjourn.

The motion was agreed to, and at five o'clock and thirty-three minutes P. M., the Convention adjourned until Monday at ten o'clock A. M.

EIGHTY-SECOND DAY.

MONDAY, *April* 21, 1873.

The Convention met at ten o'clock A. M., Hon. Wm. M. Meredith, President, in the chair.

Prayer by Rev. J. W. Curry.

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

QUALIFICATION OF MR. BIGLER.

Mr. CURTIN. I desire to announce that Hon. Wm. Bigler, elected a delegate in the place of Mr. S. H. Reynolds, resigned, is present, and I ask that he be now qualified.

Mr. BIGLER advanced to the desk, and having been duly sworn, took his seat in the Convention.

PETITIONS AND MEMORIALS.

Mr. CAMPBELL presented a petition of merchants and others, citizens of Pennsylvania, praying for the adoption of certain sections of the railroad report, which was read and ordered to lie on the table.

Mr. D. N. WHITE presented a petition praying for the prohibition of the manufacture and sale of intoxicating liquors, which was ordered to lie on the table.

DAILY SESSIONS.

The PRESIDENT. If there be no further memorials, original resolutions are in order.

Mr. D. N. WHITE offered the following resolution:

Resolved, That the Convention sit every day hereafter, except Sunday, until further orders.

On the question of proceeding to the second reading and consideration of the resolution, the yeas and nays were required by Mr. D. N. White and Mr. H. W. Smith, and were as follow, viz:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Barclay, Bigler, Boyd, Brown, Campbell, Carey, Carter, Cochran, Collins, Corbett, Darlington, De France, Dodd, Edwards, Fulton, Gilpin, Guthrie, Hall, Hay, Heverin, Howard, Landis, Lawrence, MacConnell, M'Allister, M'Murray, Mann, Mantor, Niles, Purviance, John N., Purviance, Sam'l A., Russell, Smith, H. G., Smith, Wm. H., Struthers, Walker, White, David N., Woodward, Wright and Meredith, *President*—43.

NAYS.

Messrs. Baker, Broomall, Buckalew, Cronmiller, Curry, Curtin, Dallas, Davis, Dunning, Ewing, Fell, Gibson, Gowen, Hanna, Harvey, Hemphill, Horton, Hunsicker, Kaine, Knight, Lilly, MacVeagh, Metzger, Minor, Newlin, Parsons, Read, John R., Rooke, Ross, Runk, Smith, Henry W., Stanton, Temple, Wetherill, Jno. Price, Wherry, White, J. W. F. and Worrell—37.

So the question was determined in the affirmative, and the resolution was read the second time.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Beebe, Biddle, Black, Charles A., Black, J. S., Bowman, Brodhead, Cassidy, Church, Clark, Corson, Craig, Cuyler, Elliott, Ellis, Finney, Funck, Green, Hazzard, Lamberton, Lear, Littleton, Long, M'Camant, M'Clean, M'Culloch, Mitchell, Mott, Palmer, G. W., Palmer, H .W., Patterson, D. W., Patterson, T. H. B., Patton, Porter, Pughe, Purman, Reed, Andrew, Reynolds, Sharpe, Simpson, Stewart, Turrell, Van Reed, Wetherill, J. M. and White, Harry—53.

Mr. LANDIS. Is it in order to amend the resolution?

The PRESIDENT. It is.

Mr. LANDIS. Then I move to amend the resolution by adding:

"*Provided*, The session on Saturday shall not continue longer than one o'clock."

Mr. WOODWARD. I hope the Convention will bear in mind that some of the standing committees have not yet prepared their reports, and under our present regulations Saturday is the only day left to them to deliberate. If the Convention sits on Saturdays there will be no time for them to prepare their reports.

Mr. S. A. PURVIANCE. I desire to ask the gentleman from Philadelphia what becomes of the afternoon from three to nine?

Mr. WOODWARD. From three to six or seven we sit here.

Mr. S. A. PURVIANCE. Well, from five o'clock until nine?

Mr. WOODWARD. My answer to that question is, that under our present regulations we sit here from three o'clock until whatever hour we choose to adjourn—five or six, or it may be seven or eight o'clock. Then there is no time after that to call a meeting of a standing committee. The gentlemen composing the committees are dispersed; they want to go to their dinners, and thus there is no time at the close of the afternoon for any committee to meet.

The Committee on Private Corporations, which I have specially in mind in these remarks, wants at least one day in the week, until it shall have prepared its report, and I should be very sorry, indeed, to have that committee deprived of the privilege of deliberating on Saturdays.

Mr. S. A. PURVIANCE. I move to amend the amendment, by striking out "one o'clock," and inserting "four o'clock."

The amendment to the amendment was rejected.

Mr. WALKER. Mr. President: I do not know whether it will be in order now to move, as an amendment to that which is pending, a provision that there shall be but one session a day; and that from ten o'clock to three o'clock. If it is in order, and there can be an amendment proposed to the motion now pending, I would move then to amend so that we shall have each day but one session, commencing at ten o'clock and ending at three o'clock.

Mr. D. N. WHITE. Make it four o'clock.

Mr. WALKER. Well, four, then.

The PRESIDENT. The motion to so amend would not be in order now, as it is not an amendment to the amendment. When the amendment pending is disposed of, it will then be competent for the gentleman from Erie to move his amendment. The question is upon the amendment, that on Saturday the session shall adjourn at one o'clock.

The motion to adjourn at one o'clock on Saturday was rejected.

Mr. WALKER. Mr. President: I now move to amend the resolution pending, by having the session commence at ten o'clock in the forenoon and terminate at four o'clock in the afternoon.

Mr. DALLAS. I move to amend the amendment, by striking out four o'clock and inserting three.

On the question of agreeing to this amendment, the yeas and nays were required by Mr. Hay and Mr. Temple, and were as follow, viz:

YEAS.

Messrs. Achenbach, Addicks, Baker, Barclay, Bigler, Broomall, Buckalew, Carey, Curry, Curtin, Dallas, Davis, Dunning, Finney, Gowen, Guthrie, Hanna, Hemphill, Heverin, Kaine, Knight, Metzger, Mott, Parsons, Patterson, T. H. B., Read, John R., Rooke, Runk, Smith, H. G., Woodward and Wright—31.

NAYS.

Messrs. Alricks, Armstrong, Baer, Baily, (Perry,) Boyd, Brown, Campbell, Carter, Cochran, Collins, Corbett, Cronmiller, Darlington, De France, Dodd, Edwards, Ewing, Fell, Fulton, Gibson, Gilpin, Hall, Harvey, Hay, Horton, Howard, Hunsicker, Landis, Lawrence, Lilly, MacConnell, MacVeagh, M'Murray, Mann, Mantor, Minor, Newlin, Niles, Purviance, John N., Purviance, Samuel A., Ross, Russell, Smith, Henry W., Smith, Wm. H., Stanton, Struthers, Temple, Walker, Wetherill, Jno. Price, Wherry, White, David N., White, J. W. F., Worrell and Meredith, *President*—54.

So the amendment was not agreed to.

ABSENT.—Messrs. Ainey, Andrews, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Beebe, Biddle, Black, Charles A., Black, J. S., Bowman, Brodhead, Cassidy, Church, Clark, Corson, Craig, Cuyler, Elliott, Ellis, Funck, Green, Hazzard, Lamberton, Lear, Littleton, Long, M'Allister, M'Camant, M'Clean, M'Culloch, Mitchell, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Porter, Pughe, Purman, Reed, Andrew, Reynolds, James L., Sharpe, Simpson, Stewart, Turrell, Van Reed, Wetherill, J. M. and White, Harry—48.

Mr. WRIGHT. I move that the further consideration of this subject be postponed.

The PRESIDENT. To what time?

[Several Delegates. "Indefinitely."]

Mr. WRIGHT. Well, indefinitely; or I will move to postpone for two weeks.

The PRESIDENT. It is moved that the resolution be postponed until this day two weeks.

The yeas and nays were required by Mr. Corbett and Mr. Edwards, and were as follow, viz:

YEAS.

Messrs. Achenbach, Broomall, Buckalew, Campbell, Carey, Carter, Curry, Cur-

tin, Dallas, Davis, Dodd, Dunning, Ewing, Finney, Gibson, Gowen, Hanna, Harvey, Horton, Hunsicker, Kaine, Knight, Landis, Lilly, MacVeagh, M'Allister, Minor, Mott, Newlin, Patterson, T. H. B., Patton, Read, John R., Rooke, Ross, Runk, Smith, Henry W., Wetherill, Jno. Price, Woodward and Wright—39.

NAYS.

Messrs. Addicks, Armstrong, Baer, Baily, (Perry,) Baker, Barclay, Bigler, Boyd, Brown, Collins, Corbett, De France, Edwards, Fell, Fulton, Gilpin, Guthrie, Hay, Hemphill, Howard, Lawrence, MacConnell, M'Murray, Mann, Mantor, Metzger, Niles, Parsons, Purviance, John N., Purviance, Samuel A., Russell, Smith, Wm. H., Stanton, Struthers, Walker, White, David N., White, J. W. F. and Meredith, *President*—38.

So the question was determined in the affirmative.

ABSENT.—Messrs. Ainey, Alricks, Andrews, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Beebe, Biddle, Black, Charles A., Black, J. S., Bowman, Brodhead, Cassidy, Church, Clark, Cochran, Corson, Craig, Cronmiller, Cuyler, Darlington, Elliott, Ellis, Funck, Green, Hall, Hazzard, Heverin, Lamberton, Lear, Littleton, Long, M'Camant, M'Clean, M'Culloch, Mitchell, Palmer, G. W., Palmer, H. W., Patterson, D. W., Porter, Pughe, Purman, Reed, Andrew, Reynolds, Sharpe, Simpson, Smith, H. G., Stewart, Temple, Turrell, Van Reed, Wetherill, J. M., Wherry, White, Harry and Worrell—56.

AMENDMENT OF THE RULES.

Mr. NEWLIN. I offer the following as an amendment to the rules:

That rule — be amended by providing:

Resolved, That hereafter all motions to alter the time of holding the sessions of the Convention be decided without debate; and that the sessions continue as at present, unless altered by a vote of two-thirds.

[Several members. "No!" "No!"]

Mr. NEWLIN. Let it lie over.

The PRESIDENT. The resolution will lie over for one day under the rules.

LEAVES OF ABSENCE.

Mr. MINOR. I ask leave of absence for Mr. Beebe, on account of illness.

Leave was granted.

Mr. NEWLIN. I ask leave of absence for Mr. Bardsley for a few days from to-day.

Leave was granted.

PUBLICATION OF THE DEBATES.

Mr. BROOMALL. I offer the following resolution:

Resolved, That the Public Printer shall not cause to be published in the proceedings of the Convention anything purporting to have been said upon the floor by any member, without first exhibiting to him the proof-sheets of the matter proposed to be published.

The resolution was ordered to a second reading, and was read the second time.

Mr. BROOMALL. It is only necessary to say that if gentlemen have not read the published reports of the proceedings of the Convention enough to know that it is necessary to pass some such resolution as this, they ought to read them. Any gentleman who will devote five minutes to these Debates will see that we shall either have to burn them when the business is done, or take some means to protect ourselves against being hereafter charged with saying what we are reported as having said in this body. Hardly a page can be taken up but what ought to induce any member to require the Debates to be burned, or published more correctly than they now are.

Mr. LAWRENCE. I agree that something ought to be done in this respect, but the resolution of my friend from Delaware reflects, I think, unintentionally probably, on the reporters. I have only to speak for myself and those around me; but when anything is said in the Convention, I think the reporters are exceedingly careful to submit to every gentleman the copy of the remarks he has made, as they have taken them down, giving him time to correct them. I understand from the official Reporter that the printing is very imperfect, and that when copy is sent to the Printer, perfectly plain and legible, it comes back here with palpable mistakes, involving members in the position just referred to by the gentleman from Delaware. I regret it exceedingly. It is not the fault of the Reporter, I am satisfied, but I think it is the fault of the Printer. I have thought it my duty to say this much in behalf of the reporters.

Mr. BROOMALL. I have made no reflection on the reporters at all. I presume the reporters have been careful in what they have done. All that I can say is that the result is as it is. It is the fault of somebody; and a reading of the proof-sheets by the persons implicated in the assertions that are attributed to them would,

at least, make them their own injurers, if they are injured

Mr. WOODWARD. I should like to ask the gentleman whether he was one of those who were in favor of reporting and publishing the Debates of this body?

Mr. BROOMALL. Indeed I was not. I was always opposed to the publication of the Debates, and every day since has satisfied me that I was right. I united with the gentleman from Philadelphia in trying to prevent the Debates from being published at all, partly because I knew it would prolong the session and partly because I was satisfied that we should be sadly misrepresented.

Mr. WOODWARD. I have no recollection in regard to the gentleman himself, but I do know that, against the efforts, most earnest efforts, made by some gentlemen in this body, there was a determination to take all the risks of reporting the Debates. I had some knowledge about that subject before, but gentlemen would have their speeches reported, and now they must take the responsibility.

While I am up I will make this remark: I believe the reporting of this Convention, as far as I have observed it, has been as well done as reporting is generally done in a legislative body, and a great deal better done than it was in the Convention of 1837. I think we have no more reason to complain than all deliberative bodies have. The truth is these troubles that afflict gentlemen are inherent in the very subject of reporting. We cannot have a hasty report of a deliberative body without these numerous mistakes; and I know they exist.

Mr. BUCKALEW. Mr. President: I move to refer this resolution to the Committee on Printing, with the directions to communicate with the State Printer on the subject of the proof-reading of the Debates. What we need now is the employment by the State Printer of some competent person to read the proofs—somebody that, when he sees a Latin quotation in the manuscript, will know how the words ought to be spelled, and if he does not know, will inquire; and who, at all events, with a proper assistant, will carefully compare the proof with the manuscript. I take it for granted that the way the proof is now read is hap-hazard by somebody in the printing office, without any accurate comparison with the manuscript from which the composition is set up. I take it that if our Committee on Printing will communicate with the State Printer and insist that he shall employ a competent proof-reader, or that he shall pay the penalty by deducting from him some percentage of his compensation, there will be a correction.

Mr. BROOMALL. I have no objection to the reference if the committee will act promptly.

Mr. NEWLIN. Mr. President: I hope that the gentleman from Columbia will word his motion so as to make it imperative upon the committee to do this thing, because when matters are left to our discretion, usually they are not done.

Mr. BUCKALEW. I will use the word "directed," that the Committee on Printing be directed to communicate with the State Printer in order to secure the employment, by the Printer, of a competent proof-reader.

Mr. NEWLIN. I think the proposition in that shape will, perhaps, be effective.

The PRESIDENT. What is the modification of the motion to refer?

Mr. NEWLIN. Instructions that the committee be directed to secure the employment of a competent proof-reader by the State Printer.

The PRESIDENT. The motion is simply to refer to the committee?

Mr. BROOMALL. With directions to act at once.

Mr. NEWLIN. I think the difficulty can be reached by the employment of a competent proof-reader. I do not know about these mistakes, for I confess that I never read the Debates; but I am told there are such mistakes, and I have no doubt there are. A correction would probably be reached in the way suggested.

The PRESIDENT. The modification of the motion to refer is to refer to the committee, with the instructions stated. Is that accepted?

Mr. BUCKALEW. Yes, sir; I accept it.

Mr. COCHRAN. I do not want to debate this matter; but I wish to say that this complaint is just, and I want to note one mistake that caught my eye this morning. I made a remark in respect to the gentleman from Tioga (Mr. Niles) a day or two ago, stating that his criticism was *hypercritical*. The State Printer has made me say that it was *hypocritical*, [laughter,] a thing which I certainly did not intend to charge to the gentleman from Tioga.

The PRESIDENT. The question is on the motion to refer the resolution to the Committee on Printing, with instructions to

carry out the provision stated by the mover of the motion (Mr. Bucklaew.)

The motion was agreed to.

ORDER OF BUSINESS.

Mr. COCHRAN. I move that the Convention resolve itself into the committee of the whole, on the article reported by the Committee on Railroads and Canals.

Mr. ARMSTRONG. I suggest that a special order was made for this hour.

The PRESIDENT. The motion is not debatable.

Mr. ARMSTRONG. I rise to a question of order.

The PRESIDENT. Does the gentleman call for the orders of the day?

Mr. ARMSTRONG. I do, sir.

The PRESIDENT. The orders of the day are called for.

Mr. COCHRAN. In order simply to test the question, I move that the orders of the day be dispensed with.

The PRESIDENT. That motion requires a two-thirds vote. It is moved and seconded that the orders of the day be dispensed with.

Mr. COCHRAN. And that the House resolve itself into committee of the whole.

The PRESIDENT. That cannot be received until the motion to dispense with the orders of the day is agreed to. That motion requires a two-thirds vote.

The question being put, a division was called for, which resulted: Ayes, forty-one; noes, thirty-two. So the motion was not agreed to, two-thirds not having voted in favor thereof.

Mr. KAINE. I submit that a majority is sufficient to postpone a special order under the rule.

The PRESIDENT. The Chair has decided the question. If the gentleman appeals the matter will be submitted to the House.

Mr. KAINE. I will not appeal.

The PRESIDENT. The Chair will state that by making any particular business a special order of the day, it is put at the head of the order of business, and cannot be postponed without a vote of two-thirds. The orders of the day are called for; and the motion to dispense with them having been negatived, the question is, will the House proceed to the consideration of the article on the judiciary?

The question being put, a division was called for, which resulted: Ayes, thirty-eight; noes, forty-three.

So the motion was not agreed to.

RAILROADS AND CANALS.

Mr. COCHRAN. I move now that the Convention resolve itself into committee of the whole, on the article reported by the Committee on Railroads and Canals.

The PRESIDENT. The question is on the motion of the gentleman from York.

The motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Broomall in the chair.

The CHAIRMAN. The committee of the whole resumes the consideration of the article on railroads and canals. The fifth section is before the committee, and the question is upon the amendment to the amendment, which the Clerk will read.

The CLERK. The amendment was to strike out all after the word "Legislature," in the eleventh line, and the amendment to the amendment, offered by Mr. Kaine, was to strike out all after the word "stockholders," in the seventh line.

The CHAIRMAN. The question is on the amenement to the amendment.

Mr. COCHRAN. Mr. Chairman: I deem it due to myself and to the committee, to say that on Friday afternoon I made some remarks here, which might have led to a misapprehension, that I want to correct. From the tenor of the remarks that I made, it might be supposed that this fifth section submitted to the determination of the stockholders and the Legislature, as well the question of consolidation of stock and the purchase of railroads as the question of leasing. The only apology I can offer, sir, for using language which might have produced that impression is this: That the section came up at a time when I did not expect it, and, further, my attention was directed particularly to the amendment offered by the gentleman from Fayette, (Mr. Kaine,) and that amendment had special reference to leasing. I used language which was broader than I should have used, and was calculated to produce a misapprehension.

I wish to state that this section has three distinct clauses in it, as I understand it. The first is, "that no railroad, canal or other transportation company shall consolidate its stock, property or franchises with any other corporation engaged in the business of a common carrier." That is absolute and unqualified. Then, "nor purchase the property or franchises, directly or indirectly, of such company or corporation," which is another

unqualified clause. Then the third clause is, "nor in any case lease, or contract for a lease thereof, at any one time exceeding twenty-five years, without the consent of a majority of two-thirds in value of its stockholders," &c. The qualification is attached to the leasing, and not to any other provision of the section; and I should justly forfeit the confidence of the members of this committee if I were to misrepresent it, and persist in a misrepresentation of that kind. What I said was a mistake.

Mr. GOWEN. Will the gentleman permet me to ask him whether the two first prohibitions are absolute. The first is that there shall be no consolidation or purchase. Is that provision absolute?

Mr. COCHRAN. Yes, sir.

Mr. GOWEN. Then the second, that no company shall ever hereafter purchase the property of another one, and that no company shall ever consolidate with another?

Mr. COCHRAN. Yes, sir.

Mr. GOWEN. And the saving clause of consent only refers to the leasing?

Mr. COCHRAN. That is the true reading of the section, and is what it is intended to do, I may say, whether right or wrong. I made a mistake on Friday under the circumstances I have stated.

I do not propose now, Mr. Chairman, to to go into a discussion of the general question involved in this section at all. I have but a word or two further at this moment to say with regard to the amendment pending. Whether the section be right or wrong in its other provisions, the simple question now before the committee is this, and to that I confine myself: Whether or not a renewal of a lease should be effected without the consent of two-thirds of the stockholders and the Legislature. That is the simple proposition before the committee. When the question comes up on the general provisions of the section, I will endeavor, as far as I am able, to vindicate those provisions; but at present it would be out of place to do so.

Mr. GOWEN. Will the gentleman permit me to ask him one other question?

Mr. COCHRAN. Yes, sir.

Mr. GOWEN. I desire to ask the chairman of the committee whether it is the idea of the committee that this phraseology of the fifth section is intended to apply to leases, mergers and purchases heretofore made?

Mr. COCHRAN. I take it that it is almost impossible for us to apply it to all those things that have been done already. We cannot annul them.

Mr. GOWEN. I think we are entitled to a definite answer upon that question, whether it is intended to apply to existing contracts already ratified.

Mr. COCHRAN. Certainly it cannot, I think, apply to existing contracts already ratified. I suppose the gentleman will concur with me in opinion that we cannot violate a contract wherever a contract exists, under the provisions of the Constitution of the United States.

Mr. GOWEN. I dislike to ask questions, but really it saves debate. If the gentleman will pardon me for asking one other question, I inquire, if the fifth section is intended to be an absolute prohibition against all mergers and all purchases, where is the necessity of the fourth section declaring that certain particular mergers shall not be lawful?

Mr. COCHRAN. Mr. Chairman: I will state to the gentleman, in reply to that, that he will find that the language of the fourth section is very specific with regard to officers and others connected with these corporations. If he will read the sections he will find a very great difference in the language. The fourth section is more specific and special than the fifth section. That is the distinction between the two sections. The fourth section was intended to provide against the consolidation of parallel and competing lines, putting very special restrictions upon all parties connected with them. The fifth section is different and more general in that regard.

Now, I want to say one more thing before I take my seat. Before we adjourned on Friday evening, the gentleman from Columbia (Mr. Buckalew) propounded to me a question which I was really, at that time, not prepared to answer, and which required some investigation. I can only say with regard to it now, that I think the question of the gentleman was not only an eminently proper one, but it points out a defect in the section. And when these amendments are disposed of I shall offer an amendment to the section myself, which will make the addition to it of a few lines to provide for the case of existing leases, in the following words:

"No existing lease of any railroad or canal shall be renewed or extended at the close of the current term, for any longer period than twenty-five years, nor without the consent of the stockholders

and the Legislature first had and obtained in the manner above specified."

Mr. BAER. Mr. Chairman: With the explanation of the chairman of the Committee on Railroads and Canals, section five becomes a monstrous iniquity that ought to bring down upon it every vote in this Commonwealth. If we incorporate it into the Constitution, I assert here and now that the whole body of the instrument will go down just as certain as that we are assembled here to-day. If section five means that there shall be no consolidation, merger, purchase or lease at all, then the Constitution becomes so outrageous that the people in that portion of the State who have no railroad, or who are too poor to build them themselves, will say that it is an effort on the part of those who have all the facilities needed to make their railroad system perfect, to crush out the life of those portions that have no railroads. As a representative of the interior of the State, I say that this section is outrageous.

The fourth section goes far enough, in providing that there shall not be a consolidation and purchase of competing lines; but there can be no merit or reason whatever in saying that a main line of five hundred miles long shall not consolidate with it a small branch running ten miles at a right angle with it, because that may be to say that the small branch shall be destroyed. The small road of ten miles may not be able to continue its existence for a single year if it must remain under its separate existence, while, by being merged with the main line, it may be continued and operated so as to result in general benefit to the entire community in which it is situated.

If you incorporate into your Constitution any such provision as this, the mining region from which I come may as well close her doors to all improvements. She will be utterly unable to do all that is required to be done by herself, and this section will prevent her working any combination with any other strong company that may be willing to assist her in the development of the enterprises. To give you an illustration; in the county from which I come, where we have had no railroads until the last few years, where we have been deprived of all the benefits which were given to the other portions of the State, there is a main line now extending from Pittsburg to Baltimore, called the Pittsburg and Connellsville road. There are some four branches, in extent not exceeding ten miles long, which have been in contemplation and are partly built. The people have got together and have subscribed to the general stock, have paid in their money, and the roads are graded and the cross-ties delivered; and there they rest. They are willing to say to either of the large companies, either the Baltimore road or the Pennsylvania railroad: "Come, take a first mortgage upon these roads, furnish the iron to build them, and control them yourselves. We are willing to sink all our stock. We are willing to do so much in order to get the opportunities we are unable to furnish ourselves, and which will enable us to complete these roads." And sir, the coal, and the iron, and the lumber that we have there will lie a hundred years undeveloped, unless we can get such an arrangement as this carried into execution.

Whom would such a measure hurt? What injury would it do to any living mortal to have such a lease effected? Yet this section would forever prevent the lease of any of these small lines, and prohibit their consolidation with any of the larger companies who could successfully carry them into operation. Whom would such a measure affect? Nobody but the people there; those who have put their money into the stock of these branches, and who now are willing and anxious that the large roads, the great main lines, shall come into their midst and help them out of their distress. Who has complained of any such consolidation in the past? Nobody has complained of it, and nobody will complain as long as you do not consolidate parallel and competing lines; and when you come to consolidate competing lines, I take it that the Baltimore and Ohio and the Pennsylvania Central will be considered competing lines. I will go as far as any man in this body to secure equal and fair competition; but I deny the propriety, or even the common sense, of a proposition that will tie up the interior of the State and prevent development there.

I hope that the amendments which have been offered will all be sustained, and not only that they will all be sustained, but that the whole section will be voted down. Then, when an opportunity arises, I will offer a substitute which will cover, not only this section, but section four also. If we incorporate this article as it now stands into our Constitution, this article alone will be as long as the entire Constitution of any other State. I

will then, if these sections are voted down, as they ought to be voted down, submit this:

"No railroad or canal corporation, nor the lessees or purchasers thereof, shall consolidate, in stock, property or franchises, with, nor lease, purchase, or in any way control, any other railroad or canal corporation owning or having a parallel or competing line. And in no case shall any railroad or canal corporation consolidate with, or lease or purchase any other railroad or canal without the consent of a majority of the stockholders of each corporation first had."

That is going far enough. The idea that we should be driven to the Legislature for permission to consolidate every little ten mile corporation, that has expended its last dollar, and cannot complete its improvement, with any of the main lines; the idea that after the people who own the stock have consented to the merger, they shall be compelled to go to the Legislature and beg this privilege from the legislators or, if necessary, buy them, in order to do justice to the interior communities, is putting upon us a burden which we should not be made to bear. When the people who are directly interested are willing to make the lease, why should they then be driven to the Legislature of Pennsylvania for permission to carry out their wishes. What interest have the public at large that is superior to that of those in the district who have subscribed the money to carry forward to partial completion the roads that need stronger aid, and who are anxious for the development of the State? Is not the whole State benefited by the general development of any portion, especially of the mining regions? Every dollar's worth of coal that we can get out of those mines helps to increase the revenue of the entire State, and to make it still greater. But by this section you mean to so cut off these railroad improvements; you mean to so restrict them, as to make it impossible for them to be constructed and operated, because it says to the people so circumstanced, "poor as you are, you shall make your own railroads, and you shall operate them without help from stronger corporations to whose works they may be made tributary;" and all this because there is a cry against corporations.

I assert that the grand, fundamental error of the majority of the Committee on Railroads has been founded on a false assumption, and that assumption is that the people of this State are opposed to railroads. There is no such thing as a hostility generally prevalent in this Commonwealth in opposition to railroads. The people of this State, everywhere, value railroads, and they are willing to do all they can to have railroads run to their mines and into every corner of this broad Commonwealth. The public clamor that has been raised against huge monopolies may be good for some purpose; but it may be carried to a dangerous extent, and the people do not ask us to come here and run hobbies to such an extreme as to kill the goose that lays the egg. Where would this State be to-day if it had not been for its great corporations? Pennsylvania, instead of being the great Keystone of the arch, would be at the tail of all the States, an insignificant empire, indeed! whereas she is now a sleeping giant, awaiting the opportunity of developing all the resources within her limits, and at a single bound show that she cannot only maintain her character of the Keystone State, but in truth and in fact assume that of the Empire State of the Republic. But to tie us, hand and foot, in this style, because of this cry against corporations, is to begin a system which, when once commenced, who will say where it is to stop? I say, restrict these corporations to whatever is reasonable and just; treat them just as you treat individuals; give them no greater power than you give anybody else; make them live up to their chartered privileges; hold them to a strict account; do all you can to make them do justice to individuals, and when you have done this you will have done all that the people require at your hands. They will never ask that we should wipe the corporate powers of the State out of existence altogether.

You want nothing better that to put some absurd proposition against railroads into your Constitution to secure the defeat of that instrument. Already a ring is formed which will try to secure its rejection, because of the clause against special legislation, who, while they will not dare to proclaim publicly that they have founded their opposition to the Constitution upon such a pretence, will be bold enough, when they see iniquities of this kind, to go before the people and overthrow the work that you are here doing. This section would simply give them the means of covering up their actual opposition to the Constitution, based upon the clause prohibiting special legislation; and shall we

thereby put into their hands the very means to array the people on their side, which they could not do if you passed a wise provision on the subject of railroads and canals?

I hope that this entire section will be voted down, and that we shall put in a section which will prevent competing lines from consolidating, and that we make the only requisite for other lines to consolidate that they shall have the assent of a majority of the stockholders, who are the only parties who ought to be consulted on the question.

Mr. M'ALLISTER. Mr. Chairman: I am glad that the chairman of the Committee on Railroads and Canals has given us, this morning, a correct explanation of this section. His explanation is entirely correct in every respect; but on Friday I replied to a leading member of the committee who reported the section, the gentleman from Allegheny, (Mr. J. W. F. White,) and he told me that the provision as to the two-thirds applied and was intended to apply to the whole three provisions, as well to the consolidation as to the leasing. I remarked that the grammatical construction would not bear that out, because they were connected by the disjunctive conjunction. I then applied to the honorable chairman of the committee, and he gave me the same interpretation, saying that it applied to the whole three provisions, and I endeavored to get the floor at the opening of this session for the purpose of asking him, with that construction in view, to transpose that proviso, so as to come in at the commencement of the second line, so that it should read: "No railroad, canal or other transportation company, without the consent of a majority of two-thirds," &c., so as to make it clearly apply to the whole. That suggestion now becomes unnecessary, in that it is admitted that it was intended to apply only to the leasing, leaving the restriction upon consolidation absolute and unqualified.

Now, Mr. Chairman, just because this section is absolute and unqualified in reference to consolidation, I am utterly opposed to the whole provision. We cannot amend it beneficially; it will be as objectionable after the passage of this amendment as before, and it raises the first great dispute which was raised in the committee: Is it wise to prevent these consolidations altogether?

This leads me to speak of the inauguration of the doctrine of the consolidation of railroads in Pennsylvania. The first case, according to my recollection, arose in the consolidation of the Lebanon Valley and Reading railroads, and is reported as Lauman *vs.* Lebanon Valley railroad, 6 Casey, 42, reported in 1858. The stockholders of the Lebanon Valley railroad, I believe, with one solitary exception, Mr. Lauman, agreed to the consolidation as being for their interest; but Lauman stepped in and said, "you cannot consolidate without my consent; I am a stockholder, and I will not yield that consent; you cannot transfer my profits and my liabilities to any other corporation than that to which I belong, which is the Lebanon Valley railroad." If that position had been unqualifiedly sound, we should have had no competition between the Reading railroad and the Pennsylvania railroad between Philadelphia and Harrisburg.

I hold, Mr. Chairman, that that competition this day is a great blessing, and it has been so from the time the consolidation was made to this day.

The position of Mr. Lauman was conceded to be sound and good law by the Supreme court. It held that he could not be transferred from one corporation to another corporation against his will. But that raised the question whether one man in a great corporation shall set himself up in opposition to all the other stockholders of the corporation, and prevent consolidation. The Supreme court said he could not do that, but that he was entitled to a valuation of his stock at its full value, without any diminution arising from the proposed combination; that he could in equity seek this redress, have appraisers appointed and have his stock appraised, and that value paid to him, and he could put it in his pocket. He could give his fellow corporators or any one else an opportunity of purchasing his stock at its full value. On that ruling and under that appraisement his shares, as well as all the other shares of the stockholders, were transferred to the Reading railroad company, and we have a competing line between two great points in Pennsylvania.

Now, in pursuance of this policy, we have had legislation, and first I will refer to the legislation upon the subject of consolidation. On the sixteenth day of May, 1861, the Legislature passed an act authorizing the consolidation of any railroads within the State at the suggestion of a majority of the stockholders of both cor-

porations; and under the provisions of that act the Pennsylvania railroad company has consolidated with most of the branches between Philadelphia and Pittsburg, greatly to the benefit of the State, greatly to the benefit of the stockholders upon the branch lines, and more especially to the benefit of the landholders and property holders on the lateral roads.

Several supplements were passed to this act of the sixteenth of May, 1861. Its provisions applied only to consolidations within the State, and yet the Pennsylvania road, and I may say not only the Pennsylvania road, but the people of Pennsylvania, looked to the trade of the Pacific, and looked to the trade of China. More was necessary, and therefore it was that on the twenty-fourth of March, 1865, the Legislature passed another act enabling any railroad in Pennsylvania to form an alliance, to consolidate with any other railroad on the way to the Pacific, provided the Legislatures of the States through which those roads ran would pass an enabling act similar in its provisions to the enabling act of the Pennsylvania Legislature. The result was that those acts were passed by the Legislatures of Ohio, Indiana, Illinois and all the States reaching out to the Pacific, and it has resulted in a magnificent line of improvement; a line of improvement which is not only enriching Philadelphia, but enriching Pennsylvania, and enriching all the cities and towns through which that great line of railroad passes. Without these enabling acts, the Pennsylvania railroad would never have been able to compete with the then well established lines of New York, in all their connections west; it would never have been able to compete with the lines south, which are now reaching out in the same way for the trade of the west.

Under those acts we have a system of railroads connecting with the great west, and reaching out to the trade of the Pacific, that is honorable to our State, and let me say here, Mr. Chairman, honorable to the men of administrative ability who have been chiefly instrumental in controlling that great work; but whilst I endorse them as men of administrative ability, I am here to denounce, most unhesitatingly and unqualifiedly, the means by which some of these lines have been secured. It is the mistake as to the means that has brought odium upon these great works. Odium was brought upon the Pennsylvania railroad in the repeal of the tonnage tax.

I am here, Mr. Chairman, to say, and I did say at the time to every member who consulted me upon the subject, that if I were a member of the Legislature I should vote for the repeal of that tax on principle. It was a tax which could not be sustained by any just principle. When we can find no principle on which to base a tax or any other legislative provision, the sooner the act is repealed the better. Yet I am here, at the same time, to say that I have no doubt whatever that that act was repealed by improper means, by improper pecuniary influences brought to bear upon members of the Legislature.

The railroad interest is a great interest; it is one of the greatest interests of our State; and I am happy to meet upon this floor men connected with railroads of administrative ability; men who can look out upon the extended field and see at a glance the benefits to be derived from present and future connections of the trunk lines. I was sorry, indeed, to hear one of those gentlemen deny that he was here as a representative of railroads. I think it is honorable for a man to be sent here as a representative of railroads, and when he comes, let him not be ashamed of it, but take his position and plant himself behind the truth as his fortification, and carry out the principles which should be adopted by this Convention.

But there is another class of men that the railroads have been brought to bear upon. They are men in our legislative halls who are sent, not as representative men of railroad interests, but as being opposed to abuses, and when they get into the Legislature they suddenly veer around and suddenly become the most active supporters of every abuse. It is against that we are to guard in Convention. Corsupt legislation, secured by corrupting means, is the first evil to be remedied.

Now, what other evils are there to be remedied? Monopolies in the carrying trade. On Friday, in committee of the whole, the fourth section was adopted almost unanimously. It was thus provided that railroads contending for the trade of particular localities should not be allowed to consolidate, and that this exception should be made to the general law, which had been passed upon that subject. In that I most heartily concurred. The question then arose upon the section now under discussion, in which it is proposed to prevent consolidation altogether, as an

unmitigated evil and a curse to the people of the State.

So widely do I differ from that position that, instead of holding it as an evil, I conceive that if every branch railroad between Philadelphia and Pittsburg should be consolidated into the main line—nay, if every branch road between Philadelphia and San Francisco was consolidated with the main line, it would be a blessing; it would lessen the expenses of transportation by lessening the cost of management.

We have an illustration of that in our present telegraph system. The more telegraph companies the dispatch has to go over, the higher the charges; so that, on a line of a thousand miles, that has ten branches, you pay ten times as much as you would on one complete line. That has been also my experience in express companies. A few years ago, when the first State fair was held at Scranton, I found it necessary to ship to that exhibition produce of my own, and of the Agricultural College of Pennsylvania, which we thought ought to be represented there, by express companies, and was charged four times as much as I would have been charged for the same distance upon any part of the Adams express company on the Pennsylvania line; and so with dispatches. It necessarily arises from the expenses of these different, independent organizations, all with their independent boards, each taking a slice of the profits.

It is an unmitigated evil, and it is an evil which applies especially to branch roads. We suffer in Bellefonte now from the simple fact that the Pennsylvania railroad has only a lease of the Lock Haven and Tyrone road, and because she has only a lease of that road two bodies are to be consulted; no reduction of freights can be had without the consent of each board. If we had consolidation our freight from Bellefonte to Philadelphia would be lessened one-third or one-fourth. It is consolidation that we want; it is consolidation that we are seeking for.

Let us say a word here in reference to the protection of stockholders on these branch roads. And let me say to every gentleman in this body that the Pennsylvania railroad—I speak of the Pennsylvania railroad, for of the Reading I know little—the Pennsylvania railroad, so far as I know, has never sought consolidation with the branches; the branches have sought consolidation with the trunk line. It is done in this way: Desiring a railroad, such as is now being constructed from Lewisburg to Tyrone, from Lewisburg to Bellefonte, we come to the Pennsylvania railroad and say, "help us, because the completion of this line will throw the trade of Penn's valley upon your road; it will increase the profits of the main trunk; help us, because it will develop the great mineral and agricultural resources of our valley; but, above all, help us." The voice that has come up from the Pennsylvania railroad, in all these cases, is, "help yourselves; put your shoulders to the wheel, and then call upon us;" and under these leading strings the people, the farmers and the merchants of the valley, have come up and subscribed enough to grade the road and gone to work upon the grading, under the assurance that if the road be graded, the Pennsylvania railroad will take hold and lay the track; they will provide the rolling stock, and for that expenditure in laying the track and providing the rolling stock, they will take a first mortgage upon the road. The proposition is always accepted, accepted not because the stockholder supposes that he will grow rich, but because if he should lose the entire amount of the stock subscribed, he will still be the gainer. His land will be enhanced in value; he will be relieved from twenty or thirty miles of transportation by wagons and stages. He will be the richer for the road, though the road should be swept away by the mortgage. It is upon that ground that all these subscriptions are made.

I am here to say, Mr. Chairman, that that kind of responibility and right is the only kind that I have ever had in a railroad. I never owned a bond, never owned a share of stock, except that the money of which went to secure the grading, under an agreement with the railroad assisting that they should have a first mortgage in order to supply the iron and the rolling stock.

The Lock Haven and Tyrone railroad was commenced without any such agreement; it was commenced, as the chairman and the majority of this committee would have all railroads commence, with Dr. Underwood and some sanguine gentlemen at its head, who felt satisfied that that railroad would be a paying road. The railroad failed, and its corporate franchises were sold, and passed, for a

mere song, into the hands of the present shareholders.

The CHAIRMAN. The gentleman's time has expired.

Mr. Boyd obtained the floor.

Mr. ALRICKS. Allow me to make a motion to extend the time of the gentleman from Centre [Mr. M'Allister.]

The CHAIRMAN. That motion is not in order. It can only be done by unanimous consent.

Mr. ALRICKS. I ask unanimous consent.

Mr. D. N. WHITE. I object.

The CHAIRMAN. Objection is made.

Mr. BOYD. Mr. Chairman: In rising to address the committee, I desire to state in advance that, whilst I cannot support the section under consideration, reported by the Committee on Railroads and Canals, yet I wish that committee to distinctly understand that, whilst I regret my inability to agree with them in it, it is not out of any disrespect whatever to that distinguished committee.

Mr DARLINGTON. I rise to a question of order. It is impossible for me to hear the gentleman, as near as I am to him; I do not know how it is with others.

Mr. WORRELL. I make the point of order that the gentleman is not in his place.

The CHAIRMAN. The gentleman from Montgomery will suspend his remarks until order is restored.

Mr. WORRELL. I desire to make the point of order that the passage-way should not be occupied by anybody, and that the gentleman should speak from his place.

The CHAIRMAN. The point of order is well taken.

Mr. BOYD. I prefer to speak from my seat, because it is a better position. I had commenced to say, Mr. Chairman, that in differing with the Committee on Railroads and Canals in their report of this section, and the one that succeeds it, it is not out of any disrespect to that committee, because I am well satisfied that our worthy President, in selecting that committee exercised the same sound judgment and wisdom that he displayed in the selection of other committees; that it is a committee composed of experienced and intelligent gentlemen, perfectly conversant with railroads and everything that pertains to them; a committee certainly of average ability with any other committee in this House, and I rather think a little superior to some.

The wisdom of the President was displayed when he appointed my near neighbor and dear friend, Darlington, chairman of the Committee on Education. We all knew that selection to be a wise one, because in Chester county, a county of intelligence and of brilliance, no one could have been selected who knows more about schools and school systems than Mr. Darlington. And so with regard to the Committee on Cities and City Charters, was not the wisdom of the President demonstrated when he selected my beloved friend, Mr. Walker, a resident of a city, and who knows all about cities and city charters, as the chairman of that committee? And so, I apprehend, it has been with the Committee on Railroads. Therefore I desire the chairman of that committee, who devoured my friend from Bucks (Mr. Lear) the other day, because he spoke of a bull, and the gentleman from Pittsburg, who devoured my friend from Philadelphia (Mr. Gowen) because he did not agree with the report of the committee, to understand that my opposition to this section does not arise from any disrespect to that committee.

I am furthermore inclined now, more than ever, to follow the precept and example of the man whose precepts and example I have always followed. I mean Judge Woodward, and start out by telling you just who I am and what I am in relation to this subject. He told you that he was once a stockholder in a railroad. So am I. I own just three shares of stock in the Perkiomen, and three in the Pickering Valley road, and I own four $100 bonds of the Perkiomen railroad, all of which, as you are well aware, will have to be appropriated to pay that subscription at the Academy of Music. (Laughter.) With the exception of these railroad securities I never did own any, do not own any more now, and do not expect I ever shall, because this city will ruin me before this Convention is over. [Laughter.]

But furthermore, Mr. Chairman, it is proper for me to state that I was a railroad president once, long before these present great railroad presidents were heard of. I had the honor to be the president of the Plymouth railroad. It was then a road just three miles in length, and our entire rolling stock consisted of four horses. [Laughter.] It was what is known as a strap railroad, though a very successful one; but Judge Woodward, when he was upon the bench, a question arising as to the existence of such a railroad as that,

declared that it was not a railroad within the meaning of any law or decision of the court. From that day to this I have been put down as a railroad president.

But, sir, I have represented railroads in the county of Montgomery, with lines reaching one hundred miles and more. I have been in that capacity for over twenty years, and in that time have personally settled all land damages for those branch roads since they have been projected, and I have expended hundreds of thousands of dollars, and I might safely say into the millions, in the settlement of such damages, and in the purchase of real estate. And, sir, in no case where there was a jury was there ever an appeal by the company to the court, and in all that time there never were twenty appeal cases tried in our courts among the thousands of persons who had been settled with or whose lands had been taken and condemned under the railroad act.

I mention this, sir, because I have been intimately acquainted with this subject for the period of years I have stated, and, indeed, I may add, that from one-half to two-thirds of my entire time, during that period, has been occupied in that kind of business, and therefore, when I come here and speak as I do now, for the county of Montgomery—for beyond that I speak not—nay, I know not beyond it—I say to the gentlemen who have stood up here and declared that railroads are unpopular; that they have become odious to the people, that it is not true, so far as the county of Montgomery is concerned; but on the contrary, in what some gentlemen have been pleased to term, in derision, the upper and darker corners of Montgomery county, the people are more friendly, more liberal and better inclined toward the protecting of railroads through their lands and through their portions of the county, than in what is generally termed the more enlightened part of that county. And therefore, when I say to you, sir, that railroads are popular; that there is none of the odium attached to them in our county which is described here by gentlemen.

Furthermore I desire to say that we are in that county, at this time, projecting, finishing and extending several branch roads; and if the section under consideration is adopted, and the one succeeding it is likewise adopted, it will check all improvements of that nature in our county, because the time has arrived when it is utterly impossible to find local capital enough to build a railroad and to run it, and unless it can be done by the aid and assistance of the wealthier corporations, who have the means, it cannot be done at all. When my friend from Somerset (Mr. Baer) spoke to you on this subject, he knows as well as I know, and as well as every man must know who lives in the interior, and is acquainted with the railroad system at all, that if such a project as is proposed by this committee should be adopted here, there is an end to improvements of that kind.

Why, sir, the cost of building a branch railroad we know to be enormous. We know that the persons living upon the line of such roads are not, as a general thing, able to furnish the amount of money necessary for that purpose; and it can only be done, and it only has been done in the past, by the aid and the assistance of larger corporations in guaranteeing the bonds or the stock of the branch road, to enable it to raise money on securities thus secured before those roads can be built.

Twenty years ago we had the Reading railroad passing through our county, and also the Norristown railroad. Since that time, under the system that has been pursued in the past, we have had added to them at least sixty miles of new road in different portions of the county, permeating the iron ore regions of our county, developing them and the agricultural portions of the county; and in every instance where a railroad has been projected through our county, I say what I know when I declare that the land along the line of the road, and for a considerable distance on either side, has been enhanced more than fifty, and often times one hundred per cent., within five years after the construction of the road; and hence it is that this fact, which is within the knowledge of those interested, makes the roads popular and not at all unpopular; and hence it is that men are willing to subscribe for stock which they are satisfied shall be sunk if they can only get a railroad company to advance money or to guarantee their bonds to enable them to go on and build their branch road and make the necessary improvements to perfect it. Why, sir, there is not capital enough along the line of these branch roads to furnish even the rolling stock of the road after it is built, even if it should be built with money from other sources.

Therefore, without occupying any further time on this subject, I desire to say here that I shall vote against this section

and shall vote against the next section, because it is against these branch roads, because it will utterly destroy them, and because I for one, a corporation man, as I am, am opposed to such measures as are proposed by this committee in making the strong still stronger, giving these old companies the same control and even a greater control than they have had in the past, because they will virtually become monopolies, because there is nothing here that hurts, as I understand the report of the committee, any of the established lines. You can pile on taxes, and what does it amount to? Only so much added to the charges on freight and passenger traffic. The company will add additional rates to meet the increased taxation, and will be a good deal like when they took off the State tax from real estate; the people throughout the State thought it was a great thing to have that tax released, and when it was put on the corporations we found that they were obliged, as a matter of course, to increase their rates and charges for the purpose of meeting this additional expense. Whilst this committee evidently had in view the idea of restraining the older and the stronger corporations, they have, in my judgment, simply strengthened their bands and strike a blow at the weaker corporations; and these projects which are in contemplation will necessarily be utterly destroyed, because, if I may digress here, it is simply absurd to suppose that an old company will guarantee even one-third of the bonds of a new company that proposes to build a road. If they were so inclined, and it would be sufficient to build the road, they would not do it, because, as I understand, under the fourth section, if they did advance one-third of the money and the road should be built, and it should fail, then they would not have the power, when it was sold out, to even buy the road back to secure the money they had guaranteed to the extent of one-third as provided in the fifth section.

It is for these reasons that I shall vote against these sections, and it is for these reasons that I believe this whole report should be voted down from top to bottom, because it is not in consonance with the wishes of the people of this State. I have heard of no petitions having been presented here on this subject, I have heard of no remonstrances against the present railroads; all that I have heard on the subject has been since I have come into this Convention, by gentlemen who get up occasionally and speak of the monstrous corporations which are gobbling up everything, absorbing the capital, not only of the State, but of the Union, and the great dread of fear they have. The only thing of a hostile nature I have ever heard in my county on the subject of railroads, or that which is connected with them, has been in relation to their leasing and buying coal lands, and with that exception, railroads are popular with our people, and with that exception we are opposed to any restrictions being placed upon them, and desire them to be just simply left alone.

Mr. HUNSICKER. Mr. Chairman: I feel a delicacy in following my colleague. What I intend to say I had intended to say on Friday evening last, but the Convention adjourned before I had the opportunity of making my reply. The reply that I desired to make then I make now.

It seems to be essential to secure a hearing before this body—at least a respectful hearing—that every delegate who found himself unable to agree with the report of the Committee on Railroads and Canals should first purge himself of all sympathy with, or interest in, any of the great or small improvement companies of the State. It seems to be necessary that he should go further than that, and declare that he had never been counsel for any railroad company, and never expected to be; that he had never received any fees, or ever expected to receive any from them. If he would have the merit of being entirely honest, so that his arguments would be received with proper weight and consideration, he should declare in the most vehement manner that all railroads and canals are, *per se*, a curse to the country. If the delegate has purged himself in this manner, he may then suggest mildly that the report of this committee, in some unimportant particular, is wrong. But that is as far as he may safely go.

One gentleman, in advocating the report of this committee, said that they expected that this report would be opposed, but it was rather in what was not said than in what was said, which led me to believe that the idea was that no delegate could oppose the report of the Committee on Railroads and Canals unless he was either the paid counsel of a railroad company or else its hired tool. Now, it has occurred to me—and I claim to be an anti-corporation man, (I am a lawyer, or pass for a lawyer, at least; I earn my living by my profession; I have been the counsel

for no railroad company in my life,)—that the report of this Committee on Railroads and Canals, is fastening upon the shoulders of the people of Pennsylvania the very evils you would correct.

I propose to label this report, "A constitutional system, the more effectually to enable the over-gorged corporations of this State to retain their monopolies of corporate power, and to prevent the organization of any new railroad or canal enterprises in this State; and I shall prove that this is the appropriate title.

The charters of incorporation of all the leading railroad companies of the State of Pennsylvania were passed long before 1857, before there was any constitutional provision with reference to them at all. But these railroad companies, in the language of Judge Black, are "giants whose heads are in the clouds, and the arms of their gigantic power stretch out on either side, from one horizon to the other." These companies have gorged themselves to repletion by swallowing up all the arteries of trade. Take the Pennsylvania railroad; take the Reading—the road that I am better acquainted with—as it runs through the county which I represent. It has gobbled up the Norristown road, the Plymouth Valley, and it has extended its branches in all directions. It is impossible that the Reading road can get anything more from us, because it has already got all that we have. The Constitution of the United States is the shield that protects the Pennsylvania railroad, that protects the Reading, and that protects the Lehigh Valley, the three great railroad monopolies of this State. The first section of article ten provides, *inter alia*, that "no State shall pass any *ex post facto* law, or law impairing the obligation of contracts."

We have a torrent, not a current, but a torrent of judicial authorities upon this subject, beginning with the Dartmouth college case, in which the Supreme Court of the United States holds, as well as the Supreme Court of this State, that a private charter is such a contract. It was also decided, and is the law of the land to-day, that a State Legislature may, by contract, surrender the right of taxation as to the property of a corporation, and that a succeeding Legislature has not the power to pass a law impairing the obligation of such a contract. That was decided in the case of the State bank of Ohio *vs.* Knoop, 16 Howard, page 369; and there is a whole list of cases to the same effect that you will find in the foot-note to Purdon under this section. And this doctrine was broadly asserted, notwithstanding my friend from Allegheny (Mr. Ewing) referred to this case as being the other way, in the case of the Iron City bank *vs.* the city of Pittsburg, in which case his honor, Judge Woodward, who is now before me, in an able and most exhaustive review of all the authorities, from the Dartmouth college case down, comes to the two following conclusions:

"*First.* A grant of land or of a corporate franchise by an act of legislation is a contract between the State and the grantee, the obligation of which a subsequent Legislature cannot impair.

"*Second.* If the Legislature, in creating a corporation, prescribe a rule of taxation and expressly release the power to impose further taxation, and do not expressly reserve the power to themselves, a subsequent tax law does impair the obligation of the contract and is void."

That is the law. That case we find in 37, Pennsylvania State Reports. Furthermore, Judge Black, who is also a member of this Convention, declared in 7 Harris, "that an act of incorporation is a contract between the State and the stockholders, and is held for settled law by the federal courts and by every State court in the Union. All the cases on the subject are saturated with this doctrine. It is sustained, not only by a current, but by a torrent of authorities, and no judge who has a decent respect for the principle of *stare decisis*, that great principle which is the sheet anchor of our jurisprudence, can deny that it is immovably established." It would be a mere affectation of learning to cite more authorities upon a principle that is conceded by the distinguished gentleman who is chairman of the Committee on Railroads and Canals (Mr. Cochran.)

Then what would you do? You would destroy the very thing you would build up. How can you compete with the Pennsylvania railroad, or with the Reading railroad, or with the Lehigh Valley, when you stifle the enterprise that would be in competition with them? Take my own county. We are building a little road from Norristown to intersect with the North Pennsylvania railroad, for the purpose of competing with the Reading railroad in the transportation of coal. We want to open the Lehigh Valley to our market; yet by the adoption of

this section you would stifle that enterprise and make that road languish and die through the operation of this section. This is an isolated case, but there are hundreds of such all through the State of Pennsylvania. The giant corporations that you want to restrain, whose power you would cripple, have entrenched themselves behind legislation which is beyond your reach.

If this was a Constitutional Convention, called to revise the Constitution of the United States; if you were over, and above, and beyond the power of the Constitution of the United States, then I should vote for every section of this report. But as it stands, I maintain that it is nothing more or less than a constitutional system to destroy future enterprise, and to enable the present monopolies to retain their hold of corporate power. If any delegate upon the floor of this Convention can demonstrate that there is a fallacy in what I have said, or can instruct me better, he will find in me a Casca "who will go as far as he who goes farthest, for the redress of all these griefs;" but until I can be otherwise instructed, I shall vote steadily against every section of this report that cannot and does not act upon all alike.

Mr. GOWEN. Mr. Chairman: I am very glad to see that some gentlemen, who are anti-railroad men begin to see through this report. It is with some diffidence that I rise to speak upon a question of such magnitude as this; and I am very sorry that we have adopted, as a rule, in this committee, one which is simply a declaration to the world that what each member of this committee does not know, is not worth knowing, and that all that any one does know can be told in twenty minutes. We are dealing with the subject of the fundamental law, upon which the great question of public improvement in this State is to be founded, and gentlemen cannot aver that all they may have to say on this subject can be told in twenty minutes. Let me tell the gentlemen that when these questions go out before the people the gag will be removed, and the light of reason will be let inu pon the deliberations of this body. If you are to speak but twenty minutes you must speak to the one section. I shall speak to this one section, and I shall show, I think, to my satisfaction certainly, that this section is liable to that objection to which the whole report is open, namely, that it is a report which binds the future progress of this Commonwealth, hand and foot, and hands it over to the present corporations that have the largest lines in the State. I could demonstrate that the Pennsylvania railroad could pay five millions of dollars for the adoption of this report; I could demonstrate that the Reading railroad company could pay five millions of dollars for the adoption of this report and make money by it. So far as this is necessary, I can show it to a demonstration; but this section touches it very lightly, and I cannot do it in twenty minutes, for the two sections that are particularly open to this objection are not now the subject of consideration.

Let me refer to one section of this report. There is now a general law upon the subject of leasing railroads; a general law by which, under proper restrictions, by proper methods and by proper publication, any one railroad can lease a connecting railroad by the vote of a majority of its stockholders. In a Convention which has laid its strong hand upon special legislation; in a Convention where, with a wonderful unanimity, the most startling reformations were carried out to their legitimate conclusions, to prevent the evils of special legislation, this Committee on Railroads and Canals propose to strike out the present general law, and to hand every railroad company over to the evils of special legislation. Now, I shall take the gentlemen at their word; I make no charges against any one. I take these gentlemen at their word, and I appeal to members upon the floor of this House who say that they have been members of the Legislature. What is the burden of their complaint?

It is that one great, overshadowing corporation controls the Legislature of Pennsylvania. Now, does this Railroad Committee intend that no other railroad hereafter shall acquire the lease of a little branch without the consent of one great corporation that controls the Legislature? If special legislation, in any respect, is obnoxious, why is it not ten-fold more obnoxious where one great moneyed power, controling a corrupt Legislature, can say who shall, or who shall not, have power? Do the gentlemen composing the Railroad Committee believe that all that it is necessary for a corporation to have is to acquire other railroads? Let me tell the gentlemen that they know very little about making money by railroads, and that most of the new leases

which are taken by the large railroad companies to develop a region are an actual loss to the company that takes them. If one big railroad can prevent another railroad from having branches, it is the very thing it wants to do to make money; and if the Pennsylvania, or the Reading railroad company can prevent other smaller corporations from increasing into such magnitude as to enable them to compete with them, why, there is no limit to the money they can make out of the people of this State. Therefore, any system which strikes down a good statute of general application, and requires every little, petty, struggling railroad to go up to Harrisburg and ask the consent of the Legislature, is an injury and not a reform.

Again, it will be seen that in this section the consent of two-thirds of the stockholders is to be required only of the company being leased. Do gentlemen read the newspapers? Do gentlemen know the system of railroad mismanagement which has existed in the State of New York, and which has been over and over charged against some corporations in the State of Pennsylvania? Do gentlemen know that one of the greatest evils of this leasing system is to permit a ring of the officers of a large company to buy up two-thirds of the stock of smaller ones, and then make use of their power to fasten the smaller one upon the big one, and make the stockholder of that company pay for the whistle? And yet this report is to strike out all the present legislative protection against that, and to permit the big railroad companies' officers to saddle the small ones upon their stockholders, without requiring the consent of their stockholders, but only the consent of the stockholders of the small ones, who are to benefit by the action of the ring. If gentlemen are to have reform, if the consent of two-thirds is required, why not of two-thirds of both companies, why not of two-thirds of the company that is to pay the money as well as of two-thirds of the company that is to pocket the gain?

Of the gentleman from York, (Mr. Cochran,) I desire to say nothing unpleasant; but that gentleman, the chairman of this committee, inquired the other day, in answer to a question, what harm could it do if Constitutions are to be adopted, because the committee who frame them see that they will do no harm? We shall have a Constitution that will be larger than the whole five books of Moses. I have heard it stated on the streets that a very prominent member of this Convention, who was suddenly called to preside over the committee of the whole, and who gave wonderful satisfaction, a gentleman who had had no experience whatever in legislative proceedings, when asked how he did it, said, "well, I adopted a rule invariably to decide against everything that I did not know anything about. [Laughter.] In a presiding officer, where expedition is necessary, that may be pardonable; but I do not think that when a committee say they do not know anything about a thing, do not know what harm it will do, they thereby offered a sufficient reason for changing the fundamental law of this State upon the great subject of internal improvements.

Again, the chairman of the committee has told us this morning that this section five is an absolute prohibition against future mergers or against future purchases. Before going to that, let me call the attention of the committee to one thing which this permits. It may be an evil that nowadays, under present law, one big corporation can do nothing with a smaller one unless it gets hold of two-thirds of its stock. That evil, if it be one, is a pretty injurious one to the large corporations that want to control the smaller ones; and this committee has endeavored to remove that evil by permitting the larger corporations to control the smaller, by getting only one-third of the stock of the smaller one. Take the case which the gentleman from Montgomery (Mr. Hunsicker) has just mentioned; I use the name of the Reading railroad. The Reading railroad leased the Norristown road. By doing that it acquired the entire control of all the railroads that led from Norristown to the city of Philadelphia, and to the coal regions. The people of Norristown were apprehensive that all of this power vested in one corporation might be at some time or other injuriously exercised. They wanted to build another railroad. The only other outlet they could get, was by connecting with a road called the North Pennsylvania railroad. They started to build that connection. If that road is to injure the Reading road, it would have been to the interest of the Reading road to have control of it. Under existing laws the Reading road could not have controlled it without getting at least a majority of its stock; but under the section reported by the committee, all it would have had to do to prevent it going to the North Penn-

sylvania, where it naturally would have gone, to make the competition, would have been to get one-third of the stock, and then it could have controlled it and prevented it going there, and if it never went there, it would do the Reading railroad no harm.

If it is wrong for one company to control the other, make it as hard as possible for it to get the control of it. Let the law remain as it is, that it must be at least two-thirds; but do not say that one big corporation shall strangle a smaller one, and interfere with its future prosperity and control two-thirds of its owners, simply because it gets hold of one-third of its stock.

So much about this minority representation which I had occasion to state the other day, I did not think the committee had thoroughly understood. Now we are to be told that there are to be no future mergers.

Mr. MACVEAGH. Will the gentleman pardon an interruption?

Mr. GOWEN. Certainly.

Mr. MACVEAGH. I think I see the point, but I doubt whether the gentleman had not better make it a little clearer. The point is, of course, that by controlling one-third of the stock, and voting that against the lease to the North Pennsylvania, they could prevent that lease?

Mr. GOWEN. Yes, sir; and I say here, and I want to show if I can, that the best system of all is an amalgamation and a merger of the railroads.

Now, what were we sent here to do? We were sent here to reform abuses in the State. Gentlemen tell us that the Legislature is corrupt. Gentlemen tell us, to use a quotation which has been made by one or two, that this "tidal wave of corruption is sweeping up to the very knees of the judiciary." We all must admit that the municipal governments of this State are very corrupt. Let me tell gentlemen that there are some railroad companies managed in this State with an integrity of purpose and honesty of expenditure, which, if they could ever hope to equal in the management of the State finances, or the municipal finances of this country, they would accomplish a reform that would place Pennsylvania at the head of every State in the Union. Do the gentleman think that when we go home from here, because we fence in the railroads; and fence in the State, and prevent these improvements being made hereafter, the people will be satisfied with our work? If it were possible; if, in the wildest dreams of the most excited reformer upon this floor, it were possible even to secure perfect purity in the administration of our State government; perfect integrity of purpose; perfect purity added to perfect ability, I would say that the best system for internal improvements in this State would be to put every railroad company in the control of the State itself, and have but one system.

But I shall oppose that always, because human nature is weak, and we all know that when you give the politicians the power of transacting this great business, you will have corruption as the attendant of it. It is impossible to guard against it.

Now, what is the advantage of consolidation? The advantage of consolidation is a reduction of expenses *eo instanti*. Let me speak of what is within my own knowledge, and I beg that gentlemen will not think it improper for me to speak of things with which I have been somewhat connected. The Schuylkill navigation company, which at one time was a very prosperous institution, could not stand competition with a railroad beside it. Its future was hopeless bankruptcy. It was admitted to be so. The officers of that company begged the railroad company to take it to save it, and the only reason that the railroad company could take it and not lose money was this, that from the day they took it, the expense account of that company was reduced one hundred thousand dollars a year. So it is with all these corporations.

Why, Mr. Chairman, I lately took a trip to Florida, where this magnificent system of separate railroad management exists. I found, in going through North Carolina, that a railroad train just in front of me, that had, with great difficulty, kept upon the rails as far as it was likely any one train could keep on such rails, had committed the indiscretion of running off and smashing down a bridge. We were delayed several hours, in consequence of which, when we came to the station, where we were to take a train belonging to another road, that train had started without us, and we were delayed twenty-four hours. In coming north, through Florida and Georgia, I found that the conductor had a habit, as the population is not very dense in that country, of stopping the train whenever he saw a neighbor at a fence, and conversing with him a little, stopping to look at the flowers, and when the boxes got hot, as they did every ten miles, and they had to stop

and throw in sand, which, in their system of separate management, seems the best thing to cure that evil. We therefore got to Savannah an hour behind time, and the other railroad train had started without us, and we were delayed another twenty-four hours.

The people of Pennsylvania will not submit to any such management as that. And I desire to say here that the railroad system of Pennsylvania, so far as it relates to the security of the roads; so far as it relates to the permanency of the improvements, is equal to any in the world, and is better than any in the world except that of England, and it is not behind England at all; and we ought to take some pride in this, that no matter how the gentlemen who control these large corporations may be charged with dishonest and corrupt management, the railroad capital of the State of Pennsylvania is worth a higher price to-day, in the markets of the country, than the railroad capital of any country in the world. It is selling for more; its average price throughout the State is bringing more to its owners than that of any country in the world. I believe that. There are several companies in England, the stocks of which bring a very large price, but when you take the others paying little or no dividends, they bring very little.

Again, down in Florida, the other day, I found that the great United States government would send a live alligator from Florida to Philadelphia for twelve cents by mail. I was a little surprised at that, for I did not think that the great government of the United States should lay its hands so heavily on the railroad companies as to compel them to carry a live alligator as mail matter. I found that if you caught a little alligator in Florida, and put it in a box of moss, and bored a few holes through it, you could send it to Philadelphia for twelve cents through the post-office, but if you sent it by express over the different railroads, it cost eight dollars; so that the United States mail was burdened by carrying a great many alligators, and Adams' Express company did not get any. [Laughter.]

I also found that to send a telegraphic message of one word to Philadelphia cost three dollars; I suppose on account of the evil of the great number of different companies, each one wanting to get its share out of the three dollars.

All these evils are notorious. They are all cured by that system of amalgamation and leasing which has grown up as a part of the railroad system of this country. It is to-day the railroad system of England. The London and Northwestern railway controls thousands of miles, you may say, in that country. One after another it has leased its connecting lines; and thus you have a perfect system of railway management over which the people can pass with perfect safety.

Let me take the case of the county represented so ably in this body by the chairman of the Committee on Railroads. The county of York is one of the richest mineral counties in this State; it has deposits of iron ore which, under proper management, would make the town of York a city of seventy-five thousand inhabitants in ten or fifteen years; would attract manufacturing establishments there; an ore so rich that the people of France and England are acquainted with it, and I myself have had inquiries from England about the ore of York county.

That county has but one railroad—I mean it has but one great railroad that leads to any great port, to Philadelphia, New York or Baltimore. If that railroad is forever hereafter to control the whole wealth of York county, all it has to do is to get one-third of the stock of every new corporation that is organized within it, and prevent that corporation being leased by a rival road.

The CHAIRMAN. The time of the gentleman from Philadelphia has expired.

Mr. KAINE. I ask unanimous consent to allow the gentleman to proceed with his remarks.

The CHAIRMAN. Is there objection? ["No;" "no."] The Chairman hears no objection, and the gentleman from Philadelphia will proceed.

Mr. GOWEN. I appreciate the compliment very much. I have but a few words more to say. All I wanted to say was this: That by getting control of one-third of the stock of a rival road, any great railroad could prevent the citizens of the county through which it passed from connecting with another road; and unless there is that perfect connection, unless one company can get the absolute control over the smaller one, you cannot have any thorough excellence or good management.

Let this system be open to all. Let every man, woman or child, or corporation, that want to do so, build a railroad in this State wherever they please. That is the doctrine; but does it follow that a

community that may be two hundred miles away from a seaport, and may have another road twenty miles and another one running right through it, are not to get together and raise just as much money as will do to build the twenty miles so as to connect with the rival road, but are forever to remain under the control of the one large company that now exists in their community?

For these reasons I should object to this section. There are a great many criticisms that might be made upon all of this article. When I say that I want any man or any woman or anybody to build a railroad, I do not know exactly what is meant by the first section which we have adopted, which may be read in this way: "That any individual organized for the purpose." I do not know what kind of individual organization the committee mean to be necessary in order to enable a man to build a railroad, because, as a general thing, the individual organization refers somewhat to his physical structure. From some experience that I have had in the management of railroads, I should say he ought to be a man of phlegmatic temperament, for I do not think a man of sanguine or nervous disposition ought to take hold of them; he will be devilled to death if he does. With that criticism I dismiss that.

I desire now to say something on this subject, which I trust gentlemen will believe me sincere in, and that is this: Every man here is presumed to have the good of the whole State at heart. I believe that every large company now existing will make as much or more money by having the whole State prosperous, as it would by having an entire monopoly. The danger of having an entire monopoly of anything is, that you create and foster a spirit of opposition, which, in the end will destroy all corporations. My friend from Schuylkill, (Mr. Bartholomew,) the other day referred to the evil of breeding up, as he called it, or raising up a railroad aristocracy, which he compared with the French Marquis, and the English peer. This word "aristocracy" is certainly a relative term. I suppose in the South Sea Islands, the man who has twenty colors of paint on him and one large ring in his nose is a much greater aristocrat than the one who has only one kind of paint and no ring in his nose at all.

I remember that some years ago, before I was so tied down by this aristocratic feeling, that I could enjoy myself occasionally. I used to go into the wilds of Pennsylvania to fish for trout, and among our party was a gentleman who excited a great deal of opposition on the part of an old Scotchman who was there. When I asked the Scotchman his reason, he told me very candidly that he thought this gentleman was a great aristocrat, and he said the reason was because he had brought his own towels with him, and in his opinion, any man who traveled about the country with his own towels, was a born aristocrat. [Laughter.] As I had taken the precaution to take my own tooth-brush with me, I was very careful not to let it be known, for fear the Scotchman should think I was a swell of the first magnitude. [Laughter.] I am sorry my friend from Schuylkill is not here, for I think he is somewhat like the old Scotchman, and really, I do not think we are in any great danger of being overridden by this great aristocracy of which he complains.

With these remarks, I have done.

Mr. CAMPBELL. I merely wish to say, with reference to the amendment to the amendment now pending, that had it not been offered by the gentleman from Fayette (Mr. Kaine) I should have offered it myself. I did offer a similar amendment in committee, and endeavored to have it adopted, because I objected to placing in the hands of the Legislature the consideration of every proposed lease of a railroad, and giving us up again to all the evils of special legislation.

I merely wish now to set myself right before the committee of the whole on this subject, as I did not bring in a minority report, but merely intended, when the subject came before the committee, to express my views wherever I dissented from any of the sections reported. I shall, therefore, in this instance, vote willingly for the amendment to the amendment.

Mr. LILLY. I should like to hear it read.

The CLERK. The amendment to the amendment is, to strike out all after the word "stockholders," in the seventh line of the fifth section.

The CHAIRMAN. The question is on the amendment to the amendment.

The amendment to the amendment was agreed to, there being, on a division: Ayes, fifty-nine; noes, six.

The CHAIRMAN. The question now is on the amendment as amended.

The amendment as amended was agreed to.

Mr. LILLY. I think the committee have done a good work in striking out what they have done, and I hope they will now continue right on and strike out the residue of the section.

Mr. J. N. PURVIANCE. I move to amend the section as amended, by striking out, in the sixth and seventh lines, the words, "a majority of two-thirds in value of its stockholders," and inserting in lieu thereof, "a majority in value and number of its stockholders,"

The amendment was rejected.

Mr. BAER. I move to amend, by striking out the whole section and inserting in lieu thereof the following:

"No railroad or canal corporation, nor the lessees or purchasers thereof, shall consolidate, in stock, property or franchises, with, nor lease, purchase or in any way control any other railroad or canal corporation owning or having a parallel or competing line, and in no case shall any railroad or canal corporation consolidate with, or lease, any other railroad or canal without the consent of a majority of the stockholders of each corporation first had.

Mr. COCHRAN. I merely wish to say, with regard to that amendment, that the first part of it is covered fully by the fourth section, which has been already adopted, and it is therefore unnecessary. The second part of the amendment, as I heard it read, modifies the provisions of this section by making the consolidation, the purchase and the leasing depend upon the majority of the stockholders of both companies. Therefore, if the amendment is adopted, it is simply repeating what has been already done by the committee, and that part of it is entirely unnecessary. The other point raised is fairly raised, and it is this simple question: Whether or not the consolidation and the purchase of one railroad by another shall be permitted, or whether it shall be prohibited entirely, or whether it shall be allowed under the condition of the amendment offered by the gentleman from Somerset.

Now, sir, with regard to the amendment offered by the gentleman from Somerset, it is a pefectly fair thing for this committee to determine whether they will adopt that or the section as originally proposed. For my own part, although I stand here apparently unsupported in that proposition, so far as the debate has gone, yet I am not satisfied by the arguments which I have heard this morning, of the wrong or impropriety of preventing the consolidation of one railroad with another, or of preventing the purchase by one railroad of another.

It is a very large question, and probably one which I am not competent in the opinion of gentlemen here either to understand or to discuss, but I have an opinion upon it, and that opinion I will endeavor to declare; and if it meets the views of the committee, they will act in accordance with it; if not, the majority will take the other view, of course.

Now, with regard to the consolidation of railroads one with another, it involves a great question of public policy. It has been said that there was no complaint here on this subject. I believe that what the gentleman from Philadelphia, behind me, stated on Friday was true, that there is no subject pending before this Convention which enlists so fully the interest of the people as this very subject which is now before us. I have heard more said about it than I have heard on any other question before the committee, and the gentleman from Montgomery (Mr. Boyd) was in error when he said there were no petitions presented on the question to this Convention. Such petitions are lying on your table now.

The argument on the other side of this question is hard upon two positions. The first is, that we are so completely tied hand and foot, and in the power of two or three corporations in this State, that we cannot escape from them; and the second is, that in order to prevent the bad results which flow from them, we must necessarily consent to allow this system to go on and increase, and magnify from time to time.

Well, sir, that leaves the Commonwealth of Pennsylvania in a very bad position, for if I understand the argument of some gentlemen here, they admit that if this state of things did not now exist, if we had a *tabula rasa*, and were now to begin to write on, that the law which we intended to apply to these corporations, it would be proper and right that all the restrictions which are proposed here should be imposed, and those gentlemen would vote for this report from A to izzard.

Mr. Chairman, it is unquestionably true, that the power of this Convention is controlled and limited by the Constitution of the United States, and the law which has been established under that provision; and what is left for this Convention to do is to try, if it be possible by any means whatever, to make a strenuous effort to restrict

the railroad system, which is here so much discussed, without imparing the provisions of that Constitution.

Mr. HUNSICKER. If the gentleman from York gives way, I move that the committee rise, report progress and ask leave to sit again.

Mr. COCHRAN. Very well.

The motion was agreed to, and the President having resumed the chair, the chairman (Mr. Broomall) reported that the committee of the whole had had under consideration the report of the Committee on Railroads and Canals, and had directed him to report progress and ask leave to sit again.

The PRESIDENT. Shall leave be granted?

Mr. WOODWARD. Will the Chair allow me to make one single observation before the vote is taken on that question? It seems to me from the course of debate we have entered upon on this report, that it ought to be referred back to the Committee on Railroads and Canals, and if the House will refuse the committee of the whole leave to sit again, I will then move that this report be referred back to the Committee on Railroads and Canals.

The PRESIDENT. The question is: Shall the committee of the whole have leave to sit again?

Leave was granted, there being on a division, ayes, forty-nine; noes, fourteen.

The PRESIDENT. At what time shall the committee have leave to sit again? ["This afternoon."] No other time being named, the committee will have leave to sit this afternoon.

Mr. DARLINGTON. I move that the Convention now take a recess until three o'clock.

The motion was agreed to; and at one o'clock and one minute P. M., the Convention took a recess until three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

RAILROADS AND CANALS.

Mr. BAER. Mr. President: I beg leave at this time to offer a minority report from the Committee on Railroads and Canals.

The PRESIDENT. The Chair will state that this minority report will be printed in Journal form; but if the gentleman desires its reading, it will be read.

Mr. BAER. I desire its reading.

The PRESIDENT. The report will be read.

The CLERK read as follows:

"The undersigned, a member of the Committee on Railroads and Canals, unable to approve of sections six, seven, eight, nine, ten, thirteen, fourteen, fifteen, eighteen and nineteen, as reported by the committee, respectfully submits the following in lieu thereof:

"SECTION 6. No railroad or canal corporation shall directly or indirectly hold, guarantee or endorse the stock, bonds or other indebtedness of any railroad or canal company, without the consent of a majority in value of its stockholders first had.

"SECTION 7. No company incorporated for the purpose of doing business as a common carrier shall directly or indirectly engage in any other business than that of a common carrier, or hold or require lands, leasehold or freehold, directly or indirectly, except such as shall be necessary for carrying on its business as a transporter or carrier. But this section shall not prevent such company from manufacturing articles to be used by said company, or from mining coal to be used upon its road or in its shops, nor from holding mineral lands for such purpose.

"SECTION 8. Rates of fare and freight of the same class and rates of toll shall be the same to all, and no greater charge shall ever be made for a shorter distance than is made at the same time for a longer distance, and no greater charge for a short distance upon any part of the road than is made for a like distance upon any other part of its road, nor shall drawbacks be allowed.

"SECTION 9. All regulations of railroad and canal corporations, having the effect of hindering or discriminating against individuals, partnerships, or corporations, in the transportation of property on such railroad or canal shall be void.

"Sections ten, thirteen, fourteen, fifteen and eighteen I would dispense with altogether, and section nineteen I would omit here, believing that a section likely to be reported by the Committee on Corporations will fully cover all that is contemplated and apply it to all corporations.

"I concur substantially with the committee on sections eleven, twelve, sixteen and seventeen.

Respectfully submitted.

W. J. BAER."

The report was ordered to lie on the table.

Mr. DARLINGTON. I move that the House resolve itself into committee of

the whole on the article reported by the Committee on Railroads and Canals.

The motion was agreed to, and the Convention resolved itself into committee of whole, Mr. Broomall in the Chair.

The CHAIRMAN. The committee of the whole resumes the consideration of the article on railroads and canals, the question being on the amendment of the gentleman from Somerset, (Mr. Baer,) to strike out the fifth section and insert a substitute therefore. Is the committee ready for the question?

Mr. T. H. B. PATTERSON. I ask that it be read.

The CLERK read the amendment.

The CHAIRMAN. On this question the gentleman from York is entitled to the floor.

Mr. COCHRAN. Mr. Chairman: If it be true, as stated this morning, that the Commonwealth of Pennsylvania is so completely powerless that it cannot relieve itself from the burden which many gentlemen admit to be imposed upon it, then indeed we are in a very helpless condition. I acknowledge candidly that the position is a difficult one; it is surrounded by many circumstances which are calculated to embarrass our action; but the very fact of the existing difficulty is an argument why gentlemen should turn their attention to a remedy for the admitted evil, and not simply denounce the attempt which is made on the part of others to apply a remedy.

Mr. Chairman, we have to approach a point of this kind carefully and prudently. The trouble is to devise a remedy. Now, sir, it has been more than intimated here to-day—and I do not pretend to say whether the intimation was just or unjust—that the committee who have attempted to do this work were wholly unfit in the first place to do the work which was assigned to them, and in the second place that they have wholly failed to accomplish it. It may be so; but whether it be so or not, I for one, standing in my place here, contend that there has been an honest effort made to reach this matter, and I believe that the passage of this section as it stands would accomplish it.

Mr. Chairman, I know something, not as much, probably, as some other gentlemen on this floor, about the restrictions which are imposed upon our action by the Constitution of the United States; and so far as they go, I recognize them fully as binding upon us. But, sir, I do not recognize the propriety of our, therefore, folding our hands and saying to the people of this Commonwealth: "We, your representatives here, stand bound hand and foot, and are not able to relieve you in the slightest degree from the troubles and wrongs to which you are subjected."

I ask gentlemen to consider the matter in a candid spirit.

What I say, I mean earnestly and in sincerity, for I do not say anything here for the mere sake of victory; I should be unfit to occupy the position which has been assigned me, or to hold a seat on this floor, if I were to allow any feeling to induce me to go to such an extent as for the mere sake of gaining a point, to ask this committee of the whole to adopt any measure. This rises, by the admission of all gentlemen here who have spoken, beyond any simply private or personal consideration. It is a question of great public policy. It is a question which involves the great industrial interests of the State, its commercial interests, its trade, its traffic, the value of its property, and the exchange of its commodities. There are larger interests, I admit, than those, but these are very large interests, and we ought to consider them in a large and liberal spirit.

Is it denied that this section, as it stands here, if passed, would be efficient? I have not heard it so denied by any gentleman who has discussed this question. I have never heard it denied that it was in our power to pass a section of this kind. The gentleman from Dauphin (Mr. MacVeagh) characterized this section as destructive, and his onslaught upon it seems to have encouraged many other gentlemen to follow up the attack. Sir, there is nothing destructive in the section. It invades no rights. It takes away nothing even that has been granted. It simply says that certain things shall not be done hereafter. Now, anything to be destructive must overturn or destroy something that exists. That is not the effect of this section, as I apprehend it. It tramples upon no vested rights. It is simply a question of the future policy of this Commonwealth.

But gentlemen say we are bound hand and foot, and must go in this direction, and allow other corporations to be combined, by way of competition, with existing ones, and that that is the remedy to be applied to the existing state of affairs, if we have any. They simply propose what may be described in the term "competition."

That is all they have to offer, all they have to present. They say it is true that we have built up great and powerful corporations in this Commonwealth that overshadow it and bestride it like a colossus; we have invested them with such powers that we have no control over them; they are our masters, no longer the servants of the State or the people; they are the masters of the Commonwealth; they hold this Commonwealth within their grasp, and you cannot unclench it. Why, sir, then what can you do? Build up other great corporations in this Commonwealth, build up other great and powerful organizations which can control just as much as these corporations which already exist, and sell the people out over again to them! That is the remedy! I believe in the old adage that competition is the life of trade. If you will set two men, or a dozen men, or fifty men alongside of each other, and put them in competition with each other, the community around them is benefited by their competition. But where you build up great artificial bodies, and give them large special privileges, and endow them with extraordinary powers, can you expect them to compete, with their vast accumulated capital, one with the other, and tear each other to pieces for the sake of the people? Will they do it? No, sir, they will do nothing of the kind. It is the instinct of capital to combine and confederate and not to compete. Capital draws together and works together for the sake of profits. You may build railroads side by side, and run them mile by mile alongside of each other, and before they are in operation many years you will find that instead of competing they will combine. Their instincts, their interests, all lead in that direction.

The State of Illinois tried the experiment. In more than one instance they built railroads, with the idea that those railroads would compete with each other, and that by means of the competition they would keep down tolls and charges. What was the result? They had not been in operation any length of time, according to the information I have from the public journals, before, instead of competing, they combined. They put up their prices and their charges, and the whole Commonwealth of Illinois is to-day convulsed by the efforts of the agricultural and other classes of that State to relieve themselves from this incubus. Now you want to introduce the same situation of affairs in Pennsylvania. That will be the upshot of it as sure as it is tried, if you depend alone upon this principle of competition between moneyed corporations to support and protect the interests of the people.

What is the *animus* of the opposition of the gentleman from Somerset, (Mr. Baer,) and the gentleman from Centre, (Mr. M'Allister,) to this proposition? It is a fair and an honorable sentiment that animates them. It is the same thing that was thrown at me by the gentleman from Philadelphia, (Mr. Gowen,) the local interests of a particular county, set up against the great, broad interests of this Commonwealth. I would be as reluctant as any man in this State to interfere with the local development of the interests of any part of the Commonwealth, and it was in view of representations made by some of the gentlemen I have mentioned, that I have tried to modify this very obnoxious and objectionable section, which has brought down upon it such a sentence of condemnation, as far as I could, to protect and give some show to the interests of these gentlemen. The modification which I proposed was the modification in the section, that instead of prohibiting leasing absolutely, we would allow leasing for terms of years, so that there might be an inducement held out, an opportunity afforded for these people to go on and improve and develop their special and particular interests, and then, when that time arrived, if it was necessary in the view of the public representative, which is the Legislature, in view of the stockholders, that that same relation should continue to subsist. But that has conciliated nobody it seems. I have been so unfortunate in regard to this whole matter, that I have never been able to do anything that would gratify this demand, unless it was an utter and absolute surrender of the whole proposition, an utter and absolute yielding of what I apprehend—it may be wrongly—to be the interests of this Commonwealth, to certain particular and local interests.

Mr. Chairman, it was said long ago, by Pope, I believe, "All partial evils universal good." There are times and occasions in which it is impossible for any man to devise measures which will meet every possible interest which can be contrived, or which presents itself in his way. Something must yield somewhere in these great enterprises, and which is to yield—the large, broad, wide interest of a Commonwealth, or the interest of one county of that Commonwealth, or the interest of

a railroad ten or fifteen miles long in the Commonwealth? Where are you going to put the point of surrender?

Now, Mr. Chairman, this section is opposed, because it prevents the adoption of the policy indicated under the second proposition, which is that the only remedy, if any exists, is to go on and establish other corporations, who shall compete and fight this battle out with the powerful corporations already constituted.

The CHAIRMAN. The gentleman's time has expired.

Mr. MACVEAGH. I ask unanimous consent that the gentleman have leave to proceed.

The CHAIRMAN. The Chair hears no objection, and the gentleman will proceed.

Mr. COCHRAN. I am very sorry that I should have trespassed in this way, but there is a certain responsibility connected with this matter, and I want to meet it fairly and squarely.

Now, sir, this section which is proposed does not defeat those objects as I apprehend, although, of course, it curbs, to some extent, their operation. But it is possible that gentlemen in this Convention are willing to do nothing to counteract those extraordinary acts on our statute book, as they were well stated to be by the gentleman from Columbia (Mr. Buckalew) on Friday last? Extraordinary! Why, sir, there is no limitation to the power of the officers of railroad companies in this State to lease out for any term of years, in effect amounting to a perpetuity, the property of those companies. There is no submission, as I understand the acts of the Assembly, even to a vote of the stockholders; and therefore, as I said this morning, the inquiry of the gentleman from Columbia on Friday afternoon was most pertinent, whether I proposed that after the existing leases should terminate, they should go on and lease their roads for twenty-five years longer without even an appeal to the stockholders. Why, sir, I admit that that appeal to the stockholders is one of the feeblest protections that you give, when an act of this kind is to be accomplished, and therefore I desire the co-operation of the Legislature. The gentleman from Philadelphia (Mr. Gowen) indicated the method of obtaining the requisite control of stock very clearly in some of his remarks this morning. It is only necessary for the corporation that has the design to accomplish to come and buy up enough of the stock to enable them to carry it out; not enough of the stockholders, because the committee repudiated the idea that a stockholder amounts to anything by their vote this morning, but it is only necessary for them to buy up enough of the stock to enable them to control the operation, even if it be but a single share more than a majority.

Mr. M'ALLISTER. Will the gentleman allow me to ask him a question?

Mr. COCHRAN. Certainly, sir; with pleasure.

Mr. M'ALLISTER. I would ask the gentleman whether he means to prohibit all consolidation on the road to the Pacific, under the acts of Ohio, Indiana, Illinois and all the intervening States; whether he means to include that in the future or in the present?

Mr. COCHRAN. Mr. Chairman: That is certainly a very wide view that the gentleman from Centre has taken with regard to this matter. Do I mean to preclude all consolidation between this and the Pacific ocean? I say this: That if I had my way I would preclude all consolidations, all purchasing, out and out; but I would let these lines connect by lease if there should be sufficient inducement for that; and, Mr. Chairman, if the inducement is strong enough the lease will be made; there is no trouble on that score. I may seem to be very narrow and contracted in my notions; but I remember that we are not representing the shores of the Pacific nor the Atlantic. We stand here representing the Commonwealth of Pennsylvania, and we want to know what is most beneficial for the interests of the people of this Commonwealth, for whom we are acting on this floor. Now, is it for the interests of the people of this Commonwealth, that this whole State, which is already represented by gentlemen here to be in the grasp of two or three great corporations, shall simply be put into the grasp of two or three more great corporations, with a power among themselves to combine and confederate until every individual interest and every individual's chance to benefit his own condition is held at the mercy of this great combined, confederated corporation?

I admit that material interests are interests of great value. I do not propose to depreciate them, nor do I have any hostility to railroad corporations as such. It has been represented here that there is a feeling in this committee among certain parties, that it is a sin for a man to be rich,

or for a man to hold property. If anybody has any feeling of that kind, I am not the man, whoever else may be.

I have probably gone as far in the expression of my views on this particular point as I am justified in doing. I remember that I stand here in the presence of a large number of gentlemen who are at least my peers, many of them my superiors, on this or any other question that comes before this body, and they have had an opportunity to form their judgments on this subject. I have presented my views simply as the views of an individual, and as the views, too, I may add, of a majority of the committee which I represent, for certainly this section did receive the consent of a majority of that committee, or it would not have been reported.

I suppose, Mr. Chairman, and I say this in regard to a suggestion which has been made here, that I have been stultifying myself all through this matter by inquiring what harm will the thing do. I always supposed that it was a wise forecast which looked not only behind but before. Gentlemen say, what harm has been realized? I say that it is sufficient for us to know that this thing is capable of doing harm in the future.

Now, sir, that is the point here. When I have said, what harm will a proposition of this kind do, I have attempted at least to show that, to some extent, it would be beneficial; that it was desireble in establishing a rule which is to prevail hereafter; we should adopt such a measure as we believe will be judicious.

I am told that in my county we have large mineral wealth. I know it. I am told that in my county what we want is an outlet. We have one railroad outlet; but another gentleman says we ought to have more outlets. I should have no objection that the Reading railroad or any other railroad should come upon the territory of our county if it came directly in competition with a railroad that was doing us any harm; but the trouble with me in all these questions is that which I have already stated, that by the time you get those two corporations side by side, in our county, instead of fighting their battle out, if they have a battle, you will find them joining, shaking hands, and combining their interests together. I do not blame them for it. As I said before, it is the instinct of capital and of corporations to do that very thing.

Mr. Chairman, there are many gentlemen who admit on the floor of this body, that it is all right to prevent the consolidation of what they call competing lines. I have said, and I repeat, that in that doctrine of competition, I believe there is nothing substantial, nothing permanent. Take this illustration, and I allude to it in no invidious sense; it is no more to be deprecated or denounced than any other proceeding of the same kind—take the case of what is pending in my own county just now; and what is it? Here is the Pennsylvania railroad company extending long lines, and, according to the glowing account of the gentleman from Centre, (Mr. M'Allister,) reaching out its arms to the Pacific coast, and that company is now negotiating, or there is negotiation pending with the company to lease, and to lease permanently, as I apprehend the matter, the only road that leads from Harrisburg to Baltimore. I apprehend you could not call the Northern Central railroad a competing line with the Pennsylvania railroad; and yet, by a lease of ninety-nine years, there is a substantial consolidation proposed to be effected. I have no doubt that if that measure meets the approbation of the two large contracting parties, it will be consummated before any provision that we can adopt will reach it, and therefore, when I use it as an illustration, I think it will be conceded that I do not mean it in any invidious sense, but I use it as an illustration of what this section would prevent, if it is passed, in the future.

The very same interest, I may say, proposes to take the Cumberland Valley railroad into its charge. The Cumberland Valley railroad is not a competing line with the Pennsylvania railroad in any sense, as I understand it, and yet, if you reject this section, you permit that combination, and you place all that part of Pennsylvania south-west of the Susquehanna, in that region, under the control of one single, large railroad corporation.

Mr. CUYLER. They have owned the majority of the stock for years.

Mr. COCHRAN. I know they have had the nominal control by owning the stock of both roads. I wish the gentleman from Philadelphia to understand that I am not using this as an illustration in any invidious sense, against that company, or with a desire to deprive that company of any of its powers or privileges, but simply to show what can be done in the absence of

a provision of the kind contained in this section.

Mr. CUYLER. Will the gentleman pardon a single inquiry at this point, which will make his argument intelligible.

Mr. COCHRAN. Certainly.

Mr. CUYLER. Will he be kind enough to point out what the mischief would be that would result from such a consolidation as he speaks of?

Mr. COCHRAN. The mischief substantially is, that it is investing in one large corporation of this State such tremendous power over the whole Commonwealth, over the interests of the whole people of the Commonwealth. I say it is not the policy of this State, it is not for the lasting benefit and advantage of the people of this State, that their individual rights and interests should be alienated from them and placed beyond the power of recall. That is what I contend for in this matter; and let me say to the gentleman, and I say it with perfect sincerity and without warmth, the complaint of the people is that this policy is overshadowing the Commonwealth with a great power that they cannot resist in business, in politics, or in anything else. That is the complaint, and I feel, whether gentlemen do so or not, that so far as I can, I should put some restriction and restraint upon the development of that enormous power, and what can I do? I have tried to do it in this section by prohibiting the combination, the coalition, purchasing and the leasing of roads for terms of more than twenty-five years at a time. That is my effort. It may be a weak effort. It may not reach far, but it goes some distance, and if adopted it will show that there is in this Convention some disposition to meet the popular demand on that question.

Mr. Chairman, I am afraid that I am tresspassing entirely too much on the attention of this committee, and I feel that I ought not to do it. I think a very important part of this section has already been stricken out. That may be the fate of the whole thing for aught I know. I do not know how that may be. I regreted the striking out of that portion which met such a fate.

But let me say to gentlemen, who I hope will keep their judgments at least cool and collected until the voting time comes, that if they oppose this peremptory restriction on the consolidation and purchasing of railroads, they can, under the amendment which is now pending, slightly amended and a part of it stricken out, make that subject to the condition at least, that like a lease the purchase or consolidation shall not be effected without at least the vote of a majority of the stockholders of the respective companies. If they cannot go my length, if I am wrong on this question, if, as a friend suggested to me jokingly one day, I am rabid on this whole subject, let them at least do the other; let them do something; but do not let this matter be entirely passed out of view and nothing done to promote the interests of the people.

Mr. HUNSICKER. Allow me to ask the gentleman a question.

Mr. COCHRAN. I am done, but I will reply to any question.

Mr. HUNSICKER. I wish to know if that is not a part of the general railroad law to-day, that they can be merged by a vote of the majority of the stockholders?

Mr. COCHRAN. I do not know that I apprehend the question.

Mr. HUNSICKER. Is not that the law now, that they may consolidate with the consent of a majority of the stockholders of both companies?

Mr. COCHRAN. I do not know.

Mr. HUNSICKER. It is so.

Mr. COCHRAN. It may be that that is the law. But admitting it, I want to make a permanent provision, something that cannot be repealed by any of those appliances we have heard so much denounced by the gentleman from Centre (Mr. M'Allister) and the gentleman from Philadelphia (Mr. Gowen) this morning. Let us put it in the Constitution where no Legislature can interfere with it, and then it stands as the law, and the stockholders have at least some protection against the action of their officers.

Mr. BAER. Mr. Chairman: I shall occupy the time of the committee but a moment in replying to the speech of the gentleman from York. I admit that I have a special interest in the locality from which I come, and I know that that community is greatly interested in the result of the action of this Convention on this article on railroads; but I do not admit that while I am representing a particular community, because I live there, I am prejudiced in favor of that community as against the whole State. On the contrary, I believe that the people of the community from which I come, on questions of business think about as the people do everywhere throughout the State; and when I find almost a unanimous expression there against this theory of prevent-

ing a main line consolidating with a mere lateral branch, I believe that that same opinion prevails everywhere. Indeed, I can go so far as to say that in many sections of the State I have heard the best business men denouncing this effort to prevent this consolidation. I know that the counties of Fayette, Westmoreland, Somerset, Bedford, and all that portion of the State, will be a unit on a question of that kind. But the interest of those people is the interest of the people generally throughout the State; and it becomes delegates here from the city of Philadelphia, who may think they have no special interest in the development of the State, to consider this question well.

I assert that, although they may not be the owners of land in these remote districts, the people here have a great interest that the development of this State shall continue in such a way and manner that this city shall be benefited by it and that the people of other portions of the State shall not be driven to other ports. If you incorporate this provision, you make it impossible for the people of the southwestern portion of the State to connect with the great artery that runs to this city, and they will be compelled to operate their lines and connect with a foreign corporation, the Baltimore and Ohio road, that runs its branch throughout the southern portion of the State, where we can expect no help and by which we shall be cut off from communication with this city.

But for fear that the breeze raised here shall be fanned into a hurricane that nobody can control, (and my friend from York has been fanning it pretty effectually,) I think it time that some of us who differ from him should draw the brakes. I, therefore, wish to call the attention of the committee to the fact that while the extreme argument that has been adduced here would induce them, perhaps, to vote down not only the amendment which I propose, but the entire section, that it is going far beyond what I wish to see done, or what the people wish to see done. You will observe that, by the amendment which I propose, this consolidation, or this purchase, or this lease is to take place only by the consent of a majority of the stock of all the roads interested.

If you vote down this amendment, I very much fear the whole section will go down, and you will not have that restriction that will compel the consent of the stockholders. I hope, for that reason, that the amendment will prevail, and will be substituted in place of the section. It is true that the amendment covers both sections. Whlie it does not materially change the fourth section, it has this merit, I submit: It puts the two sections in a much shorter space of language, embraces both sections and makes it cover all the ground. If it is adopted, we can easily re-consider section four, which is very long, and which, if this amendment be adopted, will not add anything to the instrument. I hope, therefore, that the amendment will prevail.

Mr. HOWARD. Mr. Chairman: I heard, and I suppose I understood the amendmend offered by the delegate from Somerset. It covers, in part, section four, that has already been adopted, and it covers, in part, section five, a portion of which has been rejected by the committee. So far as the section offered as a substitue, by the delegate from Somerset, relates to section four, it is not nearly so good as the one adopted by the committee. That section four has a very important provision in the last two lines, and that is a provison that the question whether a railroad is a parallel or a competing line shall always be tried by a jury according to the course of the common law. Undoubtedly the people of this Commonwealth are very deeply interested in preserving an antagonism between what are parallel or competing lines of railway, that they may have the benefit of competition; and that they may have this benefit, we provide that whenever the question shall arise whether they are such parallel or competing lines, that question of fact shall be tried by a jury. That is very important, and if the section is worth anything, that provision should be retained. In other words, I think that section four is a good one in all its parts. I do not believe that the delegate from Somerset can mend it or make it any better.

I was very sorry this morning when the delegate from Somerset, who has also been a member of the Railroad Committee, thought proper in his speech to say that a majority of the Railroad Committee, that committee with whom he has served from the commencement, were opposed to railroads. Now, sir, I venture to say that there is not a man in that majority opposed to railroads. I do not know any one whatever who is opposed to railroads. I am as strongly in favor of railroads as

any man in this Commonwealth. I will yield to no man in that respect; but, sir, I believe that railroads should be brought more under the surveillance of the law. I believe that the highways of the Commonwealth, whether they be turnpike roads, township roads or railroads, are all highways, are all essential to the sovereignty of the people—absolutely essential. Many writers have asserted that the roads of a country are the evidence of its civilization. Mr. Chairman, any people that will surrender their highways entirely to private control are, in a measure, committing political suicide.

Another gentleman refers us to the Dartmouth college case, as though that decision had, in some way, wound up the whole thing, and there was nothing more to be said on the subject, and we were simply derided out of court, and the people were nowhere. Mr. Chairman, Dartmouth college was, in no respect, like a railroad. That was a case of a college founded by private funds, and maintained by private funds, and it was for a private purpose. The gentleman from Philadelphia says I am mistaken. No, sir, I am not. I have read the case from beginning to end at least six times over, and I am not mistaken.

Mr. GOWEN. I did not say the gentleman was mistaken.

Mr. HOWARD. I thought you said I was mistaken. I know what I am talking about, though. I know that that is a decision in regard to a strictly private corporation; private, if you please, all around. A railroad is a very different thing. It was put in the original charters that they were public highways, and they had to do that in order to exercise the right of eminent domain; and if the courts have leaned a little over toward these corporations, we are going to make them lean back; and the time is not far in the distance, either, when they will be compelled to come up to popular opinion and declare that these are essentially public corporations, and under public control as much as a city charter. They will be compelled to do it to protect the public? Why so? The old fashioned highways for the great purposes of the nation are passing away, for military and for postal service, and so forth. The railway is the modern institution. We cannot afford to say that these are private corporations so as to surrender these great highways wholly to the management of any private parties. It is perfectly true we ought not to interfere with their rights so far as to prevent them from realizing a fair interest on the capital invested; but then the public rights must be preserved, I say, from necessity, just as much as the taxing power, just as much as the power to make war or conclude peace, just as much as the power to coin money; just so essential is it that any people shall control all their public highways. And, sir, the question is yet to be decided as the exact status of railroad corporations so far as the public are concerned, and how far the law-making power that represents that public has the control of them.

That question is not yet decided fully, and thoroughly, and squarely. I have no doubt that it will be made a public question. I have no doubt that it will enter into politics. I have no doubt that members of Congress will be elected upon that question. I have no doubt that our judges will feel this popular opinion, and that our railways, these great highways, (for they have come to be highways of the people, just as much as any other highways,) must be reserved to the people; they cannot surrender the management of them to private parties so far that whenever they imfringe upon the public interests the law-making power cannot come in and say, "gentlemen, thus far and no farther." The public must, in the nature of things, have the right to regulate, they must have the right to control, wherever they find that they are going against the public interest. My friend from Philadelphia, (Mr. Gowen,) to whom I always listen with the greatest pleasure, although a railroad man, seems to be very fair. I like his arguments; but yet he loves power; and for that I cannot blame him. That seems to be an instinct of human nature.

Mr. GOWEN. Speak for yourself, sir.

Mr. HOWARD. I am speaking of what you acknowledged yourself, in your speech to-day. I will speak for you and myself too, if I choose, whenever I am replying to your arguments.

The CHAIRMAN. Gentlemen will address the chair.

Mr. HOWARD. Yes, sir. He thought it would be a public benefit if all the railroads were consolidated; but for some reason, which was not given in detail, he was opposed to it as a matter of policy. Why, Mr. Chairman, we understand perfectly well that the most despotic government in the world is the simplest government. Instead of going to the trouble of

trying a man and going through the tedious form of law, it is an easy matter to say, "take him away; take off his head." If you could always have an honest emperor and a perfectly intelligent one, a great many men think that would be the best kind of government—a strong executive power concentrated in the hands of an individual, if you could always be sure that the individual was an able man and a perfecty honest man; in other words, perfectly competent to discharge the functions imposed upon him in every respect. Some think that might, perhaps, be the best. We know that a republican government is the most cumbrous perhaps, more difficult to manage, perhaps more expensive in many respects; but it is founded for this reason: We have found that concentrated power is not safe to be entrusted in the hands of any man, or set of men, no matter whether an emperor, or a king, or a great and mighty railroad corporation.

I am perfectly willing to concede them all that is right, all that is fair, and all that is just; and the reason why I was willing to support this section five was because there was a provision that the public voice might be heard whenever the question of consolidating, or of selling, or of leasing these roads was raised. They go to the law-making power of the Commonwealth that represents the people; and they ask for a charter—a charter to do what? Why, to build a road that is to be a public highway; a road to serve the public. It is true that a part of the arrangement is that they may make a reasonable profit, if they can, out of the enterprise; but at the same time it is to serve the public; and when you look at the matter truly they are really but the agents of the public, so created by law, for the purpose of discharging a public duty; and so long as they discharge that public duty in accordance with the purpose for which they were created they are to be protected. We must keep in mind that the great purpose was to serve the public; it was the inducement to the charter, the reason why the law was enacted that gave them a corporate existence; and whenever they depart from that purpose, who is to determine that question? Is it the individuals composing the private corporation, or is it the law-making power of the State? Why, sir, from the very necessity of the case, the law-making power must control to a certain extent this class of corporations, and control them differently from what it would control Dartmouth college, an institution that, as I stated before, was a private concern from beginning to end, and supported by private funds—a very different thing from a railroad.

Some gentleman has spoken about the beneficial effects of these roads. I concede all that. I do not believe that the great national debt which was saddled upon our country by the rebellion could have been met if it had not been for the vast improvements and the development made in this country by railroads. Many men at the close of the war said we never could carry this immense load; but they were men who did not look at the question in the light of present facts. Why, sir, from statistics I find that the railroads of the United States carried in value, of personal property, over twenty-one thousand millions of dollars in 1871—more personal property than would discharge the whole national debt in a year; and I have no doubt that three-fourths of that entire wealth had been developed by the railroads that have been constructed throughout this country; and for that reason I am in favor of these roads. I would give them every fair chance; but I am also in favor of the public, and I want them to have a fair chance too.

Now, in order to compete for outside freights, they say: "We must discriminate; we must carry for the people of other States cheaper than we do for the people of this." Why, sir, what is it that supports the Pennsylvania railroad? Out of their six millions and a half tons of freight, that they transported in 1871, there was not a million of that tonnage, all told, that came from States outside of Pennsylvania. This great Commonwealth has got more of the material for transportation upon railroads than nearly half the States in the Union. Of the six millions and a half of that tonnage, Pennsylvania furnished over five millions and a half. Of their four million six hundred and ninety-nine thousand passengers, how many do you suppose were furnished by the world outside of Pennsylvania? Why, they had the miserable showing of one hundred and eighty-six thousand. All the rest of those millions were Pennsylvanians, showing that the Commonwealth of Pennsylvania is the place where they get their freights, and the place where they get their passengers. The people of Pennsylvania are a great and mighty people, that I would like to see them have

their rights fairly protected, and I think that in the buying, in the leasing of railroads, the law-making power of this Commonwealth should have something to say as to whether it is going to be beneficial to the public or not.

Now, I understand that the committee of the whole have rejected the latter part of this section. I believe that that was one of the very best provisions that could have been provided by this Convention. There must be some power to represent the people in these matters. There must be, from the necessity of the case, if their interest is to be properly attended to. I do not know anything better that can be devised than that the Legislature should represent the people when they come to make this arrangement about buying and the leasing of railroads, whether they will be beneficial or not. We understand perfectly well that in the adoption of all general rules, there will be wide diversity of views, because differences of opinion have always existed. Many gentlemen thought when the Constitution of the United States was first proposed that it was totally ruinous to the entire country, honestly and earnestly thought so; and there is now in this country a large party who believe that the concentration of power in the federal government is a terrible thing. Yet, upon this floor, the same men can advocate the concentration of power as a nice thing, as a beautiful thing, when applied to the concentration of the carrying trade of this mighty people into the hands of one or two corporations.

Why, look at it! One-third of the entire personal property of the people of the United States, that is carried or transported, is absorbed in freights that are paid to the railroad companies of this country. Over these immense millions, in which the public are interested, carried upon railroads that are notoriously public highways, declared to be public highways in their charters in neary all of them, and without that declaration they could never have been chartered, the people have no voice or control. In this view of the case there is neither hardship nor injustice in saying that the law-making power of the Commonwealth should have something to say in the management and in the control of these great public highways. And if the time has not arrived, the time will arrive —and we cannot doubt it—when the government of the United States will be compelled to assume the control of the railroads, and direct them in the interest of the public. Already the conflict has arisen in regard to the postal service, and it is simply the beginning. Are the mails of the United States to be subjected entirely to the caprice of railroad managers? Are they to name whatever tolls or charges they choose, or will it not be said that, through Congress and the President, the law-making power of the United States, the people have the right to frame laws fixing reasonable rates, and saying to these people who control these railroad corporations, that they should carry for these rates; and if they do not then, under the same authority by which they take your land and mine, will put appraisers on their works and take the whole control in the interest of the public.

[Here the hammer fell.]

Mr. CUYLER. Mr. Chairman: I move that the gentleman's time be extended for an hour.

The CHAIRMAN. The motion is not in order. It will require unanimous consent.

Mr. HUNSICKER. I move that unanimous consent be given.

[Several members. "I object."]

Mr. HOWARD. I am very glad gentlemen object. They always object whenever a motion to extend my time is made.

Mr. DALLAS. I call for the reading of the amendment.

The CLERK read as follows:

"No railroad or canal corporation, nor the lessees or purchasers thereof, shall consolidate, in stock, property or franchises, with, nor lease, purchase, or in any way control any other railroad or canal corporation owning or having a parallel or competing line. And in no case shall any railroad or canal corporation consolidate with, or lease or purchase any other railroad or canal without the consent of a majority of the stockholders of each corporation first had."

Mr. HAY. Mr. Chairman: I call for a division of the amendment.

The CHAIRMAN. Will the gentleman indicate where he wants it divided?

Mr. HAY. The first division to end with the words, "parallel or competing line."

Mr. COCHRAN. Mr. Chairman: I was going to move, with the same object that I think the gentleman from Allegheny would attain by his division, to strike out the first part of the amendment, including the word "and," at the commencement of the second sentence. I hope the gentleman will include the word "and."

Mr. HAY. Let the first division include the word "and."

Mr. MACVEAGH. Mr. Chairman: It is very desirable that the committee should fully understand that sections four, five and six all embrace one subject, to prevent any future consolidation or union of railway management in Pennsylvania. Section four was passed without objection. If section five is voted down, I suppose some gentlemen who will now vote against it will perhaps make a motion to re-consider the vote on section four. Certainly section four would fall with it. As the section is now divided, if the first portion of this amendment is negatived it is virtually a negativing of section four of the report.

["No." "No." "No."]

I understand it so; and it is so in point of fact. It is expressing an adverse opinion upon the fourth section, because it is in the same language.

Mr. HAY. I do not so understand it.

Mr. LILLY. I was going to call the attention of the gentleman from Dauphin (Mr. MacVeagh) to the fact that the fifth section is different from the fourth. If he will read the fourth section, he will find that it refers to a very different subject from that included in the pending section, and prevents only the consolidation of competing lines.

The CHAIRMAN. The question is on the first division of the amendment.

Mr. MACVEAGH. Let it be read again.

The CLERK read as follows:

"No railroad or canal corporation, nor the lessees or purchasers thereof, shall consolidate, in stock, property or franchises, with, nor lease, purchase, or in any way control any other railroad or canal corporation owning or having a parallel or competing line; and."

Mr. MACVEAGH. That certainly is word for word with section four.

Mr. COCHRAN. We want to have that voted down, and then take the other.

The first division of the amendment was rejected.

The CHAIRMAN. The question is on the second division.

Mr. CAMPBELL. Let it be read.

The CLERK read as follows:

"In no case shall any railroad or canal corporation consolidate with, or lease or purchase any other railroad or canal without the consent of a majority of the stockholders of each corporation first had."

Mr. MACVEAGH. That is unnecessary.

Mr. T. H. B. PATTERSON. I wish to amend the second division of this amendment by inserting after the word "majority," the words, "of two-thirds."

The CHAIRMAN. A motion is made to amend the second division. The division will be read as it is proposed to amend it.

The CLERK read as follows:

"In no case shall any railroad or canal corporation consolidate with, or lease or purchase any other railroad or canal without the consent of a majority of two-thirds of the stockholders of each corporation first had."

Mr. GOWEN. Mr. Chairman: Permit me to call the attention of the gentleman from Somerset, (Mr. Baer,) who offered this amendment, as well as the gentleman from Allegheny, (Mr. T. H. B. Patterson,) who suggested the amendment to it, to the distinctions between stockholders and stock, because if you must have only a majority of stockholders to do a thing, you may secure that without having, in any sense, the sentiment of the company. If, for instance, a corporation has a capital of one hundred thousand dollars, and ninety-nine thousand dollars of shares in value are held by one person, then any large company who want to prevent that man using his property have only to buy up two other shares and they will have a majority of the stockholders.

The amendment to the second division was rejected.

Mr. COCHRAN. Mr. Chairman: I want to call the attention of gentlemen of this committee to one point. The question now is between the amendment of the gentleman from Somerset and the original section. If the amendment of the gentleman from Somerset prevails, the effect of it will be that by obtaining the consent of a majority of the stockholders a railway may buy, purchase, consolidate with or lease any other railroad. The section prohibits the purchasing or consolidating absolutely, and qualifies the leasing power. I just want to state the exact position of the question which has been argued.

Mr. WORRELL. Mr. Chairman: I move to amend the second division, by striking out the word "stockholders" and inserting the words, "value in stock."

Upon the question of agreeing to this amendment, a division was called for, which resulted, forty-two in the affirmative and thirty-one in the negative. So the amendment to the amendment was agreed to.

Mr. T. H. B. PATTERSON. Mr. Chairman: I want to ask the committee to think seriously of this matter of adopting a simple majority rule, and would suggest that in case they differ with the wording of the section as reported by the Committee on Railroads and Canals, it will be an easy matter to so transpose the two-thirds vote as to make it apply also to consolidation and purchasing as well as to leasing. I think the members of this committee should think well before they leave the question of consolidation and control and leasing to a simple majority vote of stockholders, and I wish they would look upon it carefully, because it will be easy to make the transposition after voting down this division.

Now, the only substantial objection that has been made against the policy announced by the Committee on Railroads and Canals is that suggested by the gentleman from Philadelphia, (Mr. Gowen,) and that was simply the danger of an opposition corporation buying up one-third of the stock in value of a road for the purpose of preventing the leasing of the road by some other corporation. Now, when it comes to the question of the danger of one large corporation buying up the stock of another road for the purpose of leasing the road or to prevent its being leased to another company, it seems to me that the danger is always in favor of getting the cousent of the majority of the stockholders to obtain control of the road, rather than putting a dead investment of one-third of the stock there, to hold the road inactive. And further than that, even if there be the danger alluded to by the gentleman from Philadelphia, delegates will please remember that if a rival road purchases the stock of another road for the purpose of holding that road within its corporate limits, it is holding the road within the corporate limits wich the Legislature and the people of Pennsylvania made for it when they created it. Therefore, if there is any danger here of great corporations buying up the stock for the purpose of manipulating smaller roads, the greater danger is of their buying up the majority of the stock, and thus securing control of the road for any purposes, rather than putting a dead investment of one-third of the stock of the corporation, simply to prevent other people from leasing the corporate privileges of this company. I submit to the delegates that the position of the gentleman from Philadelphia presents no real danger.

Mr. COCHRAN. Mr. Chairman: I call the gentleman's attention to the state of the question. As I understand it, the second branch of the amendment of the gentleman from Somerset has been adopted.

Mr. T. H. B. PATTERSON. No, sir. That is what we are discussing. We have not adopted the second branch. An amendment was adopted striking out "stockholders" and putting in "stock," and the question to which I am now speaking is to the question whether we shall adopt the mere bare majority rule or whether we shall adhere to the rule of two-thirds, suggested by the report of the Committee on Railroads and Canals in their section. The only substantial objection that has been made to the cautionary measure of a two-thirds majority of stockholders, after striking out the clause requiring any proposed leasing or consolidation to be submitted to the Legislature, is the objection made by the gentleman from Philadelphia in regard to an opposing combination, securing one-third of the stock of a company in order to hold that road inactive, and I say that there is no danger of a company locking up capital to any extent to prevent anothor company being leased by other corporations; and even if there were, the road so prevented from being leased would be retained within the corporate limits intended by the Legislature in its creation. The danger is rather in the buying up of the stock of other companies for the purpose of controlling them.

I submit that this question is one of grest interest to the people of Pennsylvania. I know it is in the great commercial centre from which I come, and I know that under the first section of the article which provides for connection, for forwarding and for a uniform management, that it is greatly to the interests of the people of Pennsylvania that there shall be some cautionary measure adopted in order to prevent controling corporations from getting control of all the chartered rights of this State. I submit, calmly, that the argument of the learned gentleman who has advocated the consolidation of all our corporate rights under the control of two or three great corporations, would apply just as truly and forcibly and logically to consolidate them all under the control of the one great corporation which he has denounced here this morning. I say that the rule which would make it for the health, welfare and well

being of the people of Pennsylvania to have their railroads all controlled by three corporations, when followed out to its logical conclusion, would make it still more healthy to have them all controlled by one.

The rule of government that makes the iron despotism of Augustus the best government the world ever saw applies with equal logical force to a system of commerce and of railroad communication, to all public highways that are uniform, and beautiful, and smooth, and powerful in their operations, and in their combinations are overshadowing and crushing to the individual. I say that the individual who enjoys the blessings of commerce, the blessings of liberty, the blessings of property at the hand of an overshadowing power that he cannot control, and at whose will and bidding he holds whatever is dearest to him, though a citizen of the State, which is the greatest Commonwealth of this country, is not a freeman in his rights of property; and I ask the delegates to pause and consider seriously before they vote these corporate rights to be controlled simply by a bare majority of value in stock. I speak seriously and not at all excitedly, because on this question I am calm, and on this question I have no interest. I am an enemy to no corporation, but I simply speak for the people of Pennsylvania in words of truth and soberness.

Mr. BAER. Will the gentleman permit me to ask him a question? Will he explain to us how a majority of two-thirds can be greater than a majority of the whole? If I comprehended the wording of the amendment, it is to require a majority of the whole, instead of a majority of two-thirds.

Mr. T. H. B. PATTERSON. There is no amendment offered. If the gentleman from Somerset would keep himself posted on the amendments, he would find that there is no such amendment offered. I am speaking simply on his amendment, which proposes a majority vote, and asking the Convention to consider seriously and carefully before they adopt that rule in perference to the report of the committee, which suggests a majority of two-thirds.

Mr. BAER. Did not the gentleman argue that a majority of two-thirds of the stock should be required?

Mr. T. H. B. PATTERSON. No, I am simply arguing on the relative merits of the section, and of the amendment proposed by the gentleman from Somerset.

Mr. W. H. SMITH. It is very evident, Mr. Chairman, that we cannot settle this matter in committee of the whole. There is a want of accurate knowledge about the details of this business. The railroad side, if it has got any ground to stand upon, has not been apparently heard in the Railroad Committee. It seems that the minds of this committee are very much divided in regard to the details that have been brought up here. I move you now, sir, to refer this whole subject back to the Railroad Committee.

The CHAIRMAN. That motion is not in order.

Mr. M'ALLISTER. Mr. Chairman: I do hope that no such reference will be made.

The CHAIRMAN. The motion is not in order. The committee of the whole cannot refer a proposition to another committee. The question is on the last division of the amendment of the gentleman from Somerset as amended.

The division was rejected.

Mr. EWING. Mr. Chairman: I move to amend, by inserting after the word "shall," in the first line, the words, "without the majority of two-thirds in value of its stockholders," and by striking out those words in the fifth and sixth lines, simply transposing those words so as to make all the clauses subject to the requirement of two-thirds.

The CHAIRMAN. The question is on the amendment just moved by the gentleman from Allegheny.

The amendment was rejected.

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

Mr. COCHRAN. I propose to strike out the words, "a majority of," in the sixth line, and the words "in value," in the seventh line, and to make the word "stockholders" read "stock," and add at the end as follows: "Which consolidation purchase, lease, or contract for lease, shall only take effect when ratified by the Legislature."

Mr. DARLINGTON. I raise a question of order, that it is not in order to move to insert what has just been stricken out by a vote of the committee.

The CHAIRMAN. The Chair over rules the point of order. The words proposed to be inserted are a very small portion of what was stricken out.

Mr. DARLINGTON. Still they are a portion of them.

Mr. COCHRAN. I will read the section as I propose to amend it:

"No railroad, canal or other transportation company shall consolidate its stock, property or franchises with any other corporation engaged in the business of common carrying, nor to purchase the property or franchises, directly or indirectly, of such corporation, nor in any case lease, or contract for a lease exceeding twenty-five years, without the consent of two-thirds of its stock." And then the words come in in manuscript:

"Which consolidation, purchase, lease, or contract for lease, shall only take effect when ratified by the Legislature.

Mr. DARLINGTON. I should like to know how it is proposed to have the consent of the stock manifested.

The CHAIRMAN. The question is on the amendment.

The amendment was rejected.

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

Mr. T. H. B. PATTERSON. I move to put in the substantial part of that amendment, by striking out the words, "a majority of," and striking out "stockholders," and inserting "stock."

The amendment was rejected.

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

The section as amended was rejected, there being, on a division, ayes twenty-three, less than a majority of a quorum.

The CHAIRMAN. The Clerk will read the next section.

The CLERK read section six, as follows:

SECTION 6. No railroad or canal corporation shall, either in its own name or in the names of its officers, or through the intervention of trustees or other agents, hold, guarantee or endorse shares in the capital stock, bonds or other indebtedness of any other railroad, canal or other corporation, to an amount exceeding one-third of each thereof actually issued or incurred.

Mr. W. H. SMITH. Mr. Chairman: I am instructed by gentlemen who are better acquainted with parlimentary law than I am, and I find that my motion before was not in order; and in order to get a vote upon it, I must move that the committee rise, which I now do, with a view to move to refer this matter back to the Committee on Railroads and Canals. I now move that the committee rise.

The CHAIRMAN. The Chair asks the gentleman from Allegheny what his motion is, whether it is to rise and report progress, or to rise and report the article.

Mr. W. H. SMITH. To rise and report progress.

Mr. M'ALLISTER. Is this motion debatable?

The CHAIRMAN. It is not debatable. The question is on the motion of the gentleman from Allegheny.

The motion was not agreed to.

The CHAIRMAN. The question is on the sixth section of the report of the Committee on Railroads and Canals.

Mr. COCHRAN. Mr. Chairman: I do not see any just objection to this section whatever. It provides against the investment by one company in the stock of another company, and getting possession of it, and prohibits that from being done to an amount exceeding one-third of the stock or bonds actually issued. Now, is it the policy of the committee to adopt a position which will allow railroad companies to buy up the bonds and stock of other companies to a greater amount than one-third? Is that the intention? Itseems to me that this is a wholesome restriction to prevent one railroad company from purchasing the stock and bonds of another, from investing in it, and so getting the control of other railroads in the State. In this way you give the power to a single railroad company to buy up every other railroad in the State. I do not think that this was the policy that was intended; but it may be that I am wrong.

I only want to call the attention of the committee to the restriction which the section imposes. This section, I may say, was modified in this way for the purpose of protecting the interests and rights of stockholders in railroad corporations. It was intended to prevent others from getting possession of their property by buying up their bonds and their stock, getting the control of the road, and in that way converting it to their own use. It was intended to prevent railroad corporations from becoming dabblers and dealers in the stocks of other railroad corporations; from speculating in them, if you please, or from monopolizing them in any other way, and holding them against the will of the stockholders of the road itself, thus, in fact, taking the road out of the possession of the original stockholders and putting it under complete control of the other railroad company.

If it is right to do this, then of course the section ought to be voted down; but I believe that this is one of the things which

it is most desirable to prevent. I think railroad companies should be prohibited from investing in, and dealing in, the stocks and bonds of other companies. That certainly was no part of the original object for which a railroad company was incorporated. It was certainly no part of the object of incorporation of a railroad company that it should go out and buy up all the other railroads in the State, or as many of them as it suited its interests to obtain, or to buy up their bonds and so control them. I hope, therefore, that this committee will consider before they reject this section, and will not allow such a departure from the true policy to be pursued in regard to this matter.

Mr. BAER. I move to amend the section, by striking out all after the word "corporation," in the fifth line, and inserting, "without the consent of a majority in value of its stockholders."

Mr. MACVEAGH. I trust the committee will vote that amendment down, and also the section. The amendment does not seriously alter the law as it now stands. I doubt not that a board of directors could be enjoined at the instance of any stockholder until the wishes of the real owners of the property were ascertained. I think in almost any act in which a board of directors, who are merely trustees of the owners, were about to engage, a court of equity would stay their hand until the real owners, the *cestui que trusts*, could be consulted and express their opinion one way or the other; and the section, notwithstanding all that my friend from York (Mr. Cochran) has said, seems to be part of the same general system to ignore the actual condition of affairs, and to prevent the development of those portions of the State which are in need to-day of railroad facilities, and which only can obtain them by the help of the great leading corporations of the State. There may be restrictions that ought to be thrown around this object; there may be guards that ought to be erected, but the advantages of the control of the people are not to be found in the direction of refusing an opportunity to the people to link themselves with these corporations in their smaller enterprises, which they need in many different localities; and as the committee, by a decided vote, declined to accept the section on which we have just voted, I trust they will also decline to accept this.

Mr. LANDIS. One word, Mr. Chairman, before the vote is taken on this question. I have sat here during the debate on the various sections of this important report, and although I have given to it all my attention, I have, up to this point, preserved a profound silence. My silence did not proceed from any want of interest in the question, but because I thought I would defer, so far as the expression of my opinion was concerned, to the opinions of those who seemed to be more familiar with the subject of railroad corporations than myself.

I came into this Convention feeling that the people desired reform in the direction of restrictions upon railroad corporations. I had been in various portions of the State of Pennsylvania prior to my election, and had conversed with numerous citizens on subjects which would probably come before this Convention, and I may safely say that upon no one subject did the people at large seem to be more heartily and more directy and more sincerely interested than in the subject of restriction upon railroad corporations.

When the article upon this subject was reached, I felt that one of the most important articles reported by a standing committee had been reached for the deliberation and consideration of this Convention. I felt that upon the action of this Convention on this subject would depend, to a very great extent, the prosperity of the State in the years which are to come. I felt, as we entered upon the consideration of it, and passed the first and second sections, that there was that in our action which seemed to augur well for our deliberations; but, sir, I desire to say at this juncture that my faith in what this Convention shall accomplish in the direction of reform has been most materially shaken.

I think the spirit of reform seemed to flag when we reached the end of the fourth section. It seemed that those who were the special champions of railroad interests had so marshalled their forces, had so brought them to bear, had so arrayed their arguments, had so succeeded in some way in convincing the doubtful ones on this question, that the position which they had assumed was proper and right, that those who were expected to be the champions of the people on this question had failed to come up to the popular expectation.

Now, sir, in the consideration of the fifth section, I think I may say fairly, we have such views urged by those who were the friends of the people, as should have entitled it to a somewhat liberal consider-

ation on the part of the committee of the whole; but the committee of the whole have seen fit to repudiate its provisions. They have seen fit to vote down the whole of the fifth section; and now I think I have discovered, as we are about to take the final vote on the sixth section, that the temper of the committee is also to commit it, like the fifth section, to the tomb of the Capulets. I ask the members of the committee to stop here and consider. I ask them if they are prepared to say that railroad corporations shall be allowed to purchase *ad libitum* the shares of other roads, that they shall guarantee without limit the stocks, the bonds and the indebtedness of other corporations? I ask if one of the crying evils of corporations has not been that one company has usurped the functions, the privileges and the prerogatives of other companies? Have we not felt, and have we not heard the people crying out against the blighting influence of those who have thus assumed and aggregated so much power?

I do not know to what extent one railroad corporation ought to be permitted to invest in the shares of another corporation. I do not know to what extent they ought to be permitted to endorse the bonds and indebtedness of another corporation. The committee, after careful consideration of that question, have come to the conclusion that it would be dangerous to allow it to a greater extent than one-third. I therefore am willing to accept the conclusions of the committee in this respect. I am willing, as far as I am concerned, to confine corporations to the one-third. Anything beyond, therefore, must either be dangerous to the liberties and rights of the people, or it must be dangerous, perhaps, to the rights of the corporations themselves.

I had intended indulging in some further observations on this question, but I shall defer doing so for the present. I will content myself at present by simply saying this: I am not prepared to see the section voted down, and if it is the intention of the committee in voting upon this section to vote down the whole section, I would here, for the purpose of ascertaining the temper of the body, propose an amendment, to effectuate if possible a compromise in the provisions of the section. I propose to strike out in the third line the words, "guarantee or endorse shares in," so as to leave the section read as follows:

"No railroad or canal corporation shall, either in its own name or in the names of its officers, or through the intervention of trustees or other agents, hold the capital stock, bonds or other indebtedness of any other railroad, canal or other corporation, to an amount exceeding one-third of each thereof actually issued or incurred."

That will prevent one corporation from holding more than one-third of the capital stock of another company, leaving them free to endorse the bonds or indebtedness of any small railroad corporation which needs the assistance of a more powerful company, should its charter or the general law permit it.

The CHAIRMAN. The gentleman from Blair (Mr. Landis) moves to amend the section, by striking out the words, "guarantee or endorse shares in," in the third line.

Mr. COCHRAN. I have said nothing on this amendment, but I have a few more remarks to make on the amendment in connection with the section, in order to show, if I can, the points in the application of them. Gentlemen who will read this section will see that it provides that no railroad or canal corporation shall either purchase or hold, in the name of its officers or otherwise, or guarantee the "indebtedness of any other railroad, canal or other corporation." The gist of the section is very largely in that last part of it.

Mr. BAER. If the gentleman will allow me, I beg leave to withdraw the amendment offered by myself.

The CHAIRMAM. The gentleman from Somerset withdraws his amendment.

Mr. COCHRAN. I say—I may have said it before—that the limitation here of one-third was put in for the express purpose of allowing the very thing that the gentleman from Blair (Mr. Landis) has alluded to, and that is that railroad corporations intending to develop various sections of our State should be allowed to hold and purchase the stock or endorse the bonds to an amount not exceeding one-third of the capital stock or of the bonds, respectively. That was intended for the very purpose of allowing this assistance to be rendered wherever it was desirable, and wherever it could be obtained. The report of the minority, made by the gentleman from Perry, (Mr. Baily,) was an absolute prohibition of any investment of this kind, and this section is very much modified in that respect from the

section which will be found in connection with his minority report.

But, sir, it seems that no concession on a point of this kind that does not go the whole length will give satisfaction. And yet if you refuse to adopt the proposition, what is the result of that refusal? It is not merely the controlling of other railroad corporations, but it is the right of railroad companies to combine with other companies which are not railroad companies, or of canal companies to combine with other companies which are not canal companies, and by that means to engage in business which is entirely separate and apart from that of transportation companies.

Let me give you an illustration, Mr. Chairman. You can conceive of legislation—such legislation has occurred—by which corporations may be created without limitation of capital, without limitation of power to contract debts, almost without a limitation of the objects to which they should be applied, for mining, for manufacturing, for almost any other purpose of that character, and those corporations carried on by the aid of the railroad companies taking their stock, endorsing their bonds so that they would invest largely in the property and real estate of this Commonwealth, and then the railroad company and the corporation enter into direct competition with the industry of individuals, either in mining, manufacturing or anything of that kind. Is it right that the railroad corporations of this State, which are incorporated for the express purpose of acting as common carriers, and of transporting the produce and property of the people of the State, should be allowed thus to go into other business, into the business of mining, the business of manufacturing, either directly or indirectly, as railroad corporations, or through the aid of some auxiliary corporation, that they should by that means become the potential and actual owners of thousands, tens of thousands, almost hundreds of thousands, of acres of land, and in that way absorb the business of the community?

If it is right that that should be done, then this section should be voted down; but the scope of this section is to confine the railroad and canal corporations of the State to the transaction of the business for which they were incorporated, the business of transportation.

If the Convention are disposed to allow companies incorporated for the purpose of transportation to go out of that sphere and to engage in all kinds of employment in this Commonwealth, if they may engage in mining and in manufacturing, either directly or indirectly, through the aid of auxiliary corporations which they own and control, then they may engage in agriculture or any other employment in the State, and there is no reason why you should not extend the same power to agriculture or to any mechanical labor that you do to manufacturing or mining. There is just the point of this section.

Mr. MANN. If the gentleman will allow me, I thought it was the next section that prohibited railroads from entering into other business than that of common carriers.

Mr. COCHRAN. That section does prohibit them; but this prohibits them from holding shares in any other railroad, canal or other corporation to an amount exceeding one-third of the value, and by this prohibition they are prevented from controlling any other corporations than railroad and canal corporations.

Mr. MANN. I should like to ask the gentleman, if we adopt the next section, will not that entirely prohibit railroad corporations from entering into any other business?

Mr. COCHRAN. It would prevent them from entering into any other business, but it would not prevent them from purchasing and controlling the stock of these other companies.

Mr. GOWEN. I always rise with some reluctance, and I should not have anything on this occasion if anybody else had relieved me by making the objection to this section which I now desire to make to it, and to call the attention of the committee to.

There are a number of railroad companies in this State who have, in my opinion very properly, agreed that if any manufacturing establishments shall be built along the line of their road, they will guarantee the bonds to a certain amount, a certain proportion of the cost of building them. The Reading railroad company particularly has done this in a great many instances, and has now a standing offer that if anybody wants to build a furnace that will cost $150,000, and will raise $75,000 in money and issue bonds to the extent of $75,000, and secure them by a first mortgage, the railroad company will guarantee those bonds; and as it happens that the railroad company's credit is rather better than that of a struggling corporation, the people in a town who are anxious to get

up a furnace have in many cases agreed to take those bonds at par. I know of a number of cases of that kind. This section would prevent anything of that kind in the future.

The amendment, if adopted, will relieve the section from the objection against guaranteeing bonds; but there is another instance to which I desire to call the attention of the committee, which is not aided by the amendment. There is one very large iron manufacturing establishment in this State that has agreed to expend a million and a half of dollars in money, in erecting a rolling mill, which, with one exception, will be the largest in the world. It will employ hundreds of people. It will build up the prosperity of the little community in which it is situated, and make it a flourishing city. The owners of these iron works came to a large railroad company and said, "we do not know anything about finances or guaranteeing bonds; we do not want to bother you about your guarantee; but if you will take our bonds and hold them, and give us a million dollars in money, we will raise the balance ourselves and put up the works." And the railroad company agreed to do it.

Now, who is injured by this? What possible wrong is done to any one? Is the laboring man injured? Are the five thousand or thousand people who are to have employment at these works injured by this thing? Not at all. I beg my friend from Allegheny (Mr. Howard) not to think that this is done for love of power. It is not that grasping love of power on the part of corporations that induces them to do this. Certainly it is love of money, because by building up the communities through which their lines run, they increase the value of their own property; and while they are engaged in this, what harm is done to anybody?

If this section is adopted, it will strike down at one blow the prosperity of a very fair section of this Commonwealth; and it will be stricken down because this right to guarantee bonds of other companies is entirely a creation of statute law, and although the guarrantee once made in a particular instance becomes such a contract as this Convention would have no power to alter, yet guarantees not already made, no matter when the company that makes them required its charter, would be prohibited by the adoption of this section.

Mr. LANDIS. I can tell the gentleman from Philadelphia, who has just taken his seat, how it might be very dangerous to permit a corporation to lend its credit to so large an amount to another corporation. Suppose that a railroad corporation did hold the bonds, or guarantee or endorse the bonds of a manufacturing corporation to the amount of a million or a million and a half, that would of course secure a controlling influence in such a corporation the two would become very closely identified, and the manufacturing corporation, therefore, would be enabled to secure greater privileges from the transporting corporation than private individuals would. Hence it would be that manufacturing corporations under the favor of railroad corporations would be brought in an unhealthy competition, a discriminating competition, with private individuals, and the result would be that there would be a favoritism on the part of railroad corporations to those whose bonds they had endorsed.

Mr. MACVEAGH. Mr. Chairman: There is another objection, possibly, that occurs to my mind to the suggestion made by the gentleman from Philadelphia, and that is this: If a company may endorse the bonds of an industrial enterprise, however meritorious the individual case may be, and however thoroughly one could appreciate the motives, both of those who applied for the help and of those who gave it, still might it not occur, in addition to the temptation to favoritism which it might create, that if the bonds were not paid by the manufacturing company, and the guarantee of the railroad company was enforced as a matter of law, they would be subrogated to the rights of the holders of the bonds, and they would be necessarily in an attitude to purchase the property, and thus directly enter into competition with other manufacturers in the same branch of industry upon the line of the same railroad."

Mr. M'ALLISTER. Mr. Chairman: It seems to me that this section falls with the rejection of the preceding section, the fifth section. Its provisions are more obnoxious; they would prevent the extension of the railroad system. Now, there are evils to be remedied, evils which this convention should remedy, whether they be real or imaginary. One of the evils alleged by the people is favoritism to corporations, reduced rates to certain companies that work within the carrying cor-

poration, and their obtaining transportation at reduced rates. For instance, it is alleged, as I understand—I do not know the truth of it, but it is generally understood—that the Pennsylvania transportation company is composed of directors of the Pennsylvania railroad company, or of stockholders of that company, and that it has special rates, that it obtains the right to transport goods upon more favorable terms than other persons. So I understand it to be alleged that a corporation connected with the Reading railroad company, which had its origin in the Laurel improvement company, and now designated by some other name, has like advantages. If this be true, it is time that this Convention should lay hold of the evil and place these "wheels within wheels" on the same footing with individuals. All preferences should be ignored, and it seems to me to be the duty of this Convention to do that. With this view I have drawn two sections, which seem to me to cover this evil, and I will read them here for information; they will come in after this section is rejected, as I have no doubt it will be.

I have to say here that to refer this report back to the committee, as it was constituted originally, would be of no use. The gentleman (Mr. W. H. Smith) is mistaken in saying that the propositions were not debated in the committee. They were debated day after day. The difference was very considerable between the minority and the majority of the committee on this report. Our chairman did not profess to be a railroad man, and there was no man on the committee who had a general knowledge, such as was absolutely necessary to avoid absurd conclusions, to avoid the creation of evils in our attempt to remedy existing evils. We wanted somebody upon the committee with more knowledge than any of us had. The honesty of purpose, the general knowledge, the integrity of our chairman, no man has ever doubted; and I do not know a man upon the committee that did not design the good of the people in all that he did. But we differed radically in reference to the means by which the ends were to be accomplished, not so much as to what was to be done as to the mode of doing it. I will read for information, as a substitute for sections seven, eight, nine and twelve, two sections which seem to me to cover these evils. With my limited knowledge of railroads I may be entirely mistaken, and if so I shall be exceedingly pleased to be put right by gentlemen who are so much more familiar with the workings of these corporations than myself.

"SECTION —. Railroads, canal or transportation companies heretofore constructed or that may hereafter be constructed in this State, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by laws, and the Legislature shall by general laws establish reasonable maximum rates of charges, (of course in accordance with the constitutional rights of the company,) and the Legislature shall by general laws establish reasonable maximum rates of charges for the transportation of passengers and property thereon; and within the limits thus prescribed by the Legislature, every railroad company shall establish a schedule of uniform rates for the transportation of passengers per person, and property per ton per mile, over their roads; and during the existence of such schedules no abatement shall be made from the charges therein set forth, in favor of any individual or individuals, corporations or partnerships, or by the granting of a free pass or special rates, the allowance of a drawback, or in any other way or manner except in the granting of personal transportation to the officers and employees of the company, and to poor and indigent persons as objects of charity.

"SECTION — No railroad, canal, or transportation corporation shall grant any preference or advantage whatever to any of its officers or stockholders, or to any corporation or partnership in which they, or any of them, shall own stock or hold an interest, over other individuals, corporations or partnerships, in its charges for the transportation of persons or property thereon, except as in the last preceding section excepted; and any wilful violation of this section, judicially ascertained, shall cause a forfeiture of the corporate franchises of the offending corporation."

These sections seem to me to cover the alleged evil, and if we have power to do anything, it is to lay our strong hand upon what is here complained of. That is all these sections do, and it does seem to me that these two sections will supercede very much the necessity for the residue of this report.

Mr. GOWEN. May I ask the gentleman a question?

Mr. M'ALLISTER. I do not offer it now, because it does not come in now. I will offer it as an amendment when this section is disposed of.

The CHAIRMAN. It is not in order now. The question is on the amendment to the amendment.

Mr. T. H. B. PATTERSON. Before this vote is taken I wish to say a few words in regard to the motives which actuated some of the members of the committee on the sixth section. The subject which is now before the committee of the whole, and which was before the Committee on Railroads and Canals, is one of great difficulty; and it is one of greater difficulty for the reason that it is a question on which there are few, almost no, constitutional provisions; and therefore it is comparatively new ground on which a Convention of this kind are called upon to work. The objections urged to this section by the gentleman from Philadelphia, and by others who have spoken upon the question, and the reasons urged in its favor by the gentleman from Dauphin and the gentleman from Blair, and others, are such as I think ought to command the candid consideration of the members of this Convention before they act upon it, and I rise simply to call their attention to the two reasons that I think ought to be considered in connection with it.

The first ground stated against it by the gentleman from Philadelphia, whose arguments always fall with so much weight, is that the adoption of this section would prevent the unlimited, unqualified endorsement by a railroad company of the bonds, and the unqualified and unlimited holding of the stock of other corporations.

Now, I just ask the delegates of this Convention to look one moment at the proposition. Here are certain corporations created for certain purposes. Some corporations are created for common carrier purposes, and some are created for manufacturing purposes, and some for mining purposes. The only object of this section, and the only intention of it is to prevent common carrier corporations from guaranteeing the indebtedness or holding the stock of manufacturing and other corporations to the extent of more than one-third.

Now, we do not intend to deny that there are no benefits arising from one corporation assisting another. No one denies that. But I must say frankly, that if any one corporation in this State, or any number of corporations in this State, could assume the capital and guarantee the stock of all other manufacturing, mining and common carrier corporations, it would be impossible in the next ten years to divide the manufacturing, mining and commercial interests of the State with safety to the people and with safety to other corporations. I concur heartily with the gentleman from Philadelphia (Mr. Gowen) when he speaks of this as a great benefit, but at the same time I would call each member of this Convention to remember that when a corporation in manufacturing or mining interests, along the lines of a great railroad, has its stock guaranteed, or its stock held by the officers of that great railroad, that mining or manufacturing corporation is owned essentially by that road. Whenever you allow a common carrier corporation, without limit, to get its hands upon the stock or the indebtedness of the mining or manufacturing interests along the line of its improvement, then you allow them to control those mining or manufacturing corporations; you allow them to reach out with mighty arms on all sides, and enter into the occupations of private enterprise and private manufacturing, and you allow the great corporations of this State, without limit, to extend their control into all the branches of industry. You allow them to go into manufactures, into the mills, into agricultural productions, into the mines, and into all the branches of industry, and compete with the private citizen at an advantage which it is impossible for the private citizen to have.

I say that while this is a benefit in one sense, in another sense it is a great evil, because it is allowing the unlimited expansion of corporations beyond their legitimate corporate limits, and allowing them to go into the private walks of life and take private capital, private citizens and private enterprise at a disadvantage. If you and I own a private manufactory, established along a line of railroad, we have the right to the use of that highway and to competition in our own business on the basis of fair competition with individuals; and that corporation along side of which we are located ought not to be allowed, unlimitedly, to go into the private business in which I am engaged and control my business and my interest. This is all that this section indicates. It is merely to limit a common carrier corporation to one-third of the stock or indebtedness of any other corporation organized for any other purpose than that of a common

carrier. Its object is simply to say to the common carrier corporations in this State that they shall not come into competition with individual interests in manufactures and mining in this State to the extent of more than one-third of the stock or capital or indebtedness of these other corporations. I ask, is this unreasonable?

Again, the other great ground on which I think that we are called upon to use some such restraint as this section provides is this: The corporations of this State are rapidly becoming a great system; they are endorsing for each other; they are guaranteeing for each other; they are crossing lines of endorsement; they are holding each other's stocks; they are going on building up a mighty artificial structure of stocks, bonds and endorsed paper. I call upon the members of this Convention to notice that if any great crisis should occur to-day, such as would compel the corporations of this State to cash their bonds and their indebtedness, such as would compel the great corporation structure of this State to come down to a cash basis, and redeem their bonds and change the whole corporation's system of this Commonwealth, it would be followed by such a financial crisis as the world never saw. I say that it is time that the people of this State should intervene, and say that one common carrier corporation shall not go on endorsing and garanteeing the bonds of other corporate enterprises, assuming their indebtedness and holding their stock, to the extent of more than one-third.

In soberness, let me ask, is not this a safe restriction? Just think of it! The corporations of this State, and some of them in particular, have undertaken, not simply to develop the corporate interests of this State, but of the United States. They have gone on endorsing the bonds, guaranteeing the paper, and taking the stock of the great corporations that are controlling this country. I tell you that it is time that we were thinking of some restriction on our artificial corporations, to prevent them taking the corporate indebtedness and endorsing the bonds and the paper of other corporations to the extent of more than one-third. I ask you, in all seriousness, is not that a safe restriction? I do not deny that it is a hardship to say that these corporations shall not endorse or guarantee the bonds of other corporations or assume their stock or indebtedness to the extent of more than one-third. I do not say that this is not attended by some hardships, for I can see the force of the argument urged by the learned and able delegates on the other side of this question; but I say, taking all the hardships into consideration, it is not a safe policy for the people of Pennsylvania to adopt, to say that these common carrier corporations, shall not go beyond one-third of the stock or indebtedness or liabilities of other corporations in their assistance and control thereof.

Mr. MINOR. Mr. Chairman: I will say but a single word, sir. In looking at this section, I find that it contains the grant of a dangerous power, while it purports to curtail power. If I understand it, it gives every railroad company or corporation in this State, by implication, the right to hold or endorse one-third of the bonds, indebtedness and stock of any other company, whether it be a railroad company or anything else. Now, we have upon our statute books a law which prohibits railroad companies from having banking privileges to any extent whatever. I call attention to the proposition that this section, if adopted, would give the railroad companies the right to hold one-third of the stock, bonds and indebtedness of every banking company in this State, by direct implication, and so of every mining company and mill company, or any other company for any other purpose that now exists or may hereafter be called into being. Where, then, is the necessity of making a step backward and repealing that statute which is salutary? I cannot, sir, vote for this section.

Mr. MACVEAGH. Mr. Chairman: In order to bring this matter fairly before the House, I want to suggest an amendment which perhaps may meet the view of the gentleman from Blair (Mr. Landis.) The point of difficulty in my mind is this, not that I am opposed to allowing railroad companies to endorse the bonds of railroad companies, because I believe that there are young and struggling railroad enterprises in this State to-day which need that peculiar kind of assistance. Whether they ought to need it is another matter; I speak of the fact as it exists. I believe in the policy of consolidation and union of railway companies. I am thoroughly in accord with my friend from Philadelphia (Mr. Gowen) on that subject. I only differ from him in that he does not think the State could administer the railroad corporations of the country for the public interest as well as private

corporations can. I believe the day is not far distant when the State will discover that it can do so; but until then I desire to see union and consolidation, unity of management, a reduction of expenses, a destruction of intermediate boards, on line of cars from New York to San Francisco, and one check for your baggage all the way through.

But that is a totally different question from allowing the common carrier which is invested with a monopoly, a franchise at least from the State which becomes a virtual monopoly to transport not its own goods, but to transport my goods and your goods, and the goods of everybody that comes to it. Now, is it compatible with the character of that corporation to allow it to become a large creditor of a manufacturing enterprise? Will it not tend inevitably to create bitterness, partiality and corruption? Is it possible that a private individual whose bonds are not guaranteed by that railroad company, and who needs to send his wares over its road to a market, and who has a right to do so because of the franchise that his Commonwealth has given, can expect to compete on equal terms (even if he was actually competing, would he ever think he was competing on equal terms) with a company whose bonds have been guaranteed by the railroad company? It would be only necessary to say that if either of them had to go down, the company whose bonds the railroad company had guaranteed would not be that one. If there was an advantage to be given, the officers of the railroad company would give that advantage to the corporation whose bonds they had guaranteed, in order to protect their own stockholders from ultimate liability.

To my mind it is a very dangerous power to confer upon any railroad; and to test the sense of the committee upon that distinction—not a distinction as against the union and consolidation of railway management in America, in common with all the rest of the civilized world to-day; on that the committee has expressed its opinion—but to limit the railway companies to the business of common carriers of freight and passengers, I propose an amendment. I will read the section as it will be if amended as I propose:

"No railroad or canal corporation shall, either in its name or in the names of its officers, or through the intervention of trustees or other agents, hold, guarantee or endorse shares of the capital stock, bonds or other indebtedness of any other corporation, except such corporations as shall be doing the business of a common carrier."

I move that as an amendment to the amendment.

The CHAIRMAN. That is not an amendment to the amendment. The question is on the amendment of the gentleman from Blair (Mr. Landis.)

Mr. BIGLER. Mr. Chairman: I desire to contribute a few words in relation to the general subject. It would have been more proper for me, perhaps, to have remained entirely silent, at least for one day, and I had fully determined to remain here for many days a mere listener; but I confess to you it is partly the development of my friend from the city (Mr. Gowen) with regard to what he thinks is proper and right to railroad corporations, that seems to require some expression at my hands. I had no idea that a railroad corporation was anything else than a public carrier, a common carrier, transporting persons; transporting tonnage; doing that general business for which it was originally designed. A proposition here which is certainly very reasonable in itself, that a railroad corporation may not go outside of its business to a greater extent than one-third the capital that belongs to another corporation, in an entirely different business, induces my friend to interpose and allege that a great public wrong will therefore follow. Why, sir, I do not so understand it. I am quite amazed that great railroad companies should desire to become the manufacturers of iron; that they should think of becoming the manufacturers of cotton or of fire-brick; or engage in any of the vast branches of manufacturing in this country.

Sir, the railroad business, of itself, is the great business of this country. It is the business of power, the business of progress, the business of development, and I cannot see, indeed, that the iron business of this country needs the aid of railroad capital. I think the profits of that business, its very nature, its great extent, will draw into it all the capital which the welfare of the country requires should be devoted to it; and I, for one, am quite unwilling to recognize, even in the remotest way, the right of a railroad company to enter into the iron business, directly or indirectly, or into any other of the vast manufacturing businesses that are going on in

the country. Let it be a railroad company for its legitimate purposes, and the defect in that provision which we are considering is that it is not emphatic that a railroad company shall not hold stock to any extent in an iron establishment or any other manufacturing establishment.

Now, sir, it is a very different thing, as has been well said by my friend from Dauphin, (Mr. MacVeagh,) to allow subscriptions to railroad corporations, for there are sections where there is a want of capital, even to construct short roads, and where the indirect advantages to the larger corporations may justify them in aiding the extension of roads through a new country. At all events it is similar; it is in the line of the business of a railroad company; it is extending the avenues of transportation; it is providing for transportation; it is providing for travel; it is all in the same line, and surely a far more liberal principle might be practiced there than in reference to this other branch apart, totally and entirely, from the purposes for which railroads were created.

In listening to the debate to-day it occurred to me that perhaps this subject had not been as thoroughly considered in all its bearings as it might well be, for it is a great subject. The report of the committee was handled, I may say, rather severely, and yet the report of the committee was right in principle. Furthermore, experience had shown that something of that kind was necessary, and yet it seemed to be without any force in its application. There seemed to be no means of applying the principles that had been laid down by the committee with any effective force, for the reason that the opportunity had gone by.

Now, I should say, sir, from what I know of the early history of railroads in this country, that as an original proposition what was suggested by the committee would have been adopted; that interdiction would have been agreed to; but it was said, and said with almost irresistible force, and in that I agree with my friend, that the effect of it must necessarily be only to protect, to a greater extent, the great corporations which now exist. In other words, it interfered with the combining together of small railroads by which they could make some kind of a competition with the great corporations now in existence, and I think it was on that reasoning that it fell. But I do not hesitate in saying that I thought there was great force in the suggestion of our friend from Pittsburg, (Mr. W. H. Smith,) that this was a subject which might go back to the committee to be considered more thoroughly and more closely.

But, sir, I rose only to express my surprise at the views expressed by my friend, the president of the great Reading railroad company, and pardon me for saying the great president of that great railroad, but I do hope that we are not coming to this, that the railroads of this country are to direct all the manufacturing establishments, or that there is to be even a qualified right to do so. Now, it is a fair deduction from the pending section, if adopted, that any railroad and all railroads in the State can hold one-third of the capital stock and bonds of any manufacturing company. I think it will be a sad mistake to adopt such a policy as that. On the other hand, if it be possible to recede from whatever steps have been made in that direction, let us do so.

Mr. GOWEN. Mr. Chairman: I think one of the most injurious things for anybody is to fly higher than he can roost, and when my friend charges me with being in favor of railroad companies engaging in manufacturing business he will find nothing that I have said to warrant his assertion. I think I agree perfectly with the gentleman who has just taken his seat. I will vote for all he said if he puts it in shape. I have asked for nothing that he objects to. On the contrary, this section of the committee, as reported, gives to railroad companies a right they never had, a right they never asked for, a right which, I admit, they never ought to possess. Railroad companies to-day have no right to hold the stock of any manufacturing company. Railroad companies to-day have no right to hold the stock of any banking institution. It is well they have not the right, and they ought to be prohibited from having it. But this committee propose to give them that right. I did not ask for that right, and do not ask for it. I simply asked that when a manufacturing company wanted the loan of the credit of a railroad company to a certain extent, it should have it, but I would prohibit that railroad company from ever embarking in that manufacture. I agree to that.

Mr. BIGLER. The gentleman will allow me. Did he not argue that all this could be done without any harm? Did he not inquire what harm would be done in granting this use of capital?

Mr. GOWEN. No, I asked what harm is there in permitting a railroad company to guarantee the bonds of a manufacturing company. That is all I asked. There is a great deal in this section which is not permitted by law now. All I ask is this: That the bonds of a manufacturing company, proposing to engage in business along the line of a railroad, may be guaranteed by that railroad without any limit as to the amount of bonds created; but, if you please, with a limit as to that amount when compared with the value of the property—for, where would my friend from Allegheny make the distinction of one-third? Let us see. Snppose a manufacturing corporation has property worth half a million of dollars. It makes a mortgage for two millions; and my friend would permit a railroad company to guarantee $660,000 of those bonds; and yet in the case of a manufacturing company whose property is worth one million, all paid for, and that only wants to borrow $10,000, the railroad company could only guarantee $3,000 of it. Why is that?

I have been told privately, by a gentleman here, that if I had not made an argument against this section, the section would have been voted down. We all remember that when Captain Dugald Dalgetty, who was a very strict Protestant, was in service in the low countries where everybody attended mass, his conscience was sorely troubled about the propriety of his attending mass, and he consulted a clerical advisor, the reverend Father Fatsides, who, after spending three or four hours over a gallon of brandy with him, delivered this as his opinion: "My dear sir; you can safely go to mass, although you are a Protestant; for as the question of your eternal perdition is already sealed, signed and delivered, it makes no difference what you do as long as you remain on the earth." [Laughter.]

My friend, the gentleman from Allegheny, (Mr. Howard,) with that suavity of manner which is characteristic of all his efforts, in reply to something I said, said to us: "We certainly expect some gentleman to oppose this; that is expected; they are gone forever; their only hope is that somebody will intercede for them after they are past this life; but on this earth we pay no attention to them." [Laughter.]

Now, with reference to this section, it vests a power in the railroad companies which the wildest advocate of railroad management has never asked. It permits a railroad company in this State to own one-third of every bank along the line of its road; it permits a railroad company to own one-third of every manufacturing establishment along the line of its road. That is not right. The committee has gone too far. Strike the whole of it out, and permit the railroad company, to an extent which is to be limited, not by the issue of the mortgage, but by the value of the property, to endorse the bonds of a manufacturing company, and then prohibit that railroad company from ever engaging in that manufacture, if you please, and that accomplishes all that is necessary. That is all I ask for.

Mr. BUCKALEW. Mr. Chairman: The amendments submitted some time since by the member from Centre, (Mr. M'Allister,) I understand, contain the views of the minority of this committee. They have never yet taken a printed form. Before we resume the consideration of this subject hereafter, I understand many members will desire to see them in print. I hope that the committee will rise, and that, before the adjournment, an order will be made that those amendments be printed.

There is also another question. A number of gentlemen seem anxious that some action should be taken in regard to our further progress on this report. In order to give an opportunity for these things, I now move that the committee rise, report progress and ask leave to sit again.

The motion was agreed to, and the President having resumed the chair, the Chairman (Mr. Broomall) reported that the committee of the whole had had under consideration the article reported by the Committee on Railroads and Canals, and had directed him to report progress and ask leave to sit again.

Leave was granted to the committee to sit again.

The PRESIDENT. At what time? ["Tomorrow." "This day week."]

Mr. ARMSTRONG. I desire the attention of the Convention for a moment. I have abstained from any discussion on the questions which are up, because I feel——

The PRESIDENT. One moment, if the gentleman pleases. Shall the gentleman from Lycoming (Mr. Armstrong) have leave to make some remaks at this time?

Leave was granted.

The PRESIDENT. The gentleman will proceed.

Mr. ARMSTRONG. I was about to say that I have abstained from discussing these questions, because I feel so confident there are many gentlemen in this Convention who are far better versed in this whole subject than I can pretend to be, that I am conscious I could not address the Convention to any edification; but it has been developed, in the progress of this debate, that the views of the majority and minority of this committee are widely divergent. Other propositions have been made which have not been printed. It has also been suggested by members of the committee that they lacked information, from the fact that there were no persons upon the committee who were conversant with the practical operation of railroads.

In view of all these facts, and after consultation with some gentlemen interested in this question, on both sides of it, I propose to move that four additional members of the Committee on Railroads be appointed, with the understanding that they represent the railroad interest, and that this report be re-committed to the Railroad Committee, the purpose being that with a full understanding, and after consultation with railroad men, they shall be able to report to this body a well-devised and well-considered scheme, which shall embrace the entire subject. I move, therefore, that four members be added to the Railroad Committee, and that the report be re-committed.

The PRESIDENT. The motion is not in order at this time. The House have granted the committee of the whole leave to sit again, and it will be necessary to re-consider that vote.

Mr. ARMSTRONG. I did not understand that the vote had been taken. If it has, I will move a re-consideration.

The PRESIDENT. It is moved to re-consider the vote by which the committee of the whole was granted leave to sit again.

Mr. COCHRAN. Did the gentleman vote for the motion?

Mr. ARMSTRONG. I made the motion.

Mr. STANTON. I will make the motion; I voted to grant leave.

Mr. BOYD. And I second it. I voted for it.

Mr. ARMSTRONG. I think the President was in error in saying that the vote had been taken.

The PRESIDENT. So far from the Chair being in error, a day had been named for the committee of the whole sitting again; and when the gentleman rose, the Chair supposed that he was going to move a more distant day. The question is on the re-consideration of the vote by which the committee was granted leave to sit again.

The motion to re-consider was agreed to, there being, on a division, ayes forty-six, noes twenty-nine.

The PRESIDENT. The question now is on giving the committee leave to sit again.

Mr. ARMSTRONG. Now, I move, if it be in order ——

The PRESIDENT. No, sir; it is not in order. The question is on giving the committee leave to sit again.

The question being put, a division was called for, and there were ayes thirty-two ——

Mr. NEWLIN. I call for the yeas and nays.

Mr. COLLINS. I second the call.

The yeas and nays were ordered.

Mr. HUNSICKER. I rise to ask a parliamentary question, and that is whether, if this committee is refused leave to sit again, the article will not be reported at once to the Convention without amendment? That will be the effect of it.

The PRESIDENT. Of course.

Mr. ARMSTRONG. That would be the effect if the motion which is intended to follow does not prevail; that it shall be re-committed to the Railroad Committee, increased in the manner which has been indicated. That is the purpose of it.

The PRESIDENT. Debate is not in order after the yeas and nays have actually been ordered. At the same time gentlemen are entitled to know what will be the effect of their vote. The committee of the whole is in charge of the report, which is on second reading. If it be taken from the committee of the whole and referred to a standing committee, it can be modified in any way. The Clerk will call the roll.

The question being taken by yeas and nays, resulted: Yeas, forty-four; nays, thirty-nine, as follow:

YEAS.

Messrs. Baer, Baily, (Perry,) Biddle, Boyd, Campbell, Carter, Cochran, Collins, Craig, Curry, Curtin, Darlington, Davis, De France, Ellis, Ewing, Finney, Gilpin, Gowen, Guthrie, Hall, Hanna, Harvey, Hay, Heverin, Horton, Howard, Hunsicker, Landis, Lilly, MacConnell, MacVeagh, M'Culloch, Mann, Mott, Newlin, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Reynolds, Ross, Smith, Henry W., Struthers and Walker.

NAYS.

Messrs. Addicks, Alricks, Armstrong, Bigler, Brown, Buckalew, Cassidy, Corbett, Cronmiller, Cuyler, Dodd, Edwards, Fulton, Gibson, Hemphill, Kaine, Lawrence, M'Allister, M'Murray, Mantor, Metzger, Minor, Niles, Palmer, H. W., Parsons, Purviance, John N., Purviance, Samuel A., Rooke, Runk, Russell, Smith, H. G., Smith, Wm. H., Stanton, Wetherill, J. M., Wetherill, Jno. Price, White, David N., White, J. W. F., Woodward and Meredith, *President.*

So the motion was agreed to, and the committe of the whole was granted leave to sit again.

ABSENT.—Messrs. Achenbach, Ainey, Andrews, Bailey, (Huntingdon,) Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Black, Charles A., Black, J. S., Bowman, Brodhead, Broomall, Carey, Church, Clark, Corson, Dallas, Dunning, Elliott, Fell, Funck, Green, Hazzard, Knight, Lamberton, Lear, Ltttleton, Long, M'Camant, M'Clean, Mitchell, Patton, Porter, Pughe, Purman, Read, John R., Reed, Andrew, Sharpe, Simpson, Stewart, Temple, Turrell, Van Reed, Wherry, White, Harry, Worrell and Wright—50.

The PRESIDENT. At what time shall the committee have leave?

[Several members. "To-morrow."]

Mr. MACVEAGH. I suggest to-morrow week.

The PRESIDENT. To-morrow and to-morrow week are named.

Mr. MACVEAGH. I would ask unanimous consent to say one word. ["No!" "No!"]

The PRESIDENT. It is not debatable unless unanimous consent is given.

Mr. MACVEAGH. It does not affect me, but other gentlemen who cannot be here.

The PRESIDENT. Shall the gentleman have leave to make a statement?

Leave was granted.

Mr. MACVEAGH. I only wish to say that it did not concern myself, but there are members of the Judiciary Committee whose views, I am very sure, without naming them, this Convention would be very glad to hear in the discussion of that article, and I think they are so situated, from what I learn, that it is almost impossible for them to be here. I know it is not the inclination of the Convention to regard the personal wishes of gentlemen, and certainly I should not ask it for myself; I know I would not have a right to do it, but I think the Convention would do wisely to take up the report of the Judiciary Committee to-morrow. ["No!" "No!"]

The PRESIDENT. To-morrow is named, and to-morrow week is also named. The question will be on the longest time.

To-morrow week was not agreed to, there being, on a division, ayes thirty-nine, noes forty-one.

The PRESIDENT. No other day being named than to-morrow, the committee will have leave to sit to-morrow.

Mr. HANNA. I move that the Convention do now adjourn.

The motion was agreed to, and at five o'clock and fifty-eight minutes P. M. the Convention adjourned until to-morrow morning at ten o'clock.

EIGHTY-THIRD DAY.

TUESDAY, *April* 22, 1873.

The Convention met at ten o'clock A. M., Hon. William M. Meredith, President, in the chair.

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

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

PETITIONS AND MEMORIALS.

Mr. BOYD presented the petition of two hundred and fifty citizens of Philadelphia, asking to have incorporated in the Constitution a clause that all contested election cases shall be tried and decided by the courts of the county in which such cases may arise, which was laid on the table.

Mr. KNIGHT presented the following memorial, which was read and refered to the Committee on the Declaration of Rights.

To the Pennsylvania Constitutional Convention:

RESPECTED FRIENDS:—At a recent meeting of the executive committee of the Pennsylvania Peace society, it was resolved that in case the Bill of Rights should be opened for amendment, you are hereby memorialized to alter, amend or expunge section twenty-one, viz:

"That the right of the citizens to bear arms in defence of themselves and the State shall not be questioned."

There is obviously so much insecurity, riot, bloodshed and death caused by recognizing this declaration as a right; men, and even boys in school and on the street, carrying concealed deadly weapons, thereby continually disturbing the peace, that this society respectfully asks the repeal of the section.

On behalf of the society.

LUCRETIA MOTT,
President.
ALFRED H. LOVE,
Vice President.
HENRY T. CHILD, M. D.,
LYDIA A. SCHOFIELD,
Secretaries.

PHILADELPHIA, April 2, 1873.

Mr. KNIGHT also presented the following memorial, which was read:

To the members of the Pennsylvania Constitutional Convention:

RESPECTED FRIENDS:—The Pennsylvania society for promoting the abolition of slavery; for the relief of free negroes unlawfully held in bondage, and for improving the condition of the African race, feeling that with the abolition of chattel slavery, and the admission of the colored man to the right of the ballot, all has not yet been accomplished that justice and the laws of a common humanity require; and feeling, too, that this society would not be fulfilling its duty were it not to bring to your notice certain natural and inalienable rights that are still withheld from our colored citizens, and which the following amendments to the Constitution, we think, would secure and make our Constitution more thoroughly republican in form and spirit:

ARTICLE I.

SECTION 25. Amend by inserting after the word "corporators," at the end of the first clause or period: "And no corporation shall be established within this Commnowealth which shall make any discrimination in the exercise of its public provisions or franchises against any citizens of the United States, on account of race or color."

Add as a new section to article one:

SECTION 27. No public hotel or tavern, and no place of public amusement which, by the laws of this Commonwealth, is required to be licensed, shall exclude or debar any person from the fullest privileges and enjoyment of its entertainments by reason of race or color.

ARTICLE III.

SECTION 1. Strike out the words "white freemen," in the first line, and insert "citizen."

ARTICLE VII.

SECTION 1. Insert after the word "gratis," so as to read as follows:

"The Legislature shall, as soon as conveniently may be, provide by law for the establishment of schools throughout the State, in such manner that the poor may be taught gratis, but no person shall be excluded from any benefit or advantage of such schools on account of race or color, nor shall any person, by reason of race or color, be debarred from attending upon public school, supported by taxation, and opened to the instruction of any portion of the inhabitants of this Commonwealth.

DILLWYN PARRISH,
President.
BENJAMIN COATES,
T. ELLWOOD CHAPMAN,
Vice Presidents.

JOS. M. TRUMAN,
WM. HEACOCK,
Secretaries.

PHILADELPHIA, *Fourth Month, 4th*, 1873.

Mr. KNIGHT. This is the society of which Benjamin Franklin was the first president. I move that the memorial be referred to the Committee on the Declaration of Rights.

The motion was agreed to.

SESSIONS ON SATURDAY.

Mr. DARLINGTON. I offer the following resolution:

Resolved, That hereafter, until otherwise ordered, the Convention will hold one session each Saturday, commencing at ten o'clock A. M. and ending at three o'clock P. M.

On the question of ordering the resolution to a second reading, the yeas and nays were required by Mr. Bear and Mr. Struthers, and were as follow, viz:

YEAS.

Messrs. Achenbach, Ainey, Baer, Boyd, Brown, Buckalew, Carter, Corbett, Craig, Darlington, Dodd, Edwards, Gilpin, Guthrie, Hay, Howard, Lawrence, MacConnell, M'Allister, M'Culloch, M'Murray, Mann, Mantor, Minor, Patterson, T. H. B., Porter, Purviance, Jno. N., Purviance, Samuel A., Reynolds, Russell, Smith, H. G., Smith, William H., Struthers, Turrell, Walker, White, David N., White, Harry and Wright—38.

NAYS.

Messrs. Addicks, Armstrong, Baker, Bowman, Broomall, Cassidy, Collins, Cronmiller, Curry, Curtin, Dallas, Davis, De France, Dunning, Ellis, Ewing, Gibson, Gowen, Green, Hall, Hanna, Harvey, Hemhill, Heverin, Horton, Hunsicker, Kaine, Knight, Lamberton, Landis, Lear, Lilly, MacVeagh, Metzger, Mott, Newlin, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Reed, Andrew, Rooke, Ross, Runk, Smith, Henry W., Stanton, Temple, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, J. W. F., Woodward, Worrell and Meredith, *President*—55.

So the question was determined in the negative, and the Convention refused to have the resolution read a second time.

ABSENT.—Messrs. Alricks, Andrews, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Beebe, Biddle, Bigler, Black, Chas. A. Black, J. S., Brodhead, Campbell, Carey, Church, Clark, Cochran, Corson, Cuyler, Elliott, Fell, Finney, Fulton, Funck, Hazzard, Littleton, Long, M'Camant, MClean, Mitchell, Patton, Pughe, Purman, Read, Jno. R., Sharpe, Simpson, Stewart and Van Reed—40.

MINORITY REPORTS.

Mr. HEMPHILL. I ask leave to present a minority report from the Committee on Railroads and Canals.

Leave being granted, the following minority report was received and ordered to be printed and lie on the table.

The undersigned, a member of the Committee on Railroads and Canals, is unable to concur in the report of the majority of said committee, for the following reasons, viz:

1st. Because it is too verbose.

2d. Because it contains much that comes more properly within the province of the Legislature than of a Constitutional Convention.

3d. Because portions of the report are calculated not only to trammel and perhaps cripple the railroads already in existence, but to retard, if not prevent, the building of others in the future; and this without in the least benefiting the people.

He has therefore deemed it expedient to submit his views in the form of a complete article:

ARTICLE.

SECTION 1. Any individual, company or corporation shall have the right to construct a railroad or canal between any two points in this State, under such general laws and regulations as may be prescribed by the Legislature.

SECTION 2. All railroad and canal companies shall hereafter be incorporated un-

der general laws; and special or exclusive privileges shall be granted to none.

SECTION 3. Parallel or competing lines of railroads or canals shall not consolidate, directly or indirectly, in stock, property or franchise, by lease, purchase or otherwise.

SECTION 4. Every railroad or canal company incorporated by or doing business within this State shall maintain an office therein, where books shall be kept, subject to the inspection of parties pecuniarily interested, in which shall be recorded the amount of capital stock subscribed or paid in, and by whom owned, and the names and places of residence of its officers. And the chief officer or director shall annually, under oath or affirmation, make a detailed report to the Secretary of Internal Affairs of the receipts, expenditures, assets, liabilities, and such other matters relating to business of the company as are now or may hereafter be required by law.

SECTION 5. Neither the real nor personal property of railroad or canal companies shall hereafter be exempted from taxaiion.

SECTION 6. No railroad or canal corporation shall, directly or indirectly, hold, guarantee or endorse the stock, bonds or other indebtedness of any individual, corporation or co mpany, other than those of railroads and canals, and then only in such manner and to such amount as may be prescribed by law.

SECTION 7. Railroad and canal companies shall not engage, directly or indirectly, in any other business than that of the transportation of freight, passengers and mails, nor be enabled to own or acquire lands, freehold or leasehold, in any manner whatever, except such as may be necessary for carrying on their business.

SECTION 8. All railroads and canals are declared to be public highways, and the Legislature may from time to time fix the maximum rates of charges for transportation over the same; and no company shall discriminate in its rates of freight, fare, toll or charges for motive power, either in favor of or against any individual, partnership, corporation or locality; allow any drawbacks to be granted, or pass free or at lower than its customary rates any persons or property, except its own officers and employees.

SECTION 9. No railroad or canal corporation shall issue any stock, bonds or other evidences of indebtedness, except for money, labor or property used or to be used for the purposes for which such corporation was created; and the fictitious increase of the capital stock or indebtedness of such corporations shall be void.

SECTION 10. No person shall be interested in any company engaged in the business of transporting freight or passengers over any railroad or canal of which he is an officer.

SECTION 11. Every ticket, except excursion tickets, issued by any railroad or canal company, shall be good until used, and shall entitle the holder to transportation between the points named by any train or trains upon which the same rate of fare is charged.

SECTION 12. Cities and boroughs shall have the right to regulate the grade of railroads and speed of trains within their limits.

SECTION 13. No street railroad shall be constructed within the limits of any city, borough, or township without the cansent of its local authorities.

SECTION 14. No railroad or canal company in existence at the time of the adoption of this article shall avail itself of, or derive any benefit from, any future legislation whatever, except on condition of complete acceptance of all the provisions of this article; but may be subjected to the restrictions and burthens hereafter imposed on such companies.

SECTION 15. The Legislature shall enforce, by appropriate legislation, the provisions of this article.

JOSEPH HEMPHILL.

Mr. M'ALLISTER. I ask leave to present a minority report from the Committee on Railroads and Canals.

The report was received and read as follows:

SECTION —. Railroad, canal or transportation companies heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law. And the Legislature shall, by general laws, establish reasonable maximum rates of charges, for the transportation of passengers and property thereon, and within the limits thus prescribed by the Legislature; every railroad company shall establish a schedule of uniform rates for the transportation of passengers, per person, and property, per ton per mile, over their road; and during the existence of such

schedule, no abatement shall be made from the charges therein set forth, in favor of any individual or individuals, corporations or partnerships, or by the granting of a free pass or special rates, the allowance of a drawback, or in any other way or manner except in the granting of a personal transportation to the officers and employees of the company, and to poor and indigent persons as objects of charity.

SECTION —. No railroad, canal or transportation corporation shall grant any preference or advantage whatever to any of its officers or stockholders, or to any corporation or partnership in which they or any of them shall own stock or hold an interest, over other individuals, corporations or partnerships, in its charges for the transportation of persons or property thereon, except as in the last preceding section excepted; and any wilful violation of this section, judicially ascertained, shall cause a forfeiture of the corporate franchises of the offending corporation.

RAILROADS AND CANALS.

Mr. DARLINGTON. I move that the House resolve itself into committee of the whole on the article under consideration yesterday.

The motion was agreed to, and the House accordingly resolved itself into committee of the whole, Mr. Broomall in the chair.

The CHAIRMAM. The committee of the whole have under consideration the article reported by the Committee on Railroads and Canals, the pending question being on the amendment of the gentleman from Blair (Mr. Landis) to the sixth section. The Clerk will read the amendment.

The CLERK. The amendment is to strike out, in the third line, the words, "guarantee or endorse shares in."

Mr. MACVEAGH. I think the Chair held yesterday that the amendment I proposed was not in order as an amendment to the amendment, but will be in order after the House disposes of the amendment of the gentleman from Blair.

The CHAIRMAN. Yes, sir.

Mr. MACVEAGH. Very well.

Mr. LANDIS. Mr. Chairman: At the close of the day yesterday, when we were about to take a vote on the sixth section, feeling that the committee was about, without debate, to vote down the section as reported by the standing committee, I desired to call a halt in the proceedings in order that there might be some expression of opinion by the committee of the whole in regard to the meaning of the section. I thought I saw that a vote on the section would be fatal to its passage. Therefore, in a spirit of compromise, I offered the amendment which I did, in order that there might at least be a portion of the section saved. I was perfectly willing to defer to those who desired that railroad companies might be permitted to guarantee and endorse the bonds of other corporations, so that the smaller corporations in various parts of the State might enjoy the aid and guardianship of the more powerful corporations; the argument in its favor being urged that there were many localities that were struggling to have railroads who, of themselves, were not able to construct them, and that naturally they looked to the larger corporations to which those branches were to be tributary in order that they might have that aid. I say that I was willing, therefore, to defer to that sentiment and submitted the amendment that so much of the section as prohibited that might be stricken out.

I have been asked what will be the effect of so striking that out. The effect will be this: There will be no restriction placed in the Constitution upon such action on the part of corporations; they will be left free, or rather they will be confined by the terms of their charter or by general legislation to whatever extent it might be granted to act in this connection; so that, therefore, the section, after striking out that clause, will apply to railroad corporations owning shares or owning bonds and indebtedness of other railroad corporations.

Now, sir, in regard to this question of guarantee, I do not know that I have so very much objection to it. I recognize it as a matter of contract and a matter of arrangement between corporations. If one corporation thinks it can afford to guarantee the bonds and indebtedness of another struggling corporation, if after a fair conference between the two contracting parties it is found to be for the best interests of both that such indebtedness and bonds should be guaranteed by that corporation, I presume that it would be a matter more particularly for them to determine, and if the larger corporation should find it could afford to do so, I presume that the interest of no one would be disastrously affected.

But, sir, as to the remaining proposition; we desire here in this section to restrict

corporations as to the amount of bonds and indebtedness of other corporations which they may hold. I make a very wide distinction between guaranteeing the bonds and merely holding the bonds, for I presume that, in conducting the business of railroad corporations, there are times when it becomes necessary that great railroad corporations shall hold the bonds of others. But, sir, so to hold the bonds places them in a very powerful relation towards those other corporations, and I think it would be extremely dangerous that they should be permitted to hold to a greater extent than one-third of the indebtedness of any corporation. There are times when, by holding a greater amount than that, they would be possessed of such power over those corporations, they would have them so completely within their control, more particularly when the bonds fall due, that it might become disastrous to those other companies if they held those bonds to a greater extent than the limit indicated in the section.

But, sir, the great restriction in the section is that which applies to the holding of the shares of other companies. One of the great troubles in this State, as I understand, has been that large corporations have purchased the shares of minor corporations. You have provided in the fourth section that one railroad company shall not consolidate or merge itself with another railroad corporation which is a competing line; but if you do not place alongside of that section a restriction like this, the fourth section becomes entirely nugatory and vain. Why, look at it. If they are permitted to purchase the stock of another corporation, *ad libitum*; if there is no restriction placed upon them, they may purchase the stock of that other competing corporation and assume the entire control of its organization and management. If, therefore, it is desired that the restriction of the fourth section shall be operative, that it shall protect the people against the combination of these competing lines, or if you permit, as you do by the fourth section, that there shall be competing lines, then I say you are driven to the logical consequence of fixing upon them some restriction like that contained in the section now under consideration.

Sir, this is the way that I look upon this subject, and the striking out of the words which I have proposed to strike out, I take it, will accomplish what I think is required, what I think is demanded.

It occurs to me that just in this direction lies one of the great reforms demanded by the people. We desire that there shall be independent corporations. We do not desire that there shall be an unlimited aggregation of capital. We do not desire that there shall be a consolidation of all coporate power. We do not desire that there shall be such a centralizing influence in this matter of corporations, that in looking over the State the people shall see, feel and realize that they are, as it were, in the hands of but one corporation, accepting no terms but its own. You must, therefore, do something which shall individualize these corporations, so that they shall not combine for the purpose of wielding a dangerous power and influence.

I would ask those members of the Convention who have come here for the purpose of accomplishing something in the direction of reform how they propose to do it if they do not intend to take some such step as this? Have not the people desired it? Do they not ask it? Have not the interests of the people at large in the State suffered by reason of the want of some such restriction as this? Do gentlemen intend that, after all the complaints and all the clamor on this subject, nothing shall be done? Will they go away from this place having done nothing in this behalf? Are they deaf to the appeals of the people in this particular? Will they give them nothing? If they ask them for bread, will they give them a stone? Are they to be denied that which they demand for their safety, for their protection, for their welfare?

Now, sir, as to those gentlemen who seem more particularly to represent the interests of the railroad companies here, I would ask them what they desire? Do they come here for the purpose of uniting with the representatives of the people, for the purpose of allowing them to have that which the interests and the exigencies of the times demand, or are they determined to pursue a policy which, while it is fatal to the people, must likewise become fatal to them? Why, sir, I would ask if the welfare and the prosperity of these corporations themselves are not identical with the welfare and prosperity of the people? Where do they get this power? How are they created? The very breath of life that they draw they draw from the people. The people in their sovereignty part with this corporate right and grant these franchises to them,

and now I ask, will they turn their backs upon those from whom they drew their existence, and from whom they draw their support? Do they desire more? Do they desire that in their power they shall rival the sovereignty of the people themselves? Does the creature seek to be greater than the creator?

I would desire them, for their own protection, to look at this matter in the light in which the people look at it, because it is only when the people are prosperous that they can hope to be prosperous; but if they trample upon the rights of the people, if they pursue a policy which shall paralyze the industry of the people, if they do that which shall retard their growth and prosperity, I ask does it not operate in turn upon them? Therefore, to pursue a policy which will lead to so much growth of power, which will lead to such aggrandizement, will be fatal to them as well as to the people. They will realize, perhaps only too late, the truth that when they have destroyed the bird the golden egg will no more appear. They will find themselves, perhaps, in the position of that monarch who, although he may grasp a sceptre, finds himself without an empire.

Mr. Chairman, I have thus very briefly given my views on this subject. I am sincere in this thing. What I have said has been said in no spirit of aggression upon corporations, because I regard them, within their proper sphere, as great public benefactors, indispensable to the growth, and prosperity, and convenience, and comfort of the people. You cannot dispense with them; but, sir, they must be kept within their proper orbit. They must bring themselves within the provisions of the law, and that law should be so framed and so moulded as safely and judiciously to circumscribe them in their daily action.

I therefore hope that this amendment will be adopted; and when this amendment has been disposed of, if no other gentleman proposes to do so, I shall myself offer another amendment striking out the words, "or other corporations," at the close of the section, in order that there may not seem to be, by implication, a right on the part of railroad corporations to hold stock to any amount in any other corporation than a railroad corporation.

Mr. ELLIS. Mr. Chairman: Upon the subject of finance, and its relation to the development of the resources of the country, I confess that I am in very great ignorance. I therefore conclude that I should be a proper person to address the committee on this subject. There are certain things in relation to finance which I think I understand; such, for instance, as the illustration given by Wilkins Micawber, that when his income was nine hundred and ninety-nine pounds nineteen shillings and six-pence, and his expenditure one shilling less, the result was comfort; when the contrary, it was misery. So far, I think, I understand the subject of finance. But if, in the remarks I make, I exhibit the extreme ignorance on the subject which I feel, I shall not be at all surprised if the committee should write me down an LL.D., and an A. S. S. with the LL.D. erased. [Laughter.]

Now, why should not railroad and canal companies be permitted to guarantee the bonds of other companies? I must confess I cannot understand this at all, and therefore I am against the section and its amendments. If the converse of the proposition had been moved here, I think it would have been more in the interest of the people, more for the benefit of the people of the State. If the proposition were made that railroad and canal companies, when requested thereto, should be required to guarantee the bonds of other corporations to such an extent as might be designated, I could understand how that would be for the benefit of the people at large, and, to some extent, against these large corporations. If, for instance, there were a provision in the article on banks that banks should be required to pay all checks drawn upon them, whether the party had deposits there or not, [laughter,] I take it that would be a very great advantage to the large body of the people of the State of Pennsylvania, and if the banks chose to pay these checks in this way, why deny them that pleasure? Who would be injured by it?

Upon this question of permitting railroad and canal companies to guarantee the bonds of other companies, why should they not be permitted to do it, if they are willing to do it? There are certain great interests in this country that need capital; these especially are coal and iron. In the matter of the development of iron in this country, we have had since the organization of the general government a problem of extreme difficulty, and one upon which the national politics of the country have turned and re-turned and changed, from its beginning, that of protection to iron. It is well known that the sceptre is pass-

ing from England as to the monopoly of iron, and what we want in this country, in order to compete successfully with England and to secure to us that sceptre, is capital, and the application of capital to the development of our mineral resources, and especially coal and iron. If this be encouraged and not crippled, we care not for your tariffs; we want nothing but free competition with the world, and we shall command the best part of the trade in all its departments. But you propose here to limit the great corporations that hold the wealth in the State of Pennsylvania; you say they shall not aid in the development of coal and iron. What is the effect? The effect is to cripple those very industries that lie at the basis of the greatness of Pennsylvania, our iron and our coal; and why should not railroad companies be permitted to guarantee the bonds of iron companies to any extent they choose to guarantee them? Are they not vast consumers and users of iron? Why should not the surplus capital that they have be devoted to that object, and how is Pennsylvania injured by the development of her iron interests? It has been her boast and her pride to maintain that upon that alone her greatness and her future prosperity mainly and especially depended.

We listened with great interest to the gentleman from Philadelphia, (Mr. Woodward,) whose memory and historic recollections carry him back to the golden days, when Pennsylvania had her German farmers and yeomanry, who sent up to the Capital Governors and other high officers. Those may have been golden days for those times; but they have passed away. We have entered upon a career of greatness in competition with the world in all the departments of the arts and sciences; and in that competition, while the farmers perform their functions and their duties, and are to be estimated as highly now as then, still their very prosperity depends upon the encouragement of those industries that this committee proposes now to strike down. What we want for our grain is a market. What will give a market for our grain is the encouragement of these vast industrial interests. Let Pennsylvania's interests be properly encouraged, and she will be a vast consumer instead of a mere producer and exporter. We shall consume the materials raised in the west and in our own farming districts, within our borders, with mutual advantage to the consumer and the producer in the State of Pennsylvania; and this will give to her a greatness such as will equal the dreams of the most sanguine here and elsewhere.

I can see no reason why railroad companies should not be permitted to guarantee the bonds of iron companies to any extent they choose to guarantee them. It may be maintained that certain departments of industry railroad companies should not enter upon, and I agree with you. As the gentleman from Clearfield (Mr. Bigler) stated yesterday, they ought not to enter upon the manufacture of cotton. Perhaps it is so; that subject is not particularly now one for discussion; but even if they did enter upon the manufacture of cotton, what great harm would it do in view of what has been the history of the cotton trade of this country? We have raised the raw material; we have sent it to England. So far it was all right; and if it stopped there, it would be to our advantage. But it did not stop there. The English manufactured the cotton and sent it back to us as a fabric, we paying to them an increased price and a percentage upon its manufacture. But that is not material to the present issue. I do not suppose our railroad companies intend to enter upon the manufacture of cotton, either now or hereafter. But upon the question of their entering upon the manufacture of iron, or aiding in the manufacture of iron, I think there ought to be no serious objection on the part of Pennsylvanians.

Now, sir, we have some prominent illustrations of the evil that would follow the forbidding of railroad companies to guarantee the bonds of other corporations. Take, for instance, the illustration of the steamship company in Philadelphia. A bill was passed permitting corporations to guarantee its bonds and take its stock. What is the result? To-day we have launched three steamers upon the Delaware, a fourth almost launched, thus securing a line that is to start upon the career of competing with European nations for the trade of the Atlantic. If this Constitution had been adopted with this clause as now proposed in it, the Pennsylvania railroad company could not have taken a dollar of that stock, nor guaranteed the bonds of that company.

Mr. EWING. It could to the amount of one-third of the steamship company's whole stock.

Mr. ELLIS. The gentleman says one-third of the whole. I do not see why they should be limited to one-third or one-half

of the whole. It is very certain that in this question of an enterprise to compete with the world for commerce by steam on the Atlantic individual enterprise was powerless; it quailed from the undertaking, and would never, perhaps, have undertaken it; it required aggregated capital, and that vested as it is now, in the hands of these great corporations. I merely instance this as an illustration of what has passed immediately within our recollection, and is now transpiring before our eyes. It ought to be and should be a warning against our establishing in the fundamental law a provision forbidding the like to be done in future.

Now, sir, the problem of coal is precisely in the same position with that of ocean commerce. I speak with reference to the anthracite coal of Pennsylvania. Heretofore there have been found above the water-level, throughout Schuylkill, Luzerne and other counties, vast beds of coal deposited in the mountains above water-level. Individual enterprise may drive a gang-way, a drift or a slope upon these, and exhaust the coal above water-level, and to a comparative depth below. Most of that coal has been exhausted; and the question now is to sink down upon the vast deposit that lies some fifteen hundred feet below the surface, requiring the expenditure of vast sums of money to reach it and develop it. There is no association of individuals in the State of Pennsylvania willing to undertake that vast enterprise. Therefore a corporation with the means to do it has undertaken it, and like the steamship company, has started out with every prospect of success in that enterprise. Had this provision been adopted, that could not have been done, and in a short time we should have found the shipments of anthracite coal dwindling down instead of, as they should be, increasing. We have in the county of Schuylkill and the surrounding counties coal sufficient to last for centuries and centuries; but we must have capital to develop it, and we can only get that capital from incorporated companies that have a perpetual existence, and an assurance that they can wait years and years for a return of their money, and be able to stand the adverse outlay and expense and trouble attending that delay.

These are restrictions; and it is well for this committee to leave this question, I think, to the Legislature. Let them in their wisdom surround it with such restrictions as from time to time the people may demand and they adopt. Let us not insert here in the fundamental law a provision which, I think, will cripple the development of these great resources.

Why, sir, all of us are borrowers. The government of the United States is a borrower, and from whom? These corporations are forbidden to lend to those asking money from them, because the corporations are regarded as the enemies of the people and will trample upon their liberties! What are we doing to-day in the United States with the United States bonds? We are asking European capitalists to guarantee them, to buy them; and what are those bonds? They are mortgages upon the real and personal property of the United States; they are mortgages upon the blood and flesh of the people of the United States; for who does not know that the collection of taxes can be enforced by the imprisonment of the body? We are constantly inviting capital from Europe and borrowing it in our national capacity, in our individual and associate capacity, and in every other way.

Why say to these corporations that are created in our midst: "You shall not lend your assistance to develop the resources of the country, because you are not the friends of the people?" Such a proposition, I think, is monstrous; and we are standing in our own light and erecting a monument of our folly if we undertake at this time to insert in the fundamental law of the State a provision of this kind. It is a subject which will regulate itself, and, at most, it is a subject which ought to be left to the wisdom of the Legislature. We propose to elevate the character of the Legislature, and we propose that from the city of Philadelphia there will be willing to go, as we know there have gone in the past, the Merediths and the Prices. We propose that after the adoption of this Constitution, a seat in the Legislature shall be an honorable position again, and that such men as Biddle, Wetherill and Dallas will seek positions there and protect the interests of the Commonwealth. Let us throw safeguards around every effort to corrupt the Legislature, secure wise laws, secure good men to fill positions in the Legislature, and trust to their wisdom and the discretion of the people to regulate these matters.

Mr. HOWARD. Mr. Chairman: It certainly would be a very happy faculty if men, in the discharge of their duties, could please everybody. But after all it seems to me almost impossible, perhaps wisely so. In my experience, so far in this world, I have found it a very difficult thing to please every person on every possible interest. Some gentlemen took exception to the remark which I made yesterday, that there might possibly be some opposition to some portion of this report of the Committee on Railroads and Canals. It was a very reasonable supposition, and perhaps it may not be considered exactly courtesy, in the estimation of some gentlemen here, to strongly express one's sentiments. So far as I am concerned on this question of courtesy, gentlemen may spare themselves any trouble on my account, and save the butter and the lard.

Some gentlemen seem to think that the Railroad Committee, some how or other, was not so constituted as to contain within itself the wisdom of the Convention. Some gentlemen think it would be vastly improved if it could have four railroad men put upon it, and be entirely reconstructed, basing this motion upon the fact that differences of opinion seem to exist between the members of the committee. Why, Mr. Chairman, I do not think it at all strange, although it may seem strange to some gentlemen, that there are differences of opinion in the Railroad Committee. Differences of opinion have existed in nearly all the committees that have made reports to the Convention. If my recollection serves me right, the Judiciary Committee have a minority report from a most distinguished member, and the majority report has been denounced by members of the bar all over this Commonwealth. In our county, at a meeting of the members of the bar, we have publicly been instructed to vote against some of its most important features. But did we come here and move that that committee should be re-constructed, in order to get some more intelligence into it, that it might get up a report that would please every lawyer in the Commonwealth?

I have lived in the world long enough to know that I cannot please everybody if I try. Some people like the truth, and some people do not. If telling the truth is very offensive to some gentlemen, how shall we act wisely and suppress the truth upon the matters submitted to our decision? If you were to make a straightforward proposition that is to benefit the community at large, and that will impinge upon the plans and the schemes that are laid down by individuals to rob and swindle that same community, I will guarantee that it will not please everybody. It will raise not only a particular storm, but a very general one, depending upon how many of these special things that live upon society happen to be hit by it. It is a wonderful thing that some member of the Committee on Railroads and Canals has differed with the majority, and because that is so another gentleman thinks it his duty to move that the committee shall have injected into it four railroad men, as if there are no other men in the Commonwealth that could possibly understand, in any way, what are the public rights or the corporate rights that may be involved in the consideration of the subject embraced in the report of the Committee on Railroads and Canals! Certainly the proposition was a very extraordinary one. I am not aware that any gentleman rose in his place and moved to enlarge the Judiciary Committee by appointing some practical lawyers upon it, because we had a minority report from that committee, and because the majority report had been denounced by members of the bar in different places in the Commonwealth. I was not aware that any such motion had been made, nor do I see the necessity of it.

Some gentlemen talk about courtesy. That, I suppose, sir, is the very "pink" of courtesy. Some gentlemen cannot understand why it is that corporations, created by the Commonwealth of Pennsylvania, should be limited in their right to go into debt. Heretofore the creditor has had some interest in his debtor. Creditors have thought that they had a pecuniary interest in him. One of these great corporations to-day owes the Commonwealth of Pennsylvania ten millions of dollars, the principal of which will not fall due for a great many years. And has not the State of Pennsylvania some interest in how far that corporation may become involved in other liabilities? Some years ago an act of Assembly was obtained by which executors, administrators, guardians and trustees, of every description, may invest the last dollar of all the orphan children and the widows in this Commonwealth in the bonds and the obligations of certain of these corporations, and if every dollar of it was lost, they are discharged from all responsibility, because they invested it under authority of law.

The State that creates these corporations gives them this enormous power. I wonder if she has no interest in protecting her people? Will she give corporations the unlimited right to issue bonds and issue capital stock, and then, beside all that, to guarantee all the world outside of it? Yet that is the claim of the delegate from Schuylkill, (Mr. Ellis,) who has just taken his seat. He cannot see the propriety of placing any limitation whatever on these corporations to prevent them engaging in other occupations. He would have them not only guarantee railroad bonds, but guarantee the bonds of private manufacturing companies, for manufacturing cotton, iron and anything else. He cannot see how the coal of eastern Pennsylvania can ever reach a market, unless it is done through some of these giant corporations. Why, Mr. Chairman, in western Pennsylvania we furnish nearly one-half of the entire tonnage of the Pennsylvania railroad, in bituminous coal. Of all the 60,00,000 of tonnage carried over its road in 1871, 2,400,000 tons was bituminous coal gathered from the bituminous coal fields of the west.

Mr. ELLIS. Mr. Chairman: If the gentleman will allow himself to be interrupted, I would like to ask him whether, in western Pennsylvania, they have any bituminous coal one thousand five hundred feet below the water-level?

Mr. HOWARD. Well, sir, we have not yet got down that far. We have not worked off the surface. Perhaps, when we are boring for salt or oil, we may sometime find out how deep our coal seams lie. At any rate we have managed to mine and market our millions of tons of coals ourselves by private enterprise. We have sent them to the markets of the south and the west, along the great rivers that run through our section, without the agency of corporations. We have suffered injury only, where these corporations have came in contact with the citizen, whose rights were impared by them, and sometimes destroyed; because officers of the railroads were interested in some Westmoreland coal company, that would crush out individual enterprise, and prevent the coal of individual citizens from being transported, either at the special rates that were fixed for the transportation of coal mined by these companies, or the drawbacks that were given, or in furnishing the facilities for transportation itself. But when our coal goes to the west and the south, there we have the natural rivers that were given us by Almighty God, and there we have no trouble. We do not need any of this aggregated capital that is concentrated in great corporations; this capital that may be imported from abroad, and may be concentrated here. It may wrap its arms around and enclose the industry of Schuylkill county. If they want that kind of thing east of the mountains let them have it; but so far as we are concerned, we say, in the west, "deliver us!"

Some delegates seem to think that steam would never have found its way from the Atlantic to the Pacific, connecting the two oceans, if it had not been for the aggregated capital of these great corporations. Sir, the connection that unites us to the Pacific ocean was built by the people of the United States. It was built out of the United States Treasury, and so far as the aggregated capital, that the gentleman talks about, is concerned, it only furnished the cunning, and the schemes and the combination that wrung from Congress, and from the people of the United States, more money and more land than would, honestly expended, have built two such railways. That has been proven beyond all question or peradventure. So much for aggregated capital in building the railroad that connects the two oceans by steam.

We can see many reasons why unlimited power should not be given to these corporations to guarantee the bonds and obligations of other corporations. They are chartered by the public to do a public duty. It is not a private matter that they are chartered to perform. They are to perform certain duties for the public; and when that same public have given them the power to issue bonds, they have declared, by law, that all trustees may legally invest the moneys under their control, in these obligations, they are protected by law, if losses occur. Some of these corporations are largely indebted to the Commonwealth itself, and we can see many reasons why we are interested in limiting their capacity to involve themselves in other liabilities. How can the community—how can a guardian—how can a trustee determine the status or standing of any of these corporations, if they have a right to guarantee all the railroad bonds; all the bonds of other corporations; all the bonds of private manufacturing companies, or if they do not guarantee those bonds, can take and hold their bonds to the amount of millions? They thus assume the re-

sponsibility of carrying the obligations of others until those who invest in their securities do not know whether they are good or bad; and I say the State that created them is bound, for the good of society, to watch over them and protect that public. It ought to do it. In all fairness and conscience it ought to protect the public in these matters, and see to it that they do not get into water too deep for them to navigate in, because they are interested in the securities; they are interested in these obligations; they are interested in their payment; they are interested in the solvency, and interested in maintaining the ability of these companies to meet all the obligations that they have undertaken to society.

Mr. Chairman, I repeat here again that I entertain not the slightest hostility to the corporations of this Commonwealth. I am perfectly willing to concede them all the fair and just rights that they can properly ask of the State; but, at the same time, I believe that we have a duty to perform to society; that the public are interested in these matters; and that we cannot, with safety at all, permit these corporations to have this unlimited power that seems to be claimed by some delegates here for them in considering this question; and that is the only reason why I would impose limitations upon them. They are not like a private individual; they are a creature of the law; they must be controlled by the power that creates them. They must not get higher than the law-making power that brought them into existence. I say again, that the safety of society, of creditors, of persons who have invested in the securities of these corporations, requires and demands that they should be limited; and more than that, the minority of the stockholders are entitled to this protection of the laws, because we know that heretofore the majority have done just as they thought proper, and the minority have complained, time and again, but this strong-handed majority have gone forward doing with the property of the whole as they thought proper.

It is for these reasons, and for no other reason, that I ask for these limits, for these restraints to be put upon corporations, and not that I would cripple them. They were never intended to become guarantors; it was never intended that they were to take the stocks and obligations of everything else. They were created for a special work—to build a particular railway, and upon that railway they were to carry the property of the public. They were to do it for a fair price, they were to perform a public service, and they were to receive a compensation therefore, but they have gradually gone away beyond that idea, and the only question now is, shall they go on and continue with unlimited authority in the direction which they are taking?

Some gentlemen seem to think that if we stop and put the brakes down now on some of the older and stronger corporations, it will be such a limit and restraint that hereafter we shall check improvements in the State. I do not believe anything of the kind. Why, some gentlemen are driven to make this argument, that capital cannot be got to develope the coal fields of Pennsylvania.

The CHAIRMAN. The gentleman's time has expired.

Mr. J. R. READ. I move that it be extended.

The CHAIRMAN. It requires unanimous consent.

Mr. HUNSICKER. I move that the gentleman from Allegheny have unanimous consent to proceed.

The CHAIRMAN. Unanimous consent is asked that the gentleman from Allegheny may proceed. Is there objection? ["Yes." "No."] Objection seems to be made.

Mr. HOWARD. I thank the Convention very kindly for the unanimous consent. I have said all I intended to say when I rose, and, in fact, a little more.

Mr. DALLAS. Mr. Chairman: If the body of delegates in this Convention are divided into a corporation party, and an anti-corporation party, I must say, for myself, that it is my fortune not to belong to either of them. I confess, sir, that it is my desire to incorporate into the Constitution, which we are about to present to the people for their approval, some clauses that might be properly termed restrictions upon corporate power. I am opposed to everything that tends to create monopoly; I am desirous that no corporation shall be created where individual enterprise might equally well carry out the purposes for which such corporation may be proposed, and I am, further, in favor of giving to no even necessary corporation any unnecessary grant of power.

Now, sir, having these views, I did hope that when the report from the Committee on Railroads and Canals, constituted as it is, should come before us for our consideration, I would be able to vote for

every section of it without alteration or amendment. It has proved, however, to be unfortunately true that this report has not met with general favor upon this floor, and I have had the misfortune to find myself voting more than once with the very gentlemen whom I supposed my votes upon this subject would never satisfy.

We have in this report no less than nineteen sections of what is simply nothing more nor less than an omnibus bill, an act of legislation of nineteen sections, being more than are contained in any single article of the present Constitution, except that upon the Legislature and that upon the Bill of Rights. We propose to add now to the Constitution, upon this single business interest of railroad and canal corporations, which, at the present time, has not a single section in the Constitution, nineteen long and legislative sections.

Mr. CAMPBELL. May I ask the gentleman a question?

Mr. DALLAS. Certainly.

Mr. CAMPBELL. Did not the committee, of which the gentleman is a member, report an article nearly twice as long as the article reported by the Railroad Committee?

Mr. DALLAS. If the gentleman will tell me to which report he refers I will answer.

Mr. CAMPBELL. The judiciary report.

Mr. DALLAS. That report has, I believe, a greater number of sections, exactly how many I do not know; but I do know that with a large number of them I have not the good fortune to concur, and I do know, further, that the great aim of that committee was to relieve the Supreme Court of Pennsylvania, so far as possible, from the great labors that now fall upon it; and if we want to add to its labors, if we want to make it impossible for any court that can be created to perform the judicial duties of this Commonwealth, all we have to do is to add article after article of minute direction for the control of carrying companies, for the purpose of hereafter making sure of a constitutional question in every case to which any of them may be a party.

But, sir, in all these nineteen sections of legislative matter, there are but few articles that one-half of the members of this committee of the whole can concur in as they stand. My conversation with many, and the remarks that have been made upon this floor, develop that fact; and I do not believe that if the many gentlemen in this body, or out of it, of large intelligence and experience, who serve corporations, had been called upon to make an article and present it to this Convention, which would assure the worst purposes of corporations, they could have better served their purpose than by giving us just the article we have now before us; for those of us who are sincere, but moderate and reasonable in our desire to put restrictions upon corporations, find it impossible to endorse it, and if we could endorse it, and put it before the people just as it stands, I verily believe it would defeat the entire work of this Convention.

I know that many gentlemen in this body are embarrassed just as I am, by a desire to adopt *something* to the end intended by this article, but who, feeling—as I feel—that it is impossible to accomplish anything by amendment, (because of the difficulty in securing a voting quorum,) find it impossible to give practical expression to their views. I propose, therefore, when this report goes back to the Convention, to ask for its re-commitment to the same committee, and to follow that by a motion that five members be added to that committee; and with this view, I now move that the committee of the whole rise, report progress, and ask leave to sit again.

The CHAIRMAN. It is moved that the committee rise, report progress, and ask leave to sit again.

The motion was not agreed to.

Mr. GIBSON. Mr. Chairman: I do not rise for the purpose of making a speech. I only expect to be able to give, in this instance, as in others, a reason for the vote I shall cast in committee of the whole, or in Convention, upon important measures in the proposed Constitution. I am concerned neither for nor against railroads, nor interested in them in any way. There are here able and eloquent attackers, and there are able and eloquent defenders of these corporations, so that either party, if there be such parties here, is well taken care of. I am, with many other members, interested only in seeing that a proper Constitution is made, that proper principles are adopted, and proper articles and provisions made in the organic law, so that we may here not transcend the powers that have been delegated to us, not legislate but adopt fundamental principles, and that the government may hereafter be conducted according to those

principles, and according to that organic law.

Sir, this is a new article. Every other article of the Constitution we are familiar with. The reports of the different committees have come before us and have been explained, and at once were either accepted or rejected by the Convention, and no extended discussion was demanded. As regards this report, the committee, composed of some of the most distinguished and intelligent men of this Convention, held the matter under consideration from the very time of the commencement of the session here in Philadelphia until quite recently, and I have no doubt they have given the most thorough study to the matter. I, sir, with others who have already spoken on this question, must plead ignorance of a great many things that are embraced in this report. All that I know about it I have gathered from what I have heard said here by persons who have spoken either in favor of or against the various sections. I shall, therefore, not undertake to discuss in any manner the entire article, or call attention to anything else but the section and amendment immediately under consideration. I shall be obliged, from my want of general information on the subject, to confine myself to each section, if I should say anything at all in regard to it, as it is brought before this body.

Sir, I think the amendment proposed by the gentleman from Blair, brings out, more distinctly than it has ever been brought out before, the objectionable feature of the section now before this body. Leaving out the words which he proposes to strike out, the section reads:

"No railroad or canal corporation shall, either in its own name or in the names of its officers, or through the intervention of trustees or other agents, hold the capital stock, bonds or other indebtedness of any other railroad, canal or other corporation, to an amount exceeding one-third of each thereof actually issued or incurred."

Sir, there is here what is known in law as a negative pregnant, and gentlemen who support this section must overlook the fact that while they are putting this restriction, as they suppose, they are conferring power; they are giving the right to railroad companies to hold the stock of other corporations, to go into other business. You cannot put the restriction here without conferring the power—and I care not to what extent you carry it—you are here giving, to the extent of one-third, the absolute right of investing in this manner in other business, and taking railroad companies from their legitimate province, from the business for which they have been instituted.

A great fear pervades the public mind on account of the centralization of power, by the combination of capital these corporations can bring together. That same feeling has affected me, and all the members of the Convention, to a greater or less extent; but, sir, I do not think we can reach the evil by such provisions as this. While it may be very well to say that corporations should be restricted, it does not do for us, in the same breath, to confer upon them the very powers which increase the danger that is complained of.

Sir, this is a democratic or republican government, and a co-ordinate branch of the government is the Legislature. We cannot abolish the Legislature; we must have it; and if we have a Legislature we must trust something to that Legislature. This body was not summoned here for the purpose of legislating for the Commonwealth of Pennsylvania. We were sent here to devise a form of government, or rather to propose amendments to the present form of government, and to decide what principles, in addition to those that had been in the government, are to be added to the organic law. We were not sent here to interfere with the province of a branch of the government, co-ordinate with the executive and judicial, which has been in existence from the time the government was established; and any interference with what properly belongs to legislative power is transcending the power of this Convention.

I say, sir, we must have a Legislature. The very Constitution that we are about to make will say that the legislative power of this Commonwealth shall be vested in a Senate and House of Representatives, to be elected by the people. There are to be two branches of that Legislature, a Senate and a House of Representatives. They must have something to do, and we must trust something to them.

If these corporations, or if any other class of the community, are likely to inflict injury upon the community; if, by their power, they are likely to trample upon the rights of the people, it is not for us, it is for the Legislature, to take care of it; the responsibility does not rest with us, it rests with them and the people who elect the members of that body. Therefore, in giving my views and the reasons

for the vote that I shall give on this section, I call upon members to consider, before they cast their votes, whether, in their attempt to restrict, as they suppose, the power of these corporations, they are not conferring irrevocably upon them powers, the grant of which we may regret, and which will render this Constitution, instead of being a blessing, obnoxious to the people of this State.

Mr. COCHRAN. I hope, Mr. Chairman, that in the present position of this matter, the amendment of the gentleman from Blair will not prevail, so that the question may come up in proper form. I do not wish to discuss it now, further than to say that if this amendment should fail, I propose to offer a substitute for the section, a substitute which, I may say here, will entirely meet the specific objection which has been made by my colleague from York (Mr. Gibson) with regard to the grant of additional power which seems to be very much apprehended in this section. We will guard and protect against that, and prevent any grant of additional power to that which the railroad companies now possess. I propose to make the section embody two distinct propositions. One is, that any railroad, canal or other corporation, doing the business of a common carrier, shall have the right to invest in the stock, bonds, or other evidence of indebtedness of any other similar corporation, engaged in the transaction of the same kind of business, to the amount of one-third of those respectively. That is certainly not an increase of the power they already possess. Any one who will look at our legislation will find embraced in it an unbounded and unlimited right without restriction. To show what the legislation on that subject has been, I will read one or two brief sections from the Digest:

"It shall and may be lawful for any railroad company or companies, created by or existing under the laws of this Commonwealth, from time to time, to purchase and hold the stock and bonds, or either, or to agree to purchase or guarantee the payment of the principal or interest, or either, of the bonds of any other railroad company or companies, chartered by it, or existing under the laws of any other State."

There is no limitation at all there, it will be observed. Then, again:

"It shall and may be lawful for railroad and canal companies to aid corporations authorized by law to develop the coal, iron, lumber and other material interests of this Commonwealth, by the purchase of their capital stock and bonds, or either of them, or by the guarantee of, or agreement to purchase the principal and interest of either of such bonds."

There also is a very unlimited right to invest in the stock and bonds of industrial corporations, and the argument of the gentleman from Schuylkill this morning, as I understood it, was an argument which would tend to show that it was perfectly right, entirely within the scope of the duty of railroad companies, to do this thing; that although chartered for the purpose of doing the business of common carriers, they had a right to go down into the coal mines one thousand five hundred feet deep, and draw up the coal there for the public benefit. If that is the idea on which we construct corporations in this State, the better plan would be not to define any objects or purposes for which the corporation is created. But, sir, what is remarkable about the section which I have just read, is the proviso to it, in these words:

"*Provided*, That this act shall not apply to the stock and bonds of any corporation possessing mining or manufacturing privileges in the county of Schuylkill."

So that the county of Schuylkill is protected from this thing, while all outside of that county are left exposed to this kind of policy. Why that was done, I do not pretend to say, I merely state the fact as it exists.

In order to meet the other proposition, the other branch of the section which I shall propose, will be to prohibit any investment by companies doing the business of common carrier, either in the capital stock or holding, endorsing or guaranteeing the bonds or indebtedness of any other corporations except those doing the business of a common carrier. Then the proposition would be, that so far as other common carrier corporations are concerned, railroad companies and companies of that kind may yet invest to the amount of one-third. That is intended to give all the aid and benefit which, it seems to me, is wise or prudent for us to give to railroad corporations needing help. If you allow other railroad corporations to invest to the amount of one-third in their stock, and also one-third in their bonds, you give them a liberal assistance, and enable them at the same time to help themselves along, and not to be swamped by the very bounty which is conferred

upon them. On the other hand it will, I suppose, not only satisfy my colleague, (Mr. Gibson,) but also the gentleman from Philadelphia, (Mr. Gowen,) who said that railroad corporations did not ask this privilege; it was one they never possessed, and they didn't want it. This provision will obviate that difficulty also, and they will not get what they do not want, although it seems they do profess it throughout all this broad Commonwealth, except in the county of Schuylkill. I shall, therefore, as I say, if the proposition of the gentleman from Blair is voted down, offer this section in lieu of it.

Then the question arises between the gentleman from Dauphin (Mr. MacVeagh) and myself. That is a question very easy of solution. The gentleman from Dauphin does not want any limitation upon investments made by one railroad in the stock, bonds, or other evidences of indebtedness of another railroad. I do. That is all the point we differ upon. The committee is competent to decide this point between the gentleman from Dauphin and myself. We are neither of us, I presume, so very infallible that this committee cannot overrule either one of us, or both of us, if it is required. So then, sir, the proposition comes down to this, and nothing more.

I admit, Mr. Chairman, that this is an entirely new article; I admit that it is a long article. All I can say is, that the effort was not to make it longer than necessity required. As it was a new article, we had to travel over new ground, and to do the best we could.

Gentlemen say we should not legislate. Why, sir, look at the legislation that we already have. I ask gentlemen here if they are content that such unlimited, unrestricted legislation shall continue to be the rule of this Commonwealth? Or will gentlemen say that we should submit a question of this kind to the Legislature which has already gone so far wrong, if I may say so, in this direction? There is no safety in this matter, except in applying a remedy of this character.

Mr. Chairman, this Convention, when it met, for some reason or the other, appointed a Committee on Railroads and Canals. I presume it was expected that that committee should do something. A friend near me (Mr. Fell) suggests that we have exceeded the expectations. I suppose we probably have.

Mr. FELL. No; you have answered the expectations.

Mr. COCHRAN. Well, sir, we have done something. The idea is, I presume, that we have done too much. It may be so; but what has been done, has been done in good faith; and all that the Committee on Railroads and Canals, in consideration of the time, labor and attention they have given to this subject, ask, is a simple, candid, fair consideration of what they have proposed, that that which may be deemed by the majority here to be right, may be adopted, and that which is considered wrong, may be rejected.

Mr. LANDIS. May I ask the gentleman whether, in case the amendment which I have offered should be withdrawn, he proposes to offer his section?

Mr. COCHRAN. I shall offer the section when I get the opportunity.

Mr. LANDIS. Then, sir, as the section the gentleman from York is about to offer expresses very nearly the views which I entertain, and is better than the section as amended would be, and altogether proper, I withdraw my amendment.

The CHAIRMAN. The amendment of the gentleman from Blair is withdrawn. The question is on the section.

Mr COCHRAN. I move to amend by striking out the section, and inserting in lieu thereof:

"No railroad, canal or other corporation engaged in the business of a common carrier shall, either in its own name or in the names of its officers, or through the intervention of trustees or other agents, hold shares of the capital stock, or hold, endorse or guarantee bonds or other evidences of indebtedness of any other railroad or canal corporation, to an amount exceeding one-third of the amount of such stock, bonds or other evidences of indebtedness respectively; nor shall any such railroad, canal, or other corporation engaged in the business of a common carrier hold shares of the capital stock, or hold, endorse or guarantee the bonds or other evidences of indebtedness of any other corporations, except those doing the business of a common carrier."

Mr. JNO. PRICE WETHERILL. Is an amendment to the substitute in order?

The CHAIRMAN. An amendment to the amendment is in order.

Mr. J. PRICE WETHERILL. I move to amend, by striking out all after the word "corporations," in the fifth line of the printed section—I do not know in what

line of the substitute, which is offered, it occurs—and inserting:

"Except upon public notice given of at least sixty days to all stockholders, and in such manner as shall be provided by law."

I should like to say a word or two in support of my amendment.

I suppose that the Committee on Railroads, when they say that a railroad company may subscribe one-third of the stock of any other company, mean something. When the railroad committee say that a railroad company or common carrier may subscribe to the stock of another company, they suppose that, under certain circumstances, they will do so. Now, I assert that when they limit the subscription to one-third, they do not mean anything, for the simple reason that under the proposition as presented by the Committee on Railroads, I doubt whether any railroad company would help any other railroad company by a subscription to one-third of its stock. Railroad companies do not act as beneficial societies, to help other poor, needy and indigent railroads; but they help connecting railroads for a purpose, and that purpose is to control; and never, in the wide world, would they undertake to subscribe one-third of the shares of stock of another railroad company; and in that way, by losing control, throw away so much money, giving the control of that money to the directors and stockholders of a company over which they can have no voice in its management, but they would never act in any, otherwise than to subscribe for a majority of the stock, in order that they might secure the controlling influence in that road, and that that road so secured would be worked for the benefit of the subscribing or main road. It does seem to me that when we look at this question in its length and breadth, we, by our action this morning, are taking a very narrow view of the whole subject. It does seem to me that when we cripple railroad companies by preventing them from extending their lines, and by preventing them from competing with other great railroad companies, we make a grave mistake.

One gentleman has said that there is nothing in the idea that the Pennsylvania railroad company, taking that as an illustration, is to look to business outside of the State of Pennsylvania, because outside of the freights and passengers from this State, its business comparatively amounts to nothing.

Why, sir, let him look at the past history of railroads and other corporations for the last thirty years. Why is it that the State of New York to-day, is one of the greatest manufacturing States of the Union? Why is it that the city of New York to-day, notwithstanding our coal and iron, and all our vast mineral wealth, is one of the greatest manufacturing cities in the Union?

Mr. CAREY. It is not true.

Mr. J. PRICE WETHERILL. It is according to the census. It is not true that New York exceeds Philadelphia in manufacturing, according to the Philadelphia census, taken by a Philadelphia commission, but the census as taken by the government shows, by figures, that the manufacturing products of the State of Pennsylvania amounted, in the year 1870, to seven hundred and fifteen million dollars, and the manufacturing industries of New York amounted to seven hundred and eighty-seven million of dollars. Sir, I always stand up for my native State in every proper position; but when facts like these are laid before us (and "facts are stubborn things") we must look at them in the light in which they are presented, and meet them fairly and frankly, and if these results have occurred on account of any mistakes we have made, let us endeavor to secure good results by overcoming errors which, in the past, we have committed.

Now, sir, what is the secret of this great and rapid increase in our sister States? The early completion of the Erie canal was the secret of the wealth of New York city, and of New York State; and why? Because, without crossing mountains, that canal penetrated in an unbroken water way from sea to lake. Pennsylvania tried to do the same, but in crossing the Alleghenies she found a barrier. She found that she could not connect by water through from the Ohio river to the seaboard; and therefore the State of New York, and the city of New York, obtained the supremacy in the western trade. So in Baltimore with the canal there; and so it is in Virginia with the canal running west from Norfolk; these States found that a perfect water-way could not be made.

Now, that canals and other like water communications are of the past, shall we in the great contest of the four through lines for western traffic, in any way cripple, in any way attempt to destroy, in any way attempt to curtail the power of our own great road and our own successfully

competing line? I hope not, sir. I hope we shall be extremely careful, because I know very well that the success of this city, and the success of this State, depends upon our being able to enter the great west with such a competing line, ready and willing to equal the competition offered by any other line or other State, so that we may secure the great traffic which is open before us, and which by proper efforts is within our reach. I look in vain to the Constitution of the State of New York to see any effort there to cripple either the New York Central, or the New York and Erie road. I look in the Constitution of the State of Maryland, and I see there no effort whatever to cripple, in any way, the efforts, (either by lease or control of other roads,) of the Baltimore and Ohio railroad company. I see those great roads entering into fierce and vigorous competition with the Pennsylvania railroad company, and I know very well that our success, as a State, and that our success, as a city, depends very largely upon the skill with which this great enterprise is managed; and I look with dread upon any effort on our part to endeavor to cripple this great line, in their great efforts to secure it.

Again, sir, while I speak thus, and while I see the dangers of crippling any great through line, endeavoring to compete for the western traffic, I also see an evil which it seems to me we have overlooked, and that is the evil of these giant transportation companies, and inside great freight lines coming into the great through lines, and extending their broad and grasping hands, by which they may and by which they do produce the bulk of the evils of which we complain. Let any man look into the oil traffic of the State of Pennsylvania; let him study up the history of the Southern improvement company, and he will conclude that there is an evil in this sort of traffic, and that there, perhaps a careful hand should be exercised to prune and cut down the power of freight monopolies, and there perhaps power should be exercised so that these transportation companies running in the charge and under the direction of a combination, perhaps of the directors and owners of these through lines for their own profit, to put money in their own pockets, to take money from the stockholders. To this view of the case, perhaps, the Committee on Railroads had better look carefully, and present us a section which will curtail their powers.

An effort has been made in that direction by the gentleman from Centre, (Mr. M'Allister,) and he would like a section introduced by which maximum rates of freight should be fixed by the Legislature, and transportation by a fixed schedule of rates should be required. Will that reach the evil? If I recollect aright there was a railroad company in this State which, by its charter, was not allowed to charge on freights over a certain rate; and what was the effort of that railroad company to overcome the restriction? They simply formed a transportation company inside of the railroad company, and they made a contract which placed the carrying power of all but a certain article over that road into the hands of a transportation company at the rates fixed by law, and in that way the trade and the manufacturing interests of the people in that section were crippled.

It is true that our great railroads are like our great rivers; and when we lessen their value, and when by law in any way prevent their free and open navigation and profitable use, we do destroy the commercial interests of the country, and we do destroy the manufacturing interests of the country.

Therefore, sir, by a broad, comprehensive general railroad law prohibiting the evils to which we have alluded, it does seem to me that we can and we should, by our Legislature, and not by an article adopted by this Convention, prevent the evil. We cannot by any possibility here look into the future so far as to guard against every possible emergency that may arise. As has been said, if we pass this article, the steamship company recently organized in the city of Philadelphia never could have floated a single steamer, and the city of Philadelphia and the State of Pennsylvania would have been deprived of what I conceive to be the high credit which will ever be remembered by the commercial people of this country in the future, that they were the first, by their enterprise and by their industries, to determine that the American flag should once more float over an American steamer.

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

Mr. J. PRICE WETHERILL. Certainly.

Mr. EWING. Will the gentleman inform us what proportion of the stock of the steamship company is held by the Pennsylvania railroad company; whether it is over one-third?

Mr. J. PRICE WETHERILL. The Pennsylvania railroad company saw the necessity, just as the Baltimore and Ohio railroad company saw the necessity, of their line being supplemented to Liverpool by a fleet of steamers; and why? Because they desired to offer to the great grain producing country of the west through bills of lading, not only to the seaboard, but also to Liverpool; and for that reason they saw that of necessity an ocean steam line should be established in this city. The merchants and manufacturers of the city of Philadelphia said to the Pennsylvania railroad company: "If you will subscribe to one-half of the stock, our people will take the other half; if you will endorse fifteen hundred thousand dollars' worth of bonds, which are now selling in the market at eighty per cent., we will take them at par;" and the merchants of Philadelphia did place those bonds that were selling at eighty at par, and thereby suffered a loss of three hundred thousand dollars in discount, and they did take about four hundred thousand dollars' worth of that stock, even up to the Pennsylvania railroad company's four hundred thousand.

Now, sir, in conclusion, I do hope that these sections, which in my opinion uselessly cripple the great enterprises of the State, will be voted down, and that a provision, carefully framed, will be presented, so that the proper and necessary checks upon these giant inside corporations will be presented, and thereby I think the evil will be cured. Allow me to ask the gentlemen of this Convention, have they ever heard any very serious complaint raised against railroad companies endorsing bonds or buying stocks? I never have. What I hear of is that railroad companies corrupt legislation. What I hear of is that railroad companies carry freight from Pittsburg to Philadelphia at a certain rate; when they carry it from Pittsburg to New York at comparatively lower rates. These are the complaints that come to my notice; and when the merchants of Philadelphia make these complaints by saying that New York is getting her freights cheaper from Pittsburg than Philadelphia, they are told that if they demand a classification of freight in the railroad companies upon a proper basis, very well, it shall be granted, but they have no control over the transportation companies using their road; that the transportation companies fix what rates they see fit; that at times they are compelled to discriminate against Philadelphia in favor of New York; and thus we are blocked and checked in the efforts which are made to secure justice and fair dealing in regard to freight, so that Pennsylvania and Philadelphia may be recognized by cheap and uniform rates of freight.

With these remarks I do hope the Committee on Railroads will take care that they do present just such a section as I have indicated.

Mr. MACVEAGH. Mr. Chairman: I desire only to suggest to the gentleman from Philadlephia (Mr. J. Price Whetherill) that if he will temporarily withdraw his amendment—I do not wish to interfere with the gentleman from York (Mr. Cochran) in offering the amendment of which I gave notice—it will enable me to have a vote upon my substitute, which covers the ground exactly desired by him. My amendment, if it is adopted, will dispense with the necessity of further voting. If it is not, the gentleman from Philadelphia can renew his amendment.

The amendment that I propose to offer as an amendment to the amendment is:

"No railroad, canal or other corporation doing business as a common carrier shall, either directly or indirectly, hold, guarantee or endorse shares in the capital stock, bonds or other indebtedness of any other corporation, individuals or partnerships, except those doing the business of common carriers."

In other words, it raises the exact question that the gentleman from York means to raise. He wishes to restrict them from endorsing transportation bonds, either on land or sea, to more than one-third their extent. I wish unlimited power granted to them in that respect, not even requiring them to get the permission of the Legislature, but limiting them to transportation companies and the business of common carriers, either on land or sea.

The CHAIRMAN. Is the amendment to the amendment withdrawn?

Mr. J. PRICE WETHERILL. No, sir; it is not.

Mr. MACVEAGH. Then, if it is not withdrawn, I will offer this after it is voted down.

Mr. J. PRICE WETHERILL. Mr. Chairman: Let the section be read as it is proposed to amend it.

The CLERK read as follows:

"No railroad, canal or other corporation engaged in the business of a common carrier shall, either in its own name or in the

names of its officers, or through the intervention of trustees or other agents, hold shares of the capital stock, or hold, endorse or guarantee bonds or other evidence of indebtedness of any other railroad or canal corporation (except upon public notice given at least sixty days to all stockholders, and in such manner as shall be provided by law,) to an amount exceeding one-third of the amount of such stocks," &c.

Mr. J. PRICE WETHERILL. I desire that all after the word "corporation," where it occurs the second time, shall be stricken out, and my amendment inserted.

Mr. MACVEAGH. Would that allow them to endorse to the extent of one-third the bonds of other transportation companies, without limiting them as to manufacturing and other private enterprises?

The CHAIRMAN. Will the gentleman from Philadelphia indicate just where the amendment ought to come in?

Mr. J. PRICE WETHERILL. I will. The section as amended will read as follows:

"No railroad or canal corporation shall, either in its own name or in the names of its officers, or through the intervention of trustees or other agents, hold, guarantee or endorse shares in the capital stock, bonds or other indebtedness of any other railroad, canal or other corporation, except upon public notice given of at least sixty days to all stockholders, and in such manner as shall be provided by law," &c.

The CHAIRMAN. The gentleman from Philadelphia has not indicated where his amendment comes into the amendment.

Mr. J. PRICE WETHERILL. After the word "corporation."

The CHAIRMAN. The gentleman alludes to the original section, and not to the amendment. To get it in at this time, it must be an amendment to the amendment.

Mr. J. PRICE WETHERILL. Excuse me. The amendment as amended would read:

"No railroad, canal or other corporation, engaged in the business of a common carrier, shall, either in its own name or in the names of its officers, or through the intervention of trustees or other agents, hold shares of the capital stock, or hold, endorse or guarantee bonds or other evidences of indebtedness of any other railroad or canal corporation, except upon public notice given of at least sixty days to all stockholders, and in such manner as shall be provided by law."

Mr. Chairman, just a word, that I may not be misunderstood. I say that in an article to be placed in the organic law, it is impossible for us to frame acts of legislation which, for all time to come, will meet every emergency. We must leave something to the Legislature. We have already decided, by an article adopted by the committee of the whole, that no special legislation shall be passed where a general law can be enacted. Now, it does seem to me, that in this and other sections we are trenching upon what does really and truly belong to the Legislature, because they must make a general railroad law to meet emergencies that may hereafter exist. This article as it stands would, it occurs to me, be too arbitrary, and therefore I desire that the details of it shall be left to the Legislature, to be arranged as may be provided by law.

Mr. CUYLER. Mr. Chairman: I do not propose to discuss this article, certainly not at this time, though hereafter, before it is finally disposed of, I may submit some remarks. At present I only wish to throw out this thought, that the amendment as proposed is not practicable. If it shall require that formal action of the stockholders of the companies, and of both companies, shall be had in advance, the opportunity of purchasing the bonds of other companies must, of course, become no opportunity at all, where the purpose is announced with the formality of action which this amendment provides, for the price of the bonds in the market would attain such figures as to make it impossible to carry out any designed arrangement. It is only by quiet management, just such as a man of business carries on in his own affairs, that such things are ever practicable. The publication to all the world that this amendment calls for must entirely defeat its practical value.

Mr. BUCKALAW. Mr. Chairman: I am in favor of placing in the Constitution a simple, absolute, unconditional prohibition around all companies of this character, against engaging in anything else except their legitimate business, and against endorsing the bonds or taking the stock, or meddling in any way whatever with the business of any other corporation in the State, save and except only those companies, of a similar character with themselves, which may connect with their works. Now, if I understand it, the Con-

vention is disposed to accept that as a disposition of the matter covered by this section; yet, unfortunately, we do not seem to have got that matter in such a form that the Convention can express it.

I am opposed to the limitation of one-third. I think it inconvenient, inexpedient, and if you please, unworkmanlike. What we want in the interior of the State, those parts where improvements have not yet been constructed, as has been already forcibly argued from the floor, is the aid of that aggregated capital which lies in other sections of the State, and beyond the State. In those parts of the Commonwealth yet undeveloped, local capital is not sufficient; and there is no such thing as local credit. It must be borrowed; it must be obtained from Philadelphia, or from some other commercial point, or through agents from capitalists abroad. It is by this aid, ordinarily given, in fact, that all our new works, all short lines, all branch roads, are constructed upon loans of credit by the great corporations; and to confine the extension of that credit and loan to these infant enterprises to one-third of the stock of the new enterprises would, in all ordinary cases, defeat the movement.

I hope that some such proposition as that offered by the gentleman from Dauphin (Mr. MacVeagh) will be presented to the Convention, and that we shall get a distinct vote upon it, and that the Convention will vote down everything else, so that we act upon that simple proposition that these companies shall not engage in anything else but their legitimate business, but that they shall be allowed to engage in that business without any limits upon them as to the assistance they can render smaller enterprises in the construction of their works.

Mr. M'ALLISTER. Mr. Chairman: I have listened to this debate with some interest, and I have yet to hear some good reason assigned why any restriction should be laid upon railroads and canals, in purchasing the bonds or the stock of connecting or lateral railroads. For whose protection is this restriction? Certainly not for the protection of the public, because by the consolidation of roads, freights are uniformly lessened, lessened by the consolidation of every branch railroad with the main trunk. The people are interested, deeply interested, in that result which this restriction would prevent. There is no exception to this rule. Now, if it be for the benefit of the public that this consolidation be made, if their freights are lessened, if their facilities for reaching a market are increased, why place these restrictions upon the trunk railroads?

But is it for the protection of the stockholders in the branch railroads? I hold, Mr. Chairman, that it does not protect the interests of the stockholders. I hold that the losses that have fallen upon stockholders have fallen generally from the want, from the absence, of such endorsement, and from the absence of the ownership of the stock. I lost, myself, one thousand dollars in the Lock Haven and Tyrone railway, simply from the want of such endorsement. We attempted to build that road on local capital, to iron it and to stock it, and failed, and the railroad was sold for a mere nominal price and went into the hands of purchasers who entered into an arrangement with the Pennsylvania railroad, and the stock is now worth par. The original stock would have been worth par now if we had had this ownership of bonds, this ownership of stock. So far as I know, the stockholder has never been injured by these connections. He may, in certain cases, lose his stock, but as I explained yesterday, the grading of the road and the subscriptions to the grading are made with a view to incidental benefits to the stockholders through whose land the road passes, and to the business men of the vicinity, made upon the ground that if they get the railroad they will be benefited, even if they lose the stock.

Now, I submit to the committee of the whole that the passage of this section as reported, or the laying of any restriction whatever upon the endorsement of bonds and upon the ownership of stock which keeps the control of the road out of the hands of the corporation that is asked to furnish the capital, will rest like an incubus upon the railroad enterprises of this Commonwealth. It will prevent the extension of branch roads through the country. The railroad enterprise is, in my opinion, as yet in its infancy. I would do nothing to prevent the Reading railroad from extending its lines and becoming a competing line with the Pennsylvania road. I would do nothing to prevent the Reading railroad, by the endorsement of bonds or the ownership of stock, securing as many branch roads tributary to it as they can. I would do nothing to prevent the Pennsylvania road, by the endorsement of bonds or the own-

ership of stock, in securing all the tributaries to it that they can. No evil can arise from this; good, only good; blessings, and not curses.

If this would be the result, we would act as madmen in passing such a section as this. It does seem to me to be all wrong, to be a mistake, to be an attempt to remedy an evil that does not exist. The stockholders are not injured, and the people are unquestionably benefited by the consolidation of any branch road with a trunk line. The people have not asked for any such amendment as this, and we ought not to force it on them. They have asked for many things that I hope they will receive, but this they have not requested.

Mr. HEMPHILL. Mr. Chairman: I have listened attentively to the debate on this section, and if I understand the views of the Committee on Railroads and Canals, and of the gentleman from Columbia, (Mr. Buckalew,) as I think I do, then I hold in my hand a section which I shall offer when in order, which I think will meet all objections and take the place of the one under consideration. It will absolutely prohibit the holding, guaranteeing or endorsing, by railroad companies, of the securities of any other than railroad corporations, and will permit the holding, garanteeing or endorsing the securities of other railroad and canal companies, in such manner and such amount as shall be prescribed by law. I will read the amendment as part of my remarks:

"No railroad or canal corporation shall, directly or indirectly, hold, guarantee or endorse the stock, bonds or other indebtedness of any individual, corporation or company other than railroads and canals, and those only in such manner and to such amount as may be prescribed by law."

Mr. J. N. PURVIANCE. Mr. Chairman: It seems to me that the difficulty under which this committee of the whole labors is that the report of the Committee on Railroads and Canals is so long and so similar, generally speaking, to an act of Assembly rather than a constitutional provision, that the members of the committee really do not know exactly how to treat it. It strikes me that what we want is something pointed and brief, that will, as a constitutional provision, reach what the committee desire, and yet will not be so prolix as the report of the committee, and so cumbrous as really to embarrass the minds of every member of the Convention in endeavoring to understand exactly what that committee means.

I do not know whether it will be in order now, but if it be so, I intend to offer, as a substitute for this report, an article on the subject of railroads that perhaps will meet the views of every member of this Convention.

I have taken occasion, Mr. Chairman, to examine the Constitution of every State in the Union, and I find that there is not a Constitution, except that of Illinois, that has a heading for railroads; that has an article on the subject of railroads. Not a Constitution in the United States, except that of Illinois, I believe, has the word "railroad" in it. Railroads are treated as all other corporations, and are dealt with under the head of "corporations."

I take it, then, that the main point which the worthy chairman of the Railroad Committee and the members of that committee, as well as of this Convention generally, are aiming at, is to secure a prohibition of special legislation. Therein lies the great reform of the present Constitution, and therein lies the great safety valve that the people of this State have so earnestly and so long desired. If you have general laws regulating railroads, and general laws regulating all other important subjects, no great evil can spring then from legislation. The object of the Constitution, I take it, then, should be, as briefly as possible, to define the powers of corporations, limit and restrict them properly, and let the constitutional provision be as brief as words can express it.

Now, I desire at the proper time to submit the following as the provision in regard to railroads in the Constitution, if we are to introduce an article at all on that subject. As I remarked, no other State in the Union has done it, except the State of Illinois. Then what would be placed in the Constitution, if I had my way, would be this:

"All railroad corporations shall be deemed common carriers, and shall be bound to carry mineral, agricultural and other productions or manufactures, on equal and reasonable rates and terms. No railroad company doing the business of common carriers shall, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire land, freehold or leasehold, except such as shall be necessary for carrying on its business. Any railroad company or any

corporation, organized for the purpose, shall have the right to construct a railroad between any two points in this Commonwealth, subject to the payment of all damages thereby occasioned."

Now, if that was the whole provision of our Constitution in regard to railroads, it seems to me it would cover the whole ground discussed so elaborately on both sides of this question. Here you have expressed, first, "all railroad corporations shall be deemed common carriers, and shall be bound to carry mineral, agricultural and other productions or manufactures, on equal and reasonable rates and terms." That prevents, of course, discrimination, such as my friend from Allegheny so much complains of. Then, "no railroad company doing the business of a common carrier shall, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, except such as shall be necessary for carrying on its business." This provision would prevent railroad companies from going into the business of banking, or mining, or buying lands, or dealing generally in manufacturing, or in any other business whatever. It would confine their business closely and strictly to the purpose of their organization; that is, as common carriers, to carry the agricultural and mineral and manufacturing productions of the country over the railroads, without discrimination, to all points, and not be engaged in any interested way in the manufacturing or the buying of other things outside of the legitimate business of common carriers.

A provision of this kind, it strikes me, would be all that would be required in our Constitution. Instead, then, of the nineteen long sections drawn up by the gentleman from York, (Mr. Cochran,) and presenting very much, as they do, the appearance of an act of Assembly, we would perhaps secure all the desires in the short section which I have submitted to the consideration of this committee.

I trust that when the proper time comes this section of mine will be properly considered and improved, by amendment, perhaps, in some way, and that it will be adopted by the Convention. I would, Mr. Chairman, if it now be in order, move that the committee rise, and that the report of the Committee on Railroads be recommitted to the committee, and an addition of four members be added to it.

The CHAIRMAN. That is not in order now.

Mr. J. N. PURVIANCE. If it be in order then, I move the committee rise.

The CHAIRMAN. The chair did not exactly understand what the motion was.

Mr. JOHN N. PURVIANCE. That the committee rise, report progress, and ask leave to sit again. My object is then to make the motion which I suggested, to refer this report back to the Railroad Committee.

The CHAIRMAN. The gentleman from Butler moves that the committee rise, report progress, and ask leave to sit again.

The mot on was not agreed to.

Mr. DODD. I will state, sir, that one great difficulty, at present, is not only the length of this report, but the length of the speeches that are made. Members are not confining themselves to the sections or to the amendments. If they would do that we, perhaps, would find, at some time, a solution to the difficulty. It is evident to my mind that three-fourths, at least, of this Convention will vote against this section and against all amendments proposed to it; and when they have voted them down the amendment of the gentleman from Dauphin or of the gentleman from Chester, or something similar to that, being brought before this Convention, I believe three-fourths are in favor of such a proposition. If we would confine ourselves to the different points as they arise, and not discuss railroads, and corporations generally, we should perhaps get to the end of this report before hot weather sets in. [Laughter.] I hope, therefore, we shall vote promptly on these matters, and when the amendment of the gentleman from Dauphin comes up, I believe members will be satisfied that they have at length hit a proposition that has something substantial in it.

The CHAIRMAN. The question is upon the amendment to the amendment.

Mr. JOHN R. READ. Let it be read.

The CLERK. The amendment to the amendment is, to add after the word "corporation," the words, "except upon public notice given of at least sixty days to all stockholders, and in such a manner as shall be provided by law."

The amendment to the amendment was rejected.

The CHAIRMAN. The question is on the amendment.

Mr. MACVEAGH. I move to amend the amendment, by striking out all after the word "corporation" and inserting these

words: "Doing business as a common carrier shall, either directly or indirectly, hold, guarantee or endorse shares in the capital stock, bonds or other indebtedness of any other corporation, individuals or partnership, except those doing the business of common carriers."

Mr. WHERRY. Let the amendment be read as it will stand if amended.

The CLERK read as follows:

"No railroad, canal or other corporation doing business as a common carrier shall, either directly or indirectly, hold, guarantee or endorse shares in the capital stock, bonds or indebtedness of any other corporation, individuals or partnership, except those doing the business of common carriers."

The amendment to the amendment was agreed to.

Mr. HEMPHILL. Will an amendment be now in order?

The CHAIRMAN. An amendment to the amendment is in order.

Mr. HEMPHILL. I think the same object as desired by the gentleman from Dauphin can be attained in fewer words. I therefore move to strike out all after the word "corporation," and insert the following: "Shall, directly or indirectly, hold, guarantee or endorse the stock, bonds, or other indebtedness of any individual, corporator or company, other than railroads and canals, and those only in such manner and to such amount as may be prescribed by law."

Mr. GOWEN. I simply wish to ask a question. I want to know whether we desire to put in the fundamental law of Pennsylvania a prohibition against a company which is paid for transportation by a note endorsing it in order to collect the money? It would be entirely prevented by that provision.

The CHAIRMAN. The question is on the amendment to the amendment.

The amendment to the amendment was rejected.

The CHAIRMAN. The question is now on the amendment offered by the gentleman from Dauphin (Mr. MacVeagh.)

Mr. HUNSICKER. I should like to ask the gentleman from Dauphin whether that will prevent them from endorsing a note?

Mr. MACVEAGH. Oh, no; not at all.

The amendment was agreed to.

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

Mr. JOHN R. READ. I move to strike out the words, "or other indebtedness."

The amendment was rejected.

The CHAIRMAN. The question recurs on the adoption of the section as amended.

The section as amended was agreed to, there being, on a division, ayes, sixty; noes, twenty-one.

The CHAIRMAN. Section seven will now be read.

The CLERK read as follows:

SECTION 7. No incorporated company doing the business of a common carrier, or the officers or managers thereof, shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for other persons or corporations, or for transportation on the works of said company; nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines and manufactories on its lateral railroad or canal, not exceeding fifty miles in length.

Mr. M'ALLISTER. I offer as a substitute for the seventh section, and also for the eighth, ninth and twelfth sections, the report of the minority of the committee made this morning.

The CHAIRMAN. That amendment is not now in order. The gentleman can offer it as an amendment to the seventh section, striking out and inserting.

Mr. M'ALLISTER. I offer it, then, as an amendment to the seventh section, striking out all the words of section seven, and inserting. I will offer the first section first.

The CHAIRMAN. The gentleman can offer the whole of it in this place, and it can be voted upon by divisions, and if adopted, the succeeding sections can be stricken out.

Mr. BUCKALEW. I hope the gentleman will offer the whole amendment, having a vote taken on each section. We want the whole amendment before us.

Mr. M'ALLISTER. Very well; I offer the whole amendment.

The CLERK read the amendment as follows:

SECTION —. Railroads, canal or transportation companies heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law; and the Leg-

islature shall, by general laws, establish reasonable maximum rates of charges, for the transportation of passengers and property thereon, and within the limits thus prescribed by the Legislature, every railroad company shall establish a schedule of uniform rates for the transportation of passengers, per person, and property, per ton per mile, over their road; and during the existence of such schedule, no abatement shall be made from the charges therein set forth, in favor of any individual or individuals, corporations or partnerships, or by the granting of a free pass or special rates, the allowance of a drawback, or in any other way or manner except in the granting of a personal transportation to the officers and employees of the company, and to poor and indigent persons as objects of charity.

SECTION —. No railroad, canal or transportation corporation shall grant any preference or advantage whatever to any of its officers or stockholders, or to any corporation or partnership in which they or any of them shall own stock or hold an interest over other individuals, corporations or partnerships in its charges for the transportation of persons or property thereon, except as in the last preceding section excepted; and any willful violation of this section, judicially ascertained, shall cause a forfeiture of the corporate franchises of the offending corporation.

The CHAIRMAN. The question is on the amendment of the gentleman from Centre (Mr. M'Allister.)

Mr. MOTT. I move to amend the amendment, by striking out the word "transportation," before "companies," and inserting "carrying." There are companies organized for the purpose of transportation that ought not to be affected by this provision.

The CHAIRMAN. The question is on the amendment of the gentleman from Pike (Mr. Mott) to the amendment of the gentleman from Centre (Mr. M'Allister.)

The amendment to the amendment was rejected.

Mr. MACVEAGH. I should like to submit to the gentleman from Centre that his amendment, as it seems to me, with entire deference, would apply more properly to the next section and the succeeding one; that it does not raise the question raised in the present section. If the gentleman from Centre will look at it carefully, he will see that it does not raise that question at all. I do not know how the committee feel about the question raised in section seven, but certainly we ought to be permitted to pass upon it. It does not cover the same ground at all, and I suggest to the gentleman to withdraw his amendment until the next section comes up.

Mr. M'ALLISTER. I will withdraw it.

The CHAIRMAN. The amendment is withdrawn.

Mr. MACVEAGH. Then I move to amend section seven, in line two, by striking out, after the word "carrier," the words, "or the officers or managers thereof." Those words, I submit, might give rise to misunderstanding. If the committee wish them in, they ought to be put in with the fullest meaning attached to them. For instance, we have here—I mention it in no invidious sense—the president of a steamship company, and certainly, as an individual, I suppose it would not be intended to interfere with the importing business which he carries on as a member of a private firm. The directors of a railroad company, then, would have to get gentlemen for these offices who were either lawyers or not engaged in any reputable employment. [Laughter.] Undoubtedly the purpose of the gentleman from York, (Mr. Cochran,) I assume, was to guard against doing it by indirection. If he will allow it to read, "no incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute," &c., I think it will cover everything. I therefore move to strike out the words, "or the officers or managers thereof."

The CHAIRMAN. The question is on the amendment of the gentleman from Dauphin (Mr. MacVeagh.)

Mr. GOWEN. If a vote is taken on section seven, I earnestly hope that those words will not be stricken out, for, in my opinion, that is the only part of the section that is of very much value. I take it, the object is to prevent a "ring" of the officers of a great railroad company doing business to the exclusion of individual enterprise. That, certainly, was the meaning of it, because it is not doing it indirectly for the benefit of the company if it is done in the name of the officers, if the profit of it goes to the officers.

I shall be prepared, with one or two criticisms and suggestions to the gentleman from Centre, to vote for his amendment, which I understand is now withdrawn; but if the vote is taken on section seven, I trust the words, "or the officers

or managers thereof," will be left in, for all of us who are connected with railroad companies should try to do whatever we can in this Convention, so as to make it possible that hereafter a man shall not be, *prima facie*, considered a thief, because he belongs to a railroad company. [Laughter.] I shall vote for any proposition of that kind, although I have a great many criticisms against the residue of this section, if it comes up for discussion.

Mr. MACVEAGH. Will the gentleman allow me to state that the very evil which he suggests is covered by the amendment hereafter to be proposed by the gentleman from Centre. The second section of his amendment is:

"No railroad, canal or transportation corporation shall grant any preference or advantage whatever to any of its officers or stockholders, or to any corporation or partnership in which they, or any of them, shall own stock or hold an interest over other individuals, corporations or partnerships, in its charges for the transportation of persons or property thereon, except as in the last preceding section excepted; and any wilful violation of this section, judicially ascertained, shall cause a forfeiture of the corporate franchises of the offending corporation."

That has not yet been voted upon.

The CHAIRMAN. It is not now before the committee.

Mr. MACVEAGH. It is for the present withdrawn, but is hereafter to be submitted by the gentleman from Centre, after this section shall have been voted upon. Therefore I submit that the evil suggested would be cured by that proposition; at least it is intended to strike it.

Mr. GOWEN. No; it will not cure it.

Mr. MACVEAGH. Let us see if we mean the same thing. "Or the officers or managers thereof in their official capacity."

Mr. GOWEN. Or in their private capacity—in no capacity.

Mr. MACVEAGH. Then you mean that no director of a railroad company shall be engaged in any business that requires the transportation of goods over the road?

Mr. GOWEN. Yes, I mean that.

Mr. MACVEAGH. If the Convention is ready to go that far I should be very much surprised.

Mr. GIBSON. I should like to ask one question, whether the words, "officers and managers thereof," mean any officer or manager thereof?

Mr. MACVEAGH. Certainly.

Mr. GIBSON. So that a man cannot engage in any business.

Mr. H. W. PALMER. I should like to inquire of the chairman of the Committee on Railroads, or some gentleman who can give the information, what effect the adoption of this section will have on those companies that already have the right to mine and carry coal? There are several corporations of some magnitude in the Commonwealth, among which may be instanced the Delaware and Hudson canal company, the Delaware, Lackawanna and Western railroad company, and the Lehigh coal and navigation company, that are both carriers and merchants. They own large bodies of land under franchises which have been already granted, and are engaged very extensively in the mining and carrying of coal. Now, my inquiry goes to this point: What effect will the passage of this section have on such companies?

I am answered by a gentleman from Philadelphia (Mr. Cuyler) that it will have no effect whatever. In that case, the passage of this section will multiply the value of their franchises by excluding competition with them. It will hand over to them pretty much all the value in the way of mining and carrying privileges that corporations can have. I understand the desire of the Railroad Committee and the Convention to be, in some manner and in some measure, to restrict what has been recognized as an evil in the management of corporations; but would not the effect of this section be to pass over into the hands of companies that have already secured their franchises, a value which could hardly be measured by money? They then become, *par excellence*, the great monopolies of the State, and none others can be erected hereafter with such powers. Corporations erected in the future will be enabled to operate in a restricted measure. In other words, no other railroad company can ever penetrate the Schuylkill region, or the Wyoming region, to compete with these great companies which have taken possession of the ground already, and now have the privilege of mining coal. That day I do not desire to have come, because we live in hopes of seeing the Reading company and the Pennsylvania in our region some day, and we believe up there that competition is the life of business, and we hope to control and manage the affairs of the companies we have better by enabling others to compete with them.

An inquiry is made of me whether this section will not check the further granting to these companies of privileges. Why, sir, these companies have now got all they want. They have got their lines of transportation, and they have got their coal lands; they are engaged in mining and carrying, and what else do they want? This section prohibits any other company from ever acquiring any such right, and it strikes competition dead, and it secures to these monopolies their franchises and privileges. It does not occur to me that this is the reform we desire. I am an anti-corporation man, after the strictest sect of the Pharisees; but it seems to me that this remedy is not appropriate to the disease.

The CHAIRMAN. The question is on the amendment of the gentleman from Dauphin.

Mr. M'ALLISTER. Mr. Chairman: I am opposed to this section, because it strikes directly at the natural social rights of a portion of our people. I deny that we have any right to declare in our organic law that men shall not engage in the ordinary pursuits of life because they are officers or managers of a carrying company. How can we do that without infringing the natural social rights of men? It seems to me that it is an infringement on liberty. I received the suggestion of my friend from Dauphin, that the amendment I offered would come in more properly after the disposition of this section, and yet I was satisfied that for some reason it ought to come in as it was offered; and it now occurs to me that it was offered at that place because it makes provision against one of the evils intended to be remedied by the amendment.

Mr. WHERRY. I desire to ask the gentleman a question, with his permission.

Mr. M'ALLISTER. Yes, sir.

Mr. WHERRY. I desire to call his attention to the modification annexed to the provision. There is a qualification the gentleman has entirely overlooked.

Mr. M'ALLISTER. No, sir. The section reads: "No incorporated company doing the business of a common carrier, or the officers or managers thereof, shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for other persons or for transportation on the works of said company." Is not manufacturing a business?

Mr. WHERRY. That is the qualification that I desired to call attention to, "or other persons or corporations or for transportation." The meaning of these words cannot be that he, as an individual, is prohibited from engaging in manufacturing, or even transporting as an individual, but only in the production or manufacture of commodities for transportation for the advantage of the corporation or carrying company. He can, under this section, transact any business, produce any commodity, if it is for his own personal benefit.

Mr. M'ALLISTER. It seems to me strange to allege that this does not prevent the officers of a carrying company, of a transportation company, from engaging in the industrial pursuits of life. That is the very design of it, and it is designed to prevent favoritism if it is designed for anything. If it has any beneficial operation whatever, it is to prevent, through that instrumentality, favoritism in the carrying business, and to prevent an advantage which the officer or manager could give to himself in his own business. That was one of the evils to be remidied by the two sections that were offered, and at the suggestion of the gentleman from Dauphin, withdrawn.

My objection then is, Mr. Chairman, first, that it is wrong, because it deprives men of their natural social rights; the other is, that the evil is better remedied by the sections that were proposed and withdrawn.

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

The motion was agreed to.

The committee accordingly rose, and the President having resumed the chair, the Chairman (Mr. Broomall) reported that the committee of the whole had had under consideration the article reported by the Committee on Railroads and Canals, and was directed to report progress, and ask leave to sit again.

Leave was granted to the committee to sit again this afternoon.

Mr. LILLY. I move now that the Convention take a recess until three o'clock.

The motion was agreed to, and at twelve o'clock and fifty-six minutes the Convention took a recess until three o'clock P M.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

HORTICULTURAL EXHIBITION.

The PRESIDENT laid before the Convention a communication from the president of the Pennsylvania Horticultural society, inviting the members of the Convention to visit the exhibition of plants and flowers at Horticultural hall at any time during the present week, until Friday evening next, when it will close.

Mr. DALLAS. I move that the invitation be accepted, with the thanks of the Convention.

The motion was agreed to.

[Several Delegates. "Say for Thursday evening."]

Mr. DALLAS. Thursday evening is suggested; and as I am requested to include in my motion a time, I move that the invitation be accepted for Thursday evening next.

The PRESIDENT. Will the House agree to the motion as modified?

The motion was agreed to.

PETITIONS AND MEMORIALS.

Mr. CAMPBELL presented a memorial of merchants and others, of Philadelphia, praying for the adoption of certain sections of the report of the Committee on Railroads and Canals, restraining the powers of railroad and canal companies, which, without reading, was laid on the table.

Mr. BAER presented a similar memorial, which was laid on the table.

Mr. DALLAS presented two similar memorials, which were laid on the table.

Mr. COCHRAN presented a similar memorial, which was laid on the table.

Mr. LANDIS presented a similar memorial, which was ordered to be laid on the table.

Mr. T. H. B. PATTERSON. I ask leave to present two memorials; one signed by two hundred and thirty-six citizens, and the other by nineteen citizens, of Philadelphia, asking that similar restrictions be inserted in the Constitution in regard to railroads and canals. I ask that the reading be dispensed with, and that they be laid on the table.

Mr. HANNA. I ask that the reading be not dispensed with, but that the petition may be read.

The PRESIDENT. Does the gentleman call for the reading?

Mr. HANNA. Yes, sir.

The CLERK read as follows:

To the Honorable the Convention to propose amendments to the Constitution of the Commonwealth of Pennsylvania, now sitting:

The memorial of the undersigned, citizens of said Commonwealth, respectfully represents:

That, being advised that among other propositions pending before your honorable body are provisions in substance as follows:

First. That the rolling stock and all other movable property of railroad and canal companies shall be considered personal property, and liable to execution and sale in the same manner as individual property, with precautionary stipulations to prevent the evasion of such provision.

Second. Prohibiting the consolidation of railroad and canal companies owning competing and parallel lines, or engaged in the transportation of coal, lumber and articles of food and produce of the soil; and also the constitution of two or more distinct corporations, consisting of a majority of the same stockholders in number or value; and also forbidding any one such company, either directly or through its officers, members or agents to become the owner of a majority in number or value of the shares of capital stock, or bonds, or other evidences of indebtedness of any other railroad or canal company.

Third. Prohibiting railroad or canal companies from owning or acquiring lands, freehold or leasehold, either in their corporate names, or the names of any persons whatever, for their use and benefit, except lands lying along the lines of their railroad or canal, and contiguous thereto, and necessary for the prosecution of their business as transporters and carriers, and forbidding any such company, and any stockholder therein, or any person whatever, acting in its behalf and interest, from being a stockholder or part owner in any corporation or company chartered or created for any mining, manufacturing or producing purpose whatever; and further, providing that no railroad or canal company shall carry on any other business than the transportation of passengers and freight.

Fourth. Forbidding all railroad and canal companies from charging or collecting for the transportation of goods, merchandise or property on its railroad or canal for any distance, any larger or greater amount as toll or compensation, for any service whatever, than it does or shall charge or collect at the same time for the

transportation of similar or equal quantities of the same class or kind of goods, merchandise and property over a greater distance upon its road or canal.

Fifth. That all railroads and canals shall be public highways, and free to all persons for transportation of persons and property thereon, under proper regulations; and that all rules of said companies, tending in any wise to hinder, obstruct or defeat this right, shall be null and void.

Sixth. That no such company shall issue or guarantee any stock or bonds, except for money actually received and applied to the purpose for which such corporation was created; and that all stock, dividends or other fictitious increase of the capital stock or indebtedness of any such corporation shall be void.

Seventh. That the exercise of the right of eminent domain shall be applicable in all cases to the property of railroad and canal companies, or any other corporation, to the same extent and to the same manner as the property of individuals is subject to the exercise of such right.

Eighth. That no officer of any railroad or canal company shall engage in any mining or manufacturing or other business that shall produce articles to be transported over its road or canal.

Ninth. That every company incorporated for the purpose of carrying freight and passengers shall carry all freight and passengers offered for transportation.

Your memorialists do therefore respectfully pray your honorable body to adopt said propositions so, in substance, above stated, and to propose them for the consideration of the people, in order that the rights of individuals may be protected, the public interests promoted, and a just and wholesome restraint imposed upon the increase of corporate power in this Commonwealth, and they will, &c.

The memorials were laid on the table.

Mr. HORTON presented a similar memorial from one hundred and fifty-six citizens of Philadelphia, which was laid on the table.

Mr. COCHRAN presented two similar memorials from citizens of Duncannon, Perry county, and Mifflinburg, Union county, which were laid on the table.

Mr. ALRICKS presented a similar memorial of citizens of Philadelphia, which was laid on the table.

Mr. D. W. PATTERSON presented a similar memorial from one hundred and sixty citizens of Philadelphia, which was laid on the table.

LEAVES OF ABSENCE.

On motion of Mr. Reynolds, leave of absence was granted for a few days to Mr. Church.

On motion of Mr. M'Murray, leave of absence was granted for a few days to Mr. Andrews.

RAILROADS AND CANALS.

Mr. WORRELL. I move that the House resolve itself into a committee of the whole for the further consideration of the article reported from the Committe on Railroads and Canals.

The motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Broomall in the chair.

The CHAIRMAN. The question before the committee of the whole is the amendment offered by the gentleman from Dauphin, (Mr. MacVeagh,) to strike out of the first sentence of the seventh section the words, "or the officers or managers thereof."

Mr. COCHRAN. Mr. Chairman: Before the question is taken, I desire to move a verbal amendment. The word "or," between the words "corporations" and "for transportation," which, according to my recollection, was not in the written copy furnished by the committee to the printer, ought not to be in the section, and I move to strike it out. The sentence would then read: "Prosecute or engage in mining or manufacturing articles for other persons or corporations for transportation on the works of said company."

The CHAIRMAN. The correction may be made by unanimous consent. The Chair hears no objection, and it will be made.

Mr. HEMPHILL. I desire to ask the gentleman from Dauphin, if he will withdraw his amendment for the present, to allow me to submit an amendment as a substitute for the section? I will read it for his information:

"Railroad and canal companies shall not engage, directly or indirectly, in any other business than that of the transportation of freight, passengers and mails, nor be enabled to own or acquire lands, freehold or leasehold, in any manner or to any extent whatever, except such as may be necessary for carrying on such business."

I think that will cover all that the gentleman desires.

Mr. MACVEAGH. I would rather have the words, "or the officers or managers thereof," stricken out, as is provided in my amendment. I think the gentleman from Venango (Mr. Dodd) has a substitute also. I do not know which of the two substitutes is the better. But if my amendment is adopted the gentleman can then offer his substitute for the section.

Mr. HOWARD. Mr. Chairman: Before the vote is taken on that amendment, I desire to say a few words upon it. I regard this seventh section as a very important one, and the portion which the gentleman from Dauphin (Mr. MacVeagh) has moved to strike out is, perhaps, the most material part of it. The amendment suggested by the chairman of the Committee on Railroads and Canals, to strike out the word "or" after the word "corporations" should be agreed to, as it is a mere verbal amendment, intended to make the section read as it was originally intended. It is a mistake of a word, and ought not to be coupled with the amendment of the gentleman from Dauphin.

Mr. MACVEAGH. The correction has been already made. The word "or" has been stricken out, and the amendment I have offered stands upon its own merits.

Mr. HOWARD. Then the section now expresses, as I understand, the meaning that was intended by the committee. The delegate from Dauphin now proposes to strike out the words, "or the officers or managers thereof." If those words are stricken out, I should be willing myself, however strongly I might feel upon this question, to vote against the residue of the section. One of the very great evils that has grown up in the railroad system is the fact that the officers of different railroad corporations have engaged in the business of mining and manufacturing along and near the lines of their railways, and have come in competition with hundreds and thousands of individual citizens. They have given themselves special rates and drawbacks, so that they have injured, and in many instances driven other people entirely out of business. This is an evil that has attracted the attention of the business men of this Commonwealth perhaps more than any other connected with railroads.

Mr. MACVEAGH. Will the gentleman from Allegheny allow a single moment, that we may understand each other, as we did this morning?

Mr. HOWARD. Certainly.

Mr. MACVEAGH. I simply want to see that we do understand each other. I want to know whether the gentleman has considered the second section of the amendment to be proposed by the gentleman from Centre, (Mr. M'Allister,) and whether he does not think that it is as perfect as we can hope to reach protection against the evils of which he complains. I do not know whether he does or not, but I do want his attention called to that point.

Mr. HOWARD. I will say to the committee and to the delegate from Dauphin, that I have read the second section or paragraph in the minority report prepared by the gentleman from Centre, and I do not consider that it meets that evil. That second section reads: "No railroad, canal or transportation corporation shall grant any preference or advantage whatever to its officers or stockholders." It is a simple prohibition of granting special rates on the part of the corporation; that is, that the corporation shall not grant to its officers or stockholders any special or particular privilege over other people.

Mr. Chairman, it is a wise rule in statesmanship not to lead men into temptation; and if you allow officers of railroad companies to be in the manufacturing and the mining business, rely upon it they will find some means by which they will obtain favors on the works that they themselves control. Remember the officers control works. How are you to find it out whether special favors are obtained? You will find it out in the wreck and the ruin of the private citizen along the line of that road when he is broken up in his business.

That question was all considered in the committee; and right here I desire to say—because a great many gentlemen seem to think that these matters were not all considered by the committee—that I have not heard a single argument on this floor that was not made in the committee. Every argument and every objection that has been urged here by intelligent delegates was urged in that committee against the adoption of these several provisions; and I am perfectly aware that the delegate from Centre was opposed to the report. In fact I can hardly now point to anything in the report—I do not remember what particular section the delegate from Centre did support. I know the delegate from Centre has worked very hard in this Convention. I know while we were carrying on the business of the Railroad Committee, and trying to do our

work to the satisfaction of the Convention and the people of this Commonwealth, the delegate from Centre was chairman of the Committee on Suffrage, and very busily employed; and long before we had accomplished the labors of the Railroad Committee—so that he could not have been cognizant of what took place in it—he was stricken down by sickness and unable to attend, so that he had not the same advantages, by any means, of the deliberations in the Railroad Committee that other members had. For myself, I attended every one of its meetings, with the exception, I believe, of one meeting, when it met jointly with the Committee on Corporations.

This section provides that "no incorporated company doing the business of a common carrier." In the first place, it is limited to common carriers. Mr. Chairman, appeal to the members of the Convention whether it is not right and eminently proper that where a company is chartered as a common carrier, the company shall be limited to that business and no other. If that principle is correct, here we have it. Then we say, "or the officers or managers thereof." Now, we know the reason of the introduction of these words. I have already stated the evil. Take any line of railway, and how is it? Why, upon the same line you have got the stockholders' track, if we may so call it, and they have got the ordinary slow freight line. That is all that belongs to the original stockholders. Mounted on the top of that they have the fast freight lines, they have the palace car companies, and they have the sleeping car companies, and these are all distinct companies. These have to earn money, they have all got to live, and they all live on the stockholders' track. The officers, we understand, are interested in all these different things.

Now, sir, let any man try to see how the thing works practically. You buy a bill of goods in Philadelphia, and say nothing as to how they are to be shipped, and they are shipped, if you please, in the stockholders' line; that is, the slow line, and you will not get the goods by that line in Pittsburg within a month; but you just simply say, "ship them by the fast line," and then you will get them in twenty-four hours, and you will find a majority, perhaps, of the stockholders, represented through their officers, interested more especially in the fast line, and the goods go right along.

Mr. Chairman, this shows practically how this thing has worked of permitting the officers of a railroad company, while they are engaged in its management, to be concerned in a business that is in direct antagonism with other shippers. As a question of public policy, it will not bear argument for a moment.

Gentlemen may say that this prohibition is a hardship. They ask: "Shall I, because I am an officer of a railroad, be driven out of business?" Yes, sir; if you choose to be an officer; just simply get out of being an officer, and then you can carry on your business as much as you like. Undoubtedly there is plenty of wisdom in the rest of the world to take your place; but, sir, if you are a manufacturer along the road transporting your iron to market, you ought not to have this power of fixing the rates at which your freight shall pass over your road, and at the same time be competing with other citizens along the line of the road, that have not these privileges.

Why shall we say this? These are public highways. True, they are in the hands of private management; but who are these managers? When you get down to the true basis, they are nothing but agents created by the State to manage these highways for the public weal.

Now, should the public permit this state of things? You would challenge a man off a jury in a minute if you thought he was interested to the amount of a dollar against you. If he was, you would not permit him to try a five-dollar case. And yet, here you allow a man to be president or vice president, director or manager of the railway interested in large iron works or in an immense coal field that is mining the coal that supplies all the city of Philadelphia with gas; and yet you say that, with these vast interests, that men may officer the road and carry on this business in direct antagonism to the rest of society engaged in the same kind of business.

Mr. Chairman, whatever we may do—and I appeal to this Convention—this is one of the things that we should do. We should prohibit persons from being at the same time officers of railroads and engaged in the mining and manufacturing of articles to be transported upon that road. How can there be any fair competition between them and other manufacturers who are not so favored? There is a continual rivalry in the different markets, and how can it be possible that there

can be fair competition under such circumstances? If one man is an officer in a railroad and located in a western town, or if he is located in Philadelphia, and interested in the manufacturing establishment in a western town, and another man, not an officer in the road, is interested in a similar manufacturing establishment, those men cannot compete upon equal terms.

Sir, I know of a large manufacturing firm in the city of Pittsburg, engaged in manufacturing iron, who went into the business of manufacturing horse-shoes, manufacturing them by the hundreds of tons, for the purpose of supplying the west and southwest, and directly it was ascertained that a company, away east of the Allegheny mountains, were sending those things through Pittsburg and through to the west at far less rates than they would deliver the shoes manufactured in Pittsburg. The result was that that large establishment had to surrender that branch of their business. If the officers of the railroad had not been concerned in this rival enterprise that thing would not have occurred, and we would have had the benefit of a fair competition in the market; but who can compete against a combination of that kind? It cannot be done.

I know, sir, it is a very convenient thing if a man can be concerned in a great coal mine, and be, at the same time, a director or manager of a railroad, fix his own rates, regulate his own drawbacks, control the master of transportation, have cars always at his works, have them loaded, and have everything go along smoothly, while a man alongside of him, in opposition, can get no cars, cannot get them loaded, or when he does, cannot get a locomotive and have them moved. We understand all that in the west. We have been embarrassed by it and harassed by it; and it will be a terrible outrage if this intelligent body of men here assembled shall sanction or give countenance for one moment longer than is absolutely necessary to reach this evil. It is a great evil, and a growing one; and what is the necessity for it? Is there any necessity for it? Can any honest plea be made for it? Is there any reason why this thing should continue?

Why, sir, we say in civil affairs that a man shall not hold two offices or positions that are in conflict. We do that upon grounds of public policy; and so, upon the same grounds, we ought to say that an officer of a railroad, while he holds that position, shall not be engaged in this business that comes in conflict with the rights of the citizen who has not the same opportunity. So that, under any circumstances, this is the important and living part of this section.

It provides, further, that no company, or officer or manager thereof, shall "prosecute, or engage in mining, or manufacturing articles for other persons or corporations." It allows the companies, therefore, full scope and privilege to work mines, to produce for themselves. We know that railroads cannot be managed, and locomotives cannot be run, without a very large consumption of fuel, and therefore this section leaves to them the right to do their own mining, and it leaves them the right to do their own manufacturing. We know they need an immense amount of manufactured articles in order to carry on this great and mighty railroad system of the United States, and all that is left to them. They have a right to do their "own mining for their own purposes, and their own manufactursng for their own purposes; and can it be possible that this Convention will, for a moment, entertain the idea that they will permit these common carrier corporations to go any further than that? Limit them to the business of common carriers, as this section does, and say to them, "you may mine, you may manufacture whatever is necessary for your own use, but as a corporation, you shall not mine or manufacture articles to be transported over your works for others."

The section does not prohibit them from engaging in mining and manufacturing as much as they please in other places, or if these mined and manufactured articles are not to be transported on the works that the company may control. Striking out the word "or" leaves the section to read in that way, "in mining or manufacturing articles for other persons or corporations for transportation on the works of said company." The words "for transportation," limit its application. Therefore, they are only prohibited from manufacturing for other persons articles to be transported on the works of the company. For themselves and their own use they can manufacture as much as they please; but for others they shall not manufacture and mine, to transport upon their own works. That is the meaning of the section.

Now, sir, one word in regard to the latter part of the section, which reads, "nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business." I know that the Legislature of the Commonwealth of Pennsylvania have granted to some corporations an unlimited right to acquire the lands of this Commonwealth. Every man who has ever given the subject the slightest reflection knows that to be in direct conflict with public policy. He knows that it is in direct conflict with the policy that has obtained in every civilized country.

The CHAIRMAN. The gentleman's time has expired. The question is on the amendment of the gentleman from Dauphin (Mr. MacVeagh.)

Mr. BIDDLE. I should like to have that section read as it is proposed to be amended.

The CLERK read as follows:

"No incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute, or engage in mining or manufacturing articles for other persons or corporations for transportation on the works of said company; nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines and manufactories on its lateral railroad or canal, not exceeding fifty miles in length.

Mr. LILLY. Mr. Chairman: I will go as far as he who goes farthest in this Convention to prevent railroad companies from mining or manufacturing articles for carriage. I am thoroughly convinced that that ought to be done. I will go further than that; I will vote for a section to divorce (if I may use that word) the present carrying companies from all such things now. I think it can be done without any difficulty whatever. I would provide that where one of these corporations now owns coal lands it should organize a new company under the title of a mining company, elect separate officers and separate directors in that company, not having a single person who was an officer in both companies, issue certificates of stock to the present stockholders in the proper proportion as the whole property is related to the whole corporate stock, and then let them both start off free and stand on their own bottom. I would do that, and I was in hopes that this report would contain something looking to that end. I think that ought to be done. That would dispose of the objection of my friend from Luzerne, (Mr. H. W. Palmer,) who says that by this proposition you will build up the present great corporations and prevent any other roads being constructed. Perhaps it would do that; but I say you get rid of that difficulty by adopting the plan which has suggested itself to my mind.

I think the other part of this report, with the amendment of the gentleman from Centre, will prevent special rates. I am opposed to special rates inside the State. I am opposed to special rates to anybody. I want it to be distinctly provided against, as is done by the amendment of the gentleman from Centre, and I want the companies to live up to the provision. I wish it to apply not only to individuals outside, but to the officers and managers of the roads; and if they will live up to that, the whole argument of the gentleman from Allegheny, who has just taken his seat, falls to the ground.

By leaving this section stand as reported, and refusing to adopt the amendment of the gentleman from Dauphin, you take the best talent of the State of Pennsylvania out of the management of our great system of carrying companies. I have in my mind the history of a firm of enterprising gentlemen in our region of country. They commenced, poor men, in 1834, as civil engineers, and they laid out and built the Beaver Meadow railroad. When that road was completed, they laid out and finished a railroad for the Hazleton coal company. When that road was finished, one of the gentlemen went into the management and acted as the superintendent of that Hazleton railroad and coal company. He remained in that capacity for a few years. He then contracted to mine the coal of that company, and finally he transported it to the canal. He then associated himself with another gentleman. They were industrious and prosperous and built up a large business. By their industry and their energetic business habits they became heavy stockholders in the Hazleton railroad company, and finally became a majority of the company by buying up the stock, paying the other stockholders a fair price for it.

They continued on, and after the lapse of some years, that road was merged with the Lehigh Valley railroad, and they, to-day, own probably a couple of million of dollars—I do not know how much—in that stock. They are directors of the company, and have been in that directory ever since the merger, and I defy anybody to go to the books of the Lehigh Valley railroad, or of the Hazleton company, and show that those men ever received a single cent in special rates from those companies, different from those charged to others. Now, sir, those men are honestly and fairly directors of their own property in the Lehigh Valley railroad company; and if this section be adopted without striking out the words suggested in the amendment of the gentleman from Dauphin, it will exclude those men from that management. They still continue to mine coal. Last year they and their connections sent to market about a million tons of anthracite coal over the Lehigh Valley road and the Lehigh canal; and, as I said before, the books of these companies will not show that they received a penny's worth of advantage over the smallest shipper that shipped over those improvements. I repeat, that by the adoption of this section, without the amendment of the gentleman from Dauphin, you exclude those men from the management of their own property, which I do not think should be done.

By adopting the amendment of the gentleman from Centre, which has been read here, I think you will get all that is necessary to prevent these speculations. I know that there are evils that should be remedied. I know that these very special rates have been the bane of the Erie railroad. As I understand, any man can go there and get a special rate from that railroad. I have heard it so said, and I suppose it is so. No honest man ought to do that, and I would prevent it. By this amendment we exclude the managers and officers of a road from being interested in transportation. I would not have so much objection to excluding directors from the amendment, for they are men who receive no salaries for their services as directors. They attend to the affairs of the company, and the only interest they have in it is their own stock. I do not see why they should be excluded from business along the line of the road.

I have listened to several gentlemen who have talked about these inside transportation companies, and I am free to say that I consider them a curse; not only to the stockholders of the railroad, but to everybody else, inside or outside of the management. I believe they injure the stock; but this section will not stop that. I want to see a section made that will stop that, and not only stop it in the future, but cut it off to-day. Any of it that exists now inside of the companies should be stopped. I shall therefore vote for the amendment of the gentleman from Dauphin, with the greatest pleasure. I think, however, the whole section should be voted down.

Mr. BIDDLE. Mr. Chairman: I appove heartily of the import of this section, as I understand it, and I am opposed to the amendment. The section has in view two evils. One is to prevent the officers and managers of companies from regulating the rates and management of the road in a manner to suit rather their individual interests than those of the community which these corporations are designed to benefit; and the other branch of the section is to confine these transportation companies to the business for which they were originally incorporated. I approve of both these clauses. Now, as to the first one, if you strike out, as you propose to do, by the amendment to the amendment, the words "officers or managers," you are left without the slightest security. I understand the word "or," in the fourth line, is merely a clerical error.

The CHAIRMAN. It has already been stricken out.

Mr. BIDDLE. Now, what do you propose by the section as it stands? You propose that those who go in to manage this trust shall go in with clean hands, with no bias or interest to control their judgment; and that as soon as this bias becomes controlling, they shall vacate their places for others, who can act without being unduly influenced. What is there objectionable at all in this? We seem to forget that, while on the one hand these companies are private institutions, so far as the division of the profits among their members is concerned, yet they stand towards the public in another and very distinct attitude. They are endowed with certain valuable privileges which are supposed to be held and exercised for the benefit of the whole community; and in order to get the fairest exercise of these powers, you must necessarily control and supervise them by

those who are without the temptation of self-interest in framers, and carrying out the rules by which they are governed. I cannot, myself, imagine anything fairer than to prohibit him who has to lay down a scale of prices or tolls, from being directly interested in the scaling of these prices or tolls; and this is exactly what the first part of this section strikes at.

Now, it is idle to tell me that by doing this you strike from the management of companies those who are most interested in the companies, and who therefore, presumably, know a great deal more about their management than any one else. You do not do anything of the kind. I undertake to say that in a majority of cases it is not the directors or managers who have a controlling proprietary interest in the road. Very often the men who count their shares in a stock company by hundreds and thousands are not in the direction at all; and *viee versa*, those who are managers of the road have merely a nominal interest in it. I do not say that this is always so, but I say that it happens in a very large number of cases; and men go into these boards to serve, as we are told here, without pay, but obtaining and using indirect advantages which are enormous in comparison with any salary. I hold this to be all wrong. I hold that those who manage these companies should, so far as it is possible, be above temptation, and above suspicion; that they should go there really as the fiduciaries of the public, with a single eye to their duty, untrammelled and unswerved by a desire for private gain; and if you strike out this section you may talk as much as you please about putting down special rates and preventing inequality in tolls or tariffs, but your labor will be in vain. You must go to the root of this evil if you want to cure it. You must place in these positions of management those who will have no temptation to manage the road otherwise than for the best interests of the stockholders, which always must be the best interests of the whole community; and not for the interests of classes, much less for the interests of individuals. I hope therefore this part of the section will not be changed.

In regard to the rest of the section, I suppose, as I hear no amendment suggested to it, that it meets the approval of every one here. If it does not, it certainly ought to do so; and I, for one, will say here that I feel indebted to this Committee on Railroads and Canals for the very valuable suggestions they have made throughout this whole article. It is not perfect. Nothing that has come from the hands of any committee has been found so perfect as not to require suggestions and alterations and amendments. We do not expect any such duty to be performed by a committee; but what we do expect in an article like this is to have a line of policy indicated, impressed truly and fairly upon its different sections, leaving the details to be shaped by the whole body of the Convention according to their wisdom. So far as I am concerned, therefore, I have nothing to offer but thanks to the industry and the ability of the gentlemen who have prepared and presented this article. In my judgment, they have performed their duty faithfully and well.

It is objected to it, that it is long; but the subject, Mr. Chairman, is a vast subject. It is not an easy thing to deal with that which has been the growth and development of more than a quarter of a century, in two or three short sections. You must first ascertain where evils exist, if they do exist, and then you must apply, in detail, the remedies to those evils; and that is all that I can see has been done by this committee. I do not believe that by adopting these sections, by which the business of these transportation companies shall be confined within their proper limits, you strike down one single interest that is valuable in Pennsylvania. On the contrary, I feel a deep conviction that the more directly they are held to the work which they are legitimately called upon to perform, the closer the scrutiny that is over them all the time, the better their duty will be performed, and the greater the benefit that will be derived by the community from them. It is when they go outside of their legitimate business; it is when, in the plentitude of their power—I was going to say in the omnipotence of it, for it is something akin to that—they think they can better adjust the industrial interests of the community by lending a helping hand to this one on that side, and to that one on the other side, that they do, in my humble opinion, unmixed evil. Let them confine themselves in the closest way to the business for which they are designed. I do not object to their assisting companies engaged in the kindred business of transportation; but let them confine themselves to the business of transportation, and their profits, their legitimate profits, will be greater, and the benefit to the community vastly larger,

than by their departing from their legitimate business, in these irregular attempts at assisting interests with which they have no proper concern.

I hope, Mr. Chairman, that this section will be neither voted down, nor the present amendment, which strikes out the words, "officers or managers," be adopted, because if you do that you really render futile the object of the first clause of the section, and you might as well——

Mr. M'ALLISTER. Will the gentleman allow me to interrogate him?

Mr. BIDDLE. Yes, sir.

Mr. M'ALLISTER. I ask the gentleman whether this section would not prevent any manufacturer or producer in this city from being a director of a railroad company if the production of his industry was to be transported on that particular line?

Mr. BIDDLE. I think it is very likely it would.

Mr. M'ALLISTER. Would that be right?

Mr. BIDDLE. I do not see any objection to it. I am willing to answer the question as it is was put, fairly, and to say that I think it means just what it is designed to mean, and I think it is right. I think a man who is called upon to manage one of these great trusts ought to have no interest outside of his trust; and if he finds himself fettered by the private business in which he is engaged, the sooner he gets rid of one or the other the better. I want men there who will have no temptation to make inside arrangements for themselves or their private business. I want men there who will have no temptation to make charges which will assist them while it will injure the rest of the community. I want men there whose eyes will be single upon the interests of the company, and not upon the individual interests which they may find it convenient to foster by undertaking trusts such as these.

Mr. M'ALLISTER. Another question: Would not the section, as reported, prevent every manufacturer or producer in this city, who ships articles by a railroad, from being a director in that road under a penalty of forfeiture?

Mr. BIDDLE. Probably the words bear this construction. I know, however, that no matter what provision you have in the law, so long as the management of the road is in the hands of those whose aim it is to advance their own private ends, you will not have the road managed in the interests of the stockholders, or in a way which is advantageous to the community. I know that, although you may provide in terms the most stringent for the prevention of what are called "inside" rates—partial rates of tolls or freights—your efforts will be futile while you have sitting in the board men whose interest it will be to create partial tolls or rates. The words will mean but little while the spirit of self-interest prevails in the direction.

I do not object to the amendment which the gentleman from Centre (Mr. M'Allister) is going to offer. I like that amendment; but I want also to see men in the board of directors of these corporations who will have no temptation to do otherwise than to carry out the spirit of the amendment as it should be carried out. For these reasons I shall vote against the amendment now pending.

Mr. GILPIN. Mr. Chairman: It strikes me that if these words, "or the officers or managers thereof," are taken out of the section, as they are proposed to be taken out by the amendment of the gentleman from Dauphin, (Mr. MacVeagh,) the jewel of the section, if not the jewel of the report, will be gone. We have heard a great deal said here that we should protect the people against these large corporations, as they are called; but suppose we fail in that. It strikes me that we would not do so great a wrong as if we would fail to enact this section, because these corporations, as history has demonstrated, can, after all, go to a certain length only. They may accumulate all the wealth, they may absorb the talent of the country, but when they come to the last, and which always proves their *last* act, that is to control the people at large, whether they are carrying or whether they are ecclesiastical corporations, they go to the winds; whether railroads or monasteries they are by the people overcome and dismembered, as has been heretofore demonstrated, when it has been attempted. What statutes of Mortmain could not effect, the necessity of the people did accomplish in order to protect their liberties.

Now, this section, or rather this part of it, proposes to protect, perhaps, not the people at large, at least a large class of the people, but mainly to protect the stockholders of the corporations themselves. They have, and outside of this section will have, no remedy. They have not the power of the people at large to overwhelm and crush these corporations.

They are forced to do it in the courts, not by mere right, but by the aid of judicial power, and even there they must act in the dark, that is, blindly, because their directors and officers hold the books of the company and the light by which they expect to act. We have seen but lately, in the case of the Erie road in New York, what great power a little bit of stock, in the hands of the management, has over the large body of the stockholders. Why, these stockholders are men who are entitled to some consideration, because it is their money that has made these great improvements, and that has entitled these companies to any credit that it may receive. To show the necessity of the provision as reported by the committee, let us take an example, because nothing goes further than an example. In the western part of the State there happened to be a coal company, and there happened to be within four miles of that coal company a railroad company. It so occurred that one-fourth of the stock of that coal company was transferred, without consideration, as is alleged, to a firm in which were two members, one the president and the other a director of the railroad company. Forthwith that railroad company makes a branch, some five miles long, to that coal mine. The profits of the stockholders who built the road were enjoyed by these two men; the burden of paying for those very profits, or rather the very property which was received by that president and director, was saddled upon the corporation itself, and the stockholders paid out double the value of the interest given, and yet received no part of it. Now, we have been striving, or it seems we have been striving, all along, to punish these innocent stockholders, when I hold that most of these evils that are spoken of here as the crimes of railway corporations are evils of which the stockholders are guiltless, and of which the management of these roads are really the guilty parties.

To take an example, and here I can give names because it resulted from a judicial investigation. In a case decided in western Pennsylvania, in which the Allegheny Valley railroad happened to be a party, the facts are briefly these: The Allegheny Valley railroad company had made a contract with two oil shippers, Owston and Sowers, to furnish them with certain number of cars daily for the transportation of oil from Parkers to Pittsburg. Some of the managers of that company, the president among the rest, as was stated, became interested in having oil short in Pittsburg upon a certain day, and these shippers were not furnished with cars as promised them, or sufficient to meet their engagement in Pittsburg on that particular day, and they failed. The corner was successful, and these directors made money by its success. But this firm of Owston and Sowers, by not being able to get cars to ship their oil to Pittsburg in time to meet their engagement, failed. They afterwards sued the Allegheny Valley railroad company. Mind, they sued the company, not these directors who profited by the corner, and recovered against, not the directors, but the company, a judgment of twenty-eight thousand dollars. Now, that falls upon innocent parties. It falls upon the stockholders of that road, and what had they to do with the causes which led to the judgment. Was it not these trustees who were the guilty parties? Was it not they who received the profits of that operation? Certainly it was, and it is just such cases as this that this section is now intended to remedy, and it justly says that when these trustees shall discriminate unjustly against any class of individuals, and particularly when they act and discriminate for their own individual interest and profit, they shall be punished.

But it is said that by adopting these words you deprive these gentlemen, who may be trustees, of some inalienable rights; namely, to engage in any other business they may desire. True enough, you do. But if I recollect the argument of the gentleman from Centre, (Mr. M'Allister,) some weeks since, when the question of suffrage was considered in this Convention, he demonstrated clearly that when a man first became a member of society, he sacrifices some of his absolute rights as an individual. The same rule applies here. When he becomes a railroad director he should sacrifice some of his rights. We well know the rule of law when a man becomes a trustee or an administrator, because then he is cut off from buying at certain sales certain properties that, perhaps, he might desire to purchase. And we see this principle practised daily. Every lawyer has a right to practice at the bar, but when he becomes a judge he relinquishes it. He abandons it, and when a man, therefore, becomes a railroad director, he loses, or should, at least, lose, the right to profit, as an individual, from the position he enjoys as an officer, or to prey, either upon

the stockholders or upon the public. He should be cleared entirely of all suspicion of all personal interest in the operations of the road of which he is a trustee. It is not proposed to put him out of business entirely; but it is proposed to put him out of business so far as that one road is concerned.

Now, so far as the amendment proposed by the gentleman from Centre (Mr. M'Allister) is concerned, it does not meet the case. It does not attain the object that it is designed to reach, because his amendment seems to strike at and to punish the companies when the companies are the innocent parties. The directors, who are the offenders, and upon whom punishment should be inflicted, would escape the penalty of their misdeeds. Why should that be done? Why should the penalty fall upon those who have only put their money in these corporations and who have been guilty of nothing, when the only offense that has been committed has been committed by these directors? Certainly there are never visited upon a *cestui que trust* the sins of its trustees, and if the rule holds good with regard to trustees and *cestui que trusts*, it holds with equal force with regard to railroad directors and their stockholders, so that I think the only remedy that these stockholders have, or can have, or can hope to have, is in some provision of this kind or some similar import. Indeed I hardly think that this section goes for enough, or that it strikes all of the evils at which it is aimed.

These are cases that arise in the western part of this State, that are not met by this provision. We have there in our country what are called pipe companies, which are strings or lines of iron pipes of from one to twelve miles long, and which are used to carry oil from the oil wells to the railroad cars, or to large tanks for storage, to await shipment. The oil producers store their oil in these iron tanks, and it is afterwards again run through pipes to the railroad, and there put into and carried off by tank cars. These pipe line companies have now been almost entirely absorbed by the officers of the railroads (not by the railway corporations) in that vicinity, and the result is, that when oil is at its present prices these tanks are all full, but when a good market comes the tanks in which these officers are interested are the first emptied, and, indeed, they are the only tanks that are ever emptied to reach a good market. Those of other persons, who are not interested in the firms or companies where the railroad officials are concerned, can get no cars. It is to remedy these evils, it is to prevent these preferences, not preferences by the company as a corporation, but it is the preferences which these trustees or directors seek and strive to give themselves, that this section is designed. The evil is one that I think is against public policy, and therefore, if so, it is our duty, if possible, to restrain it.

Mr. NEWLIN. Mr. Chairman: I am in favor of the section as reported from the committee, and opposed to the amendment of the gentleman from Dauphin (Mr. MacVeagh.) It seems to me that the amendment takes out of the section all that is in it which is good. In other words, to pass this section with the amendment would practically be to do nothing. I advocate putting restrictions upon the transportation companies, and of making them ample, so they shall mean something. I have no feeling on this subject whatever; but I desire to have this subject disposed of in such a manner as to be of service to the public, or else to have it let alone altogether.

We have heard a great deal here about vested rights. It would be well for this Convention to consider that there are such things as vested wrongs, and that we are here to get rid, as much as possible, of those vested wrongs. All the difficulties and complications which have arisen in endeavoring to adjust the rights of the people, and at the same time, the rights of corporations, have grown up from a political heresy which has been established upon the celebrated Dartmouth college and kindred cases. I say established "upon" that decision, because I do not consider that in its fullest extent established by the Dartmouth college case. But that is the first important case which gave rise to the adjudication which subsequently built up this principle of law, that the grant of corporate powers and privileges constitutes such a contract that it is beyond the reach of the law-making power of the government, for any reason, to limit or restrict those franchises or privileges.

Sir, I repudiate any such doctrine, and I think the time will come when the just requirements of the people will demand that the theory so developed from those cases, be very materially modified or reversed. It never can, with any pro-

priety, be admitted that a sovereign power—and a State, so far as this matter is concerned, is a sovereign power—can, through its law-making power, so bind the people under the forms of law as to prevent the just developments of their interests, nor can it waive those rights which are inherent and which no free people ever will surrender, and which no free people will ever allow to be adjudicated upon by any court. There are some questions which are so intimately connected with the welfare of the people, and which so necessarily require that their solution should depend upon political considerations—and I use the term political, not in the sense of party, but in the sense of public policy—that they should never be submitted to any court; and so far as the principle which has been established upon the cases which I have referred to seeks to trammel the people in the free disposition of these political questions, it must fall.

Now, so far as the propositions submitted by this committee go, they are good, and I hope they will be adopted. I think, however, that the final remedy will come from another quarter. I am as much in favor, in one sense, of consolidation and unity as any gentleman on this floor. I am in favor of unity of all kinds and consolidation of all powers in responsible hands, and particularly in this matter of transportation. The necessity of harmony of action between the different parts of the nation is growing every day greater and greater, and is forcing the public mind to this point: That the national government, under the power of Congress to regulate commerce between the States, shall take control of the whole system of inter-State commerce by every means, whether by making such binding provisions as shall require all transportation companies to go into one general system, or by the general government taking, at an appraised value, all the railroads and transportation companies in the country, and operating them for the public benefit.

On the continent, as we all know, most of the railroads are worked in that manner, and at this time inquiries are being made, under the sanction of the British government, for the purpose of ascertaining on what terms the railroad system of Great Britain can be controlled by the State. Transportation would then be furnished by the general government in the same way that postal facilities now are.

That is, of course, outside of the matter now before the committee; but it seems to me that it is so far connected with it that it is, perhaps, not improper to allude to it here. I hope the amendment will not be adopted. Either adopt the section without amendment, or strike it all out.

Mr. DALLAS. Mr. Chairman: The course of the remarks with which the gentleman from Philadelphia (Mr. Newlin) has just indulged the committee, leads me to suggest a view of this whole subject which I think the committee should take into consideration. Upon this section, as upon several others, there are many of us who would be greatly determined in our own votes by understanding precisely how far they can be safely understood, to have any possible bearing upon corporate franchises heretofore granted, and how far they will, if adopted, be applicable only to corporations to be created in the future.

Having this in my mind long before the Committee on Railroads and Canals reported, I had the honor to present in Convention a resolution requesting that committee to make a separate report, as to how far they supposed their amendments, when reported, would be applicable to existing corporations. That resolution was referred to the Committee on Railroads and Canals, but they, instead of considering it, reported it back to the Convention, and asked to be relieved of its consideration, and that it be referred to the Committee on the Judiciary. The Judiciary Committee very naturally and properly, I think, considering that they had nothing whatever to do with that subject, asked, through their chairman to be relieved from its consideration, and so the Convention and this committee of the whole are now entirely without any report upon that very important subject, which, as I said at the outset, would influence many of us in voting upon almost all of these sections.

This Convention is largely composed of lawyers, but many of them have not given especial consideration to the principle that grows out of and comes to us from the Dartmouth college case, which has been several times referred to; and there are also a number of gentlemen in this body who are not lawyers at all, and it is fair to them that this point should be settled for them, or made possible of settlement by them; and several of them have asked, "how far it is true that none of these

amendments can be made to apply to existing corporations?"

Under these circumstances, I very greatly regret that the resolution to which I have referred was so carelessly treated by two of the committees of this body. I cannot agree with the gentleman from Pittsburg, to my left, (Mr. Howard,) who has spoken so eloquently on this report, nor can I agree with the gentleman from Philadelphia, who has just taken his seat, in doubting that the Dartmouth college case, as a matter of law, has distinct bearing upon several of the sections now before us in relation to railroads and canals. I doubt whether many lawyers in this body, or out of it, who have carefully considered that case, can doubt that its application, as to vested rights, applies equally to a railroad company as to a college, which was the character of corporation under consideration there.

Mr. BIDDLE. Here is one that doubts it very much.

Mr. DALLAS. The gentleman from Philadelphia says he doubts it very much. It only shows that there are very distinguished gentlemen who may take that side of the question, and from whom I, for one, should be very glad to hear. If they can convince me in that way they will very materially influence my vote in several instances.

But, sir, the gentleman from Luzerne (Mr. H. W. Palmer) very forcibly and truly said this morning, that if the construction of the Dartmouth college case was what he supposed it to be, what that distinguished lawyer, who sits at my right, (Mr. Cuyler,) supposed it to be, and what I had always supposed there could be no reasonable doubt about, then to vote a number of these sections into the Constitution is simply to create monopolies in those corporations who have now corporate franchises which these articles would prevent new corporations from obtaining.

But, sir, we have, in addition to the Dartmouth college case, to be considered in this respect, the amendment of our own Constitution passed in 1857. By that amendment Pennsylvania provided that "the Legislature shall have the power to alter, revoke or annul any charter of incorporation hereafter conferred by or under any special or general law, whenever, in their opinion, it may be injurious to the citizens of the Commonwealth, in such manner, however, that no injustice shall be done to the corporators."

I suppose that there can be no possible doubt that every corporation created, and every corporate franchise granted by the State of Pennsylvania since that amendment was adopted, has been granted in view of that amendment and taken subject to it. But what corporations does that include? How many of them have we created since 1857, and how many before? Does the Dartmouth college case extend to those created before; and as to those chartered since this amendment of 1857, how far may we act, and where must we stop?

With great respect for the opinion of the learned gentleman from Philadelphia, (Mr. Biddle,) who, passing in front of me, remarked that he doubted extremely whether the Dartmouth College case had any bearing upon the corporations created for canal and railroad purposes, I have to say that so lately as 1868, in the case of the Commonwealth *vs.* the Pittsburg and Connellsville railroad company, no less an authority than Mr. Justice Sharswood, of the Supreme Court of our own State, said, (and the case is reported in 58 Pennsylvania State Reports,) that the Dartmouth College case principle was applicable in that case, which was a case of a railroad company. "Who is to decide when doctors disagree?"

I have not sought to argue this question. I have only desired to call to it the attention of the many able lawyers who occupy seats in this Convention, with the hope that it may be discussed, and that we may be enabled to vote intelligently upon the article.

I shall not renew the motion I formerly made, for a report on this subject, because I have found that the fate of him is not comfortable who undertakes to interfere with any part of the work of the Railroad Committee. Those gentlemen who reported this article love it, and those against whom it is aimed love it equally well, because they cannot hope for anything which they could so hopefully fight.

Mr. MACVEAGH. Will the gentleman allow me to make a suggestion to him?

Mr. DALLAS. Certainly.

Mr. MACVEAGH. I am not sure but that he has examined the matter, and may be able to give us some light; but I doubt whether any franchises of the character forbidden in the seventh section of this report were granted to any carrying company before 1857.

Mr. DALLAS. I think that is quite probable.

Mr. MAC VEAGH. And therefore all that is in this section is clear of that.

Mr. DALLAS. Of course my remarks were not directed so much to the section as to the remarks just made by the gentleman who preceded me, and to the article at large.

Mr. DARLINGTON. Allow me to ask the gentleman a single question before he takes his seat?

Mr. DALLAS. With pleasure.

Mr. DARLINGTON. I ask him whether he has noticed the concluding section of the report of the committee, in which they themselves, it seems to me, have conceded that they cannot disturb those corporate franchises granted before this time by providing that, in case they have any future legislation, it shall bring them under it?

Mr. DALLAS. Yes, sir, I did observe that section, and so far as companies who might hereafter ask for legislation, and who could not otherwise be affected by this constitutional provision, are concerned, those companies would find that they had to give up any future beneficial legislation or to submit to this article; but they would have that choice, and it does not determine the question of how far we can make these sections peremptorily applicable.

Mr. DARLINGTON. It is only indicative of what the committee thought.

Mr. DALLAS. Yes, sir; it seems so.

The CHAIRMAN. The question is on the amendment of the gentleman from Dauphin (Mr. MacVeagh.)

Mr. M'ALLISTER. I simply desire to call the attention of the committee specifically to the fact that if this section passes as reported by the committee, it excludes every business man in the State who is a manufacturer from being a railroad director. There is not a mechanic, there is not a producer of mechanical implements in the State of Pennsylvania who can be a director. There is no producer or manufacturer in the city of Philadelphia who can be a director. Now, these are the principal business men of our community. If we exclude them, we must fill the board either with lawyers or preachers, who do not produce manufactured articles, or we must take ninnies who are incapable of transacting any business. Shall we come to this? I trow not.

Here we propose to take the management of railroads out of the hands of the men whose business has induced them to build railroads. Who, let me ask, have built the railroads of Pennsylvania? The producers and the manufacturers of Philadelphia, principally, and the producers and the manufacturers of the interior next. Those are the men who have constructed these great works, and now we propose to take them out of their hands and put the management into the hands of men who have taken no interest in the subject. Will they be better managed in their hands? Surely not. Sir, I think we had better consider deliberately before we adopt such a proposition as this.

I confess, Mr. Chairman, that there is an evil (if it exists as alleged) in these men obtaining preferences in the carrying trade. That evil is struck at in the two sections reported this morning as a minority report, and which are to be offered as amendments, and struck at, too, in a way in which the evil can be reached. The gentleman from Philadelphia (Mr. Biddle) says he is in favor of those sections, but he wants this also on the ground that those sections are not sufficient to prevent the evil. Is that so? How can it be reached under those sections? Any person who suspects that a director or a manager or an officer of a road is obtaining preferences from the railroad, has but to make his suggestions and file his bill, and he can call up before the judiciary, in answer to that bill, every officer, manager and director of the road, and can have them answer as to what has been done. Surely, sir, the truth can be elicited; and when the truth is elicited, if the suspicion proves to be correct, it causes a forfeiture of the franchises of the company. Why? Because the company and its officers are bound to know the preferences they have given to their colleagues in the management of the road, and the forfeiture is right because they have sinned under light and under knowledge, and the consequences are to be visited upon all the stockholders of that railroad in the forfeiture because they are represented in the managers and the directors.

Why, then, cannot the evil be reached? Why shall we say that a certain class of men in the community shall not engage in the industrial pursuits of life? I have heard about incompatibility of office, but I have yet to hear of the incompatibility of an office with an industrial pursuit.

Mr. CORBETT. I rise to a question of order. I ask if the gentleman from Cen-

tre has not already spoken once or twice on this amendment?

Mr. M'ALLISTER. What is the point?

The CHAIRMAN. The point of order is that the gentleman from Centre has already spoken once on this question. The Chair sustains the point of order.

Mr. GREEN. Mr. Chairman: I am opposed to the form of the first portion of this section in the language in which it is expressed, and I am in favor, for that reason, of the amendment of the gentleman from Dauphin. As I read the language of the section, its purpose is to create two disabilities; one, a disability in the incorporated company itself from being engaged in the mining or manufacturing of articles to be transported over its road; and the other, a personal disability, incident or relating to the officers and managers of those transporting companies alone.

In regard to the first of these disabilities, to-wit, a prohibition against the transporting companies, themselves, being concerned in the mining or manufacturing of articles which are to be transported over their works, I agree to the statement of the report, and am in favor of it; but in regard to the residue of this portion of the section, to-wit, that portion of it which creates a disability as to the officers or managers, it seems to me it would be a very unwise thing to do, because if this portion of the section is to prevail, as I read it, no person who is an officer or a manager of a railway or a canal company can be engaged, directly or indirectly, either in the mining or in the manufacturing of any articles which are to be transported over the railways or canals of the company of which he is such officer or manager. In other words, no owner of a grist mill, either along or near to the line of a railway or canal, whose flour, when manufactured, is to be transported over the railway or canal in question, can be a director or manager of such company; no owner of a saw mill can be an officer or manager of such company; no owner of any kind of manufacturing interest, no person who is interested in any sort of mining corporations of coal, or of iron ore, or of zinc ore, or of any other mineral that is mined.

Moreover, as the section prohibits persons who are engaged, either directly or indirectly, in the mining or manufacturing of articles that are to be transported, no such person can be engaged as a stockholder in any corporation which is engaged in the manufacture of articles to be transported over such railway or canal. No person can be an officer or a manager who is a stockholder in an iron company, or in a coal mining company, or in any other company whose products are to pass over the railway or canal of which he might otherwise be an officer or a manager.

It seems to me that a provision of this kind would be a very unwise one, for it would certainly exclude from the management of all these lines of transportation the very persons who are most interested in the construction and in the conduct of these lines of transportation, and, as a general thing, the persons who have the best knowledge, who, having the most personal interest, are more likely to contribute their means in the construction of canals and railroads, and commit the interests of these important companies to persons who, having no such interests, are much less able to manage them.

As I understand, the principal objection to this class of persons becoming officers or managers of these companies is that they will have an individual interest that will be contrary to their interest as officers; in other words, that persons who are engaged as officers and managers would be subject to a temptation to become interested in the transportation of articles which they were engaged in manufacturing or mining. But, sir, that subject is provided for, as I understand it, in the ninth section of this report, which prohibits especially all persons who are engaged as officers or managers from becoming engaged in the work of transportation, and it is a distinctive subject matter by itself, which deserves a provision by itself, and has received such a provision in the section in question.

It seems to me, therefore, upon these plain considerations, that the provision as it stands in the first portion of the section, excluding officers and managers, ought to be stricken out, and the amendment of the gentleman from Dauphin adopted.

Mr. EWING. Mr. Chairman: It has been somewhat the fashion here for each member, on first rising to address the Convention on the subject of railroads, to define his position, and almost to give his history, and tell his relation to corporations. I have not any history of that sort, though I may say that it has been my fortune, in the past three or four years, to spend a very considerable amount of time in different parts of this country,

both north and south, both east and west, and to travel by rail, to be among the people in those different regions. If there is any one thing in my observations that pressed itself on me more than another in regard to the general condition of the country, it is that *the great question of the day is the management of the railroad corporations of this country.* I think that the man, or the body of men, who can devise measures which will harmonize the interests of the people, and the interests of the corporations, that will so limit and control the corporations of the country, that they will not infringe on the liberties of the people and the rights of the citizens, and at the same time not cripple the efficiency of these railroad corporations, will have perfomed a very great work for the country.

We have had a great deal of discussion here on these different provisions, and a great many suggestions on the part of different gentlemen as to what should be done. Several gentlemen have intimated that they had in their minds provisions which would meet the difficulties of the whole case; *but we have not had them presented to us.* Now, I have not got any plan; I do not think that I shall have any, but I am ready to adopt the best plan that the wisdom of this Convention or of any member of it shall show to me; and I wish here to ask the learned gentleman who sits near me, (Mr. Gowen,) and whose acquaintance with the railroad business is so intimate, to put in complete shape, and as a system, the provisions which he has suggested to us in regard to the management of railroad corporations. Certainly some of those that he suggested will meet with the approbation of a great majority of the Convention, and I, for one, would be glad to accept anything from him or any other gentleman that will meet the difficulties of the case. I have simply to say that when he does it, a large portion of the Convention will meet his propositions fairly and be disposed to look on them with favor; but he should not feel offended if we should scrutinize them, fearing that his private interests or his private business might affect his judgment on some of those propositions, and if they should be criticised by some others friendly to railroads, especially by my colleague from Allegheny, (Mr. Howard,) who has been talked of as being an anti-railroad man. Really, I think if there is a railroad man in this body, he is one. He *goes* for them all the time [Laughter.] My friend from Philadelphia should neither be surprised nor offended.

In regard to the particular section before us, I am in favor of the section as it now stands, and against the amendment of the gentleman from Dauphin, and I shall endeavor to give some of my reasons. I am in favor of it for the reason that I would be in favor of one of the sections offered by the gentleman from Centre, (Mr. M'Allister;) it strikes *at* the difficulties; it strikes at the evils, but I am in favor of it for a still further reason; I think it not only strikes *at* them, as the amendment of the gentleman from Centre, *but it strikes them, which, I think, his section does not.*

I have said that I had traveled a little and been among the railroad people, and among the people who use railroads. Let me tell you that the feeling in many of the western States is far more intense against railroad corporations than it is in any part of this Commonwealth. In many of those great grain growing States, the landholders are practically mere tenants of the railroad corporations, and they are to-day almost ready for a revolution, and the railroad corporations would do well to consider whether or not they should not yield some of their claimed vested rights, or at least exercise them with a little more care, and a little more regard for the prejudices of the people, lest a revolution should arise that might sweep away railroads, vested rights, and everything else with it.

Now, lest some one should think I was personal if I talk of facts near home, I will state what I believe is the manner of doing business in the western States, and that gives rise to this great feeling among the people who use the railroads. It is this: The officers of those railroad corporations are the men who either directly o indirectly engage in purchasing the articles that have to be transported over the road. As those of you who have traveled west know, the grain there is handled by having small elevators at each country station along the line of the railroad. The farmers haul in their grain, their wheat principally, unload it into these elevators in bulk, and get their certificate for a certain amount of wheat of a certain quality. They never get back that wheat; they do not sell that particular wheat; but they have got so much in the elevator. The purchasers of that grain are either men who are directly officers and managers of the railroad, or they are men who

are in partnership, special friends of the officers of the railroad, and they have the means of moving that grain in a way that no outsider can have.

I happened to be in the State of Minnesota in the summer of 1870, when there was a considerable rise in the grain markets east, and away in the north-west, as far as railroads then went; I found that grain did not rise there, and why? Because there was no competition among purchasers. An outsider came in and undertook to raise the price, and he did raise it a little, but he could not get cars to ship the grain. They said they were going to give him the same rates as others, but very soon he was driven off because the railroad officers managed for his competition, and it is so all through that country, as I understand. I think that is the principal reason of the hostility to the railroads. Just as soon as they drive off such a man, either by refusing to give him transportation or by giving his competitor lower rates or favor in some way, then they are ready to reduce the price.

The same thing exists, more or less, in our own State; it exists in Illinois; it exists in almost every State. It is the great evil, in my opinion, of the management of the railroads of this country, that the officers are permitted to engage in the transportation of articles over the road which come in competition with those who ought to be the regular patrons of the road. The gentleman from Armstrong (Mr. Gilpin) has given you some instances in which this competition has occurred. We know in the western part of this State that along the line of our railroads it is almost impossible for any firm or company for coal mining, that has not an officer or manager of a railroad in it, to succeed or to live in their business.

One firm may have on the same road, and right alongside of another, a large and valuable property, and all the facilities for mining and shipping their coal, and with even better management than their competitors, and yet they cannot get along. They make a contract to deliver coal in Cleveland, in Chicago, in Erie; and when the time comes to get it shipped they cannot get the cars, or, if they have the cars, they cannot get them off. At one time there will be a week or two that they cannot get cars at all; next, when they complain a great deal, they will have their sidings jammed with cars so that they cannot get them loaded. A rival company or firm right alongside of them, that has a railroad man in it, gets its coal shipped whenever it wants to, and makes money, and in the end it breaks down the rival that has no railroad man in it, and buys the property at its own price. That is the history of nearly all these matters. I believe that one thing has done more to create hostile feelings among the people of the western part of the State against railroads than all other things combined, and I do not see that it is any great hardship that this should be prevented by a constitutional provision.

Now, in regard to the persons that would be prohibited by this section. I am surprised that the gentleman who last spoke (Mr. Green) should claim that this provision would prevent a stockholder of a railroad from engaging in manufacturing or mining for transportation over its route. I cannot see anything in the section that would justify such a conclusion. I do not think he can find any principle of law or of interpretation that would so construe the section. Stockholders are certainly not excluded from such business; it is the officers and the managers only. I do not believe it would be difficult to find directors for the Pennsylvania railroad company who are not manufacturers or miners of coal shipped over their road. They would be easily found in Philadelphia. I do not suppose it would be very difficult to find a president, a vice president, a superintendent and managers who are not interested in this way. As I understand the management of that great railroad, (the Pennsylvania,) I have a very great admiration for it, especially as it has been my lot to travel outside of its bailiwick, and get on roads similar to those that my friend to my right (Mr. Gowen) talks of, down in North Carolina; and any man who has had to travel through that region will be very glad, in his travels, to get back to consolidated roads, and get back to the monopoly of the Pennsylvania railroad.

Among other things that I have noticed, both at home and abroad, is this, and I think it comes from railroad men being concerned in these outside corporations. I find, as a general rule, where you put a man in as a manager or superintendent of transportation, or any principal officer in one of our leading railroads, at a salary of three, four, five, or ten thousand dollars per annum, that in the course of four or five years, with any sort of reasonable management or economy—I suppose it is *economy principally*—he will be worth

from half a million to two or three millions. I do not think there is any difficulty in getting men to take those positions. I believe that this provision would prevent, prohibit, and to a very great extent cut off that unjust discrimination which has been made, and is being made, constantly, against parties who are not concerned with the railroad men. I do not see that it would be injurious. I believe it is well known to railroad men that one of the leading railroad corporations in this country, and one which stands very high in the commercial world, does not permit any officer whatever to engage in any business, either directly, or indirectly, along the line of its road which will cause him to have special interest in transportation over the road. They dismiss an officer whenever they find him engaged in anything of that sort. I understand that the leading road in the eastern part of this State (the Reading) has the same rule, and that it has neither director, officer, manager or employee engaged in anything of the sort. I have no idea that the road has suffered from it. I do not think the people along its line have suffered from it. It does seem to me that this is the most important provision of the whole section, and I hope the amendment will be voted down.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Dauphin (Mr. MACVEAGH.)

Mr. ANDREW REED. Mr. Chairman: Who should be an officer or manager of a railroad, or the manager of any company? As I look at it, certainly those should be who are most interested in it. I do not believe that the adoption of this section is going to cure the particular evils which the gentleman who spoke last referred to. Yet I am in favor of this section. I shall vote for it; but I shall vote for the amendment of the gentleman from Dauphin. In section six it was endeavored to prevent railroad companies from endorsing or taking bonds in another railroad company over one-third of its amount. Now, how are railroads built? Look at any railroad that has been built within the past ten years to develop some particular section of country, and see who has taken its stock. Who risk their fortune, and put their money in these enterprises that develop the resources and wealth of our State? Certainly it will be those men who own the mines, who own the timber and lumber, and the lands to be developed. If they do not put their money in them, you will find no railroads built there, and you will find that the resources of our State in those localities will never be developed. If these persons do so invest their money, are we going to prohibit them from managing their own business? A man may think that he has a valuable property underlaid with minerals, for which he desires to get an outlet, and he struggles to accomplish it, and puts in the greater part of his fortune in order to get it done. Shall we prohibit him from managing it? Why, surely, that is not a business like way of conducting an enterprise. A man who is most interested in a business is the man who will control and manage it the best.

Then, again, Mr. Chairman, suppose this be done, will it prevent this evil? If those men who own stock can elect whom they please, can they not put in men who will do as they say, because they can turn them out if they do not; and will they not do worse than the directors themselves? It will not cure this evil. The men who own and control it will get the officers to do what they want, and in ten cases out of twelve this very thing which we are considering is done through the intervention of others. For these reasons I shall vote for the amendment of the gentleman from Dauphin.

The amendment was rejected, there being, on a division, ayes fifteen, less than a majority of a quorum.

The CHAIRMAN. The question is on the section.

Mr. NILES. I move to amend, by striking out the word "lateral," in the ninth line, and I desire to say just one word.

Sir, if I understand the meaning of that word, it would prevent railroads that have no lateral lines, over fifty miles long, mining their own coal and running it to market. We have a railroad in my county sixty miles long that is mining its own coal and running it to market, in accordance with the wishes of all our people; and if this means what I suppose it to mean, it would prevent this railroad mining and running its coal to market, whereas a great railroad five hundred miles long might have a lateral road of fifty miles long. Therefore I move to strike out the word.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Tioga.

The amendment was agreed to, there being, on a division: Ayes, thirty-eight; noes, thirty-three.

Mr. KNIGHT. Mr. Chairman: I feel as though it was proper I should make a remark or two on this subject. I have been for some ten or twelve years a director in the Pennsylvania railroad company, and have been for a longer time in the direction of the North Pennsylvania railroad company, and I want to say here, from my own knowledge, that during my experience as a director of the North Pennsylvania railroad, I have never known, nor do I believe there ever have been, any special rates for that road. I want to say, as a director of the Pennsylvania railroad company, that I think this section with regard to officers and managers is very unjust, and that it would be very injurious to the interests of the company. I may have to allude to my own business in making the remarks that I shall make, in order that I may be understood. I would rather not do so if possible.

For several years the house of which I am a member has been largely engaged in the manufacture of sugars and syrups. We ship annually, over the Pennsylvania railroad, perhaps over thirty thousand barrels of our products, which would make a train of loaded cars from three to four miles in length, and neither myself nor any one interested with me in the house has ever asked the Pennsylvania railroad company for a special rate or for any drawback or any advantage whatever; and I have not the slightest knowledge that we ever received any special rate or any favor over what any other man competing with us or any other line of business would receive; and I doubt whether it would have been granted if we had made the request. The directors and officers proper of the railroad are not the persons who fix the rates of freight. They are fixed by the freight agent, who comes in competition with competing roads and lines, and are frequently changed two or three times in a day during exciting periods. I have always understood that it was the province of a director or an officer of a railroad company to do what he could to get freight to go over the road, and not to be prohibited from sending his own products over the road. It seems to me this is very unbusiness like. I may be mistaken in my ideas of it; but you might as well prohibit a gentleman who might be a director of any railroad company from being a member of this Convention, because he expected to vote on some subject wherein the railroad interest would come up before it, as to say that a man shall not be an officer or a director of a road where he is largely interested in stock, and not be allowed to ship his own products over it.

I am not here as the advocate of railroads; neither am I here as their enemy. I come here as other gentlemen do, to assist in trying to make a better Constitution for the people of the State of Pennsylvania than we have at present; but I doubt very much whether we are going to make a better Constitution or whether we are going to make one that will be at all acceptable or received by the people if we crowd into it all the articles of legislation and everything that can be thought of by the mind of man, which we shall never be able to understand ourselves when we are through, much less will the public.

I will take occasion to say now, in justification of my own position, that during the time I have been a director of the Pennsylvania railroad company, I have never owned a single share in any of the fast lines or the telegraph lines or land speculations, or in any company, in any way that would influence my vote or would have any bearing at all against the stockholders. I am rather opposed to anything of the kind that would discriminate against the interests of every stockholder. But I think the Convention should reflect well before they attempt to pass a section such as is reported here. I think it would derange and destroy all business transactions. I do not see how you could carry on business under it. Gentlemen who are in the management of railroads are generally largely interested in them. If they were not, they would not be placed there, as a general rule. I think if we could put an article in the Constitution which would tend to make men honest, we could get through our business here in a very short time, and it would be much better than discussing all these outside issues, to bind men and prevent their doing this and that, and being interested in corporations as managers.

Mr. ARMSTRONG. Mr. Chairman: I cannot vote for this section, and yet I am in no sense a railroad man. I own no railroad stock, no railroad bonds, and my experience, professionally, has been that for many years past I have been concerned against railroad companies, and not for them. This section, in my judgment, does not meet the evil which ought to be

remedied, and the remedy is likely to be worse than the disease.

The thing which the Convention is endeavoring to secure is to prevent the officers of corporations from exercising their power in unjust discriminations against parties who have no interest in the railroad. In order to effect that, the section, in effect, assumes that the officers are dishonest, that they exercise their trust unfaithfully and with special regard to their private interests, and not to the public advantage. Now, the thing to be remedied is, that there shall be no unjust discrimination either in the accommodation which shall be afforded by them for transportation, nor by discrimination in freights nor by embarrassing the business of one man to the advantage of another. I think it quite possible to draft a section that shall lay its hand upon this particular evil and stop it as other evils are to be stopped, but we ought not derange the whole machinery of business in the land. I do not perceive the necessity nor the utility of providing that a man who is interested in any production which is to be transported by railroad shall not be a manager, nor an officer, nor interested in a transportation company. That is not the evil to be corrected. Our purpose, I suppose, is to require those who control the carrying business of the State to manage their trusts with fidelity. I would provide some means by which the officers of a railroad convicted of any unjust discrimination shall be dealt with criminally, and punished; but I would lay no hand upon the general business of the State. This section is directed at the officers of the company, and assumes that they are necessarily dishonest.

That is the inevitable inference, and is based upon the apprehension that such officers will be dishonest in the exercise of their trusts. Now, I say, let the Convention lay its hand, by the most stringent provision that can be devised, which shall make such officers, when convicted, amenable to punishment for unjust discrimination. This is the evil which we aim to arrest. Punish the offending officers with severity, but it is no remedy, none whatever, to provide that they shall not be officers in these corporations, for assuming that the trust is to be unfaithfully executed the means of evading a provision, such as is here proposed, is very easily to be devised.

I am fully conscious that the evil which has been pointed out by men on this floor exists. I have, I was going to say, painful knowledge on this subject in the way of experience. It so chanced, a few years ago, that I was president of a coal mining company along the line of the Philadelphia and Erie railroad. We found it so extremely difficult to mine coal to advantage, and to transact our business at that time that the stock of the company was worth comparatively little, and I was induced to sell what interest I had, and it was a large interest as compared with the whole value of the stock. I sold out my interest for seven thousand dollars, and in less than three months from the time that I parted with my interest a company was organized that brought railroadmen into that corporation, and in less than that time afterward I could not have bought back my stock for forty thousand dollars. It went right up from this influence alone. Now, where was the trouble, what was the difficulty? It was not that this man or that were officers in the company, but that their office was exercised with unjust discrimination. The remedy would have been to have had such provision of law that officers or agents who discriminated unjustly against the trade and business of private corporations should be punished for that dereliction of duty. For these reasons this section does not meet my approval, and I cannot vote for it as it stands. Private capital is wholly inadequate for the transaction of the great enterprises of the day. It requires corporate combination. No private interest can compete in the transaction of business at the present day with organized capital. It requires that corporations should be dealt with liberally, that they should be held to strict but liberal and judicious management by the best men in the country, the most judicious and experienced that can be secured; but because men are unfaithful to their trust, do not derange the business interests of the country. Provide a section which shall make the men who are derelict to their duty severely reprehensible and promptly to be punished.

These are the reasons, and I state them briefly, why I cannot approve of the section as it stands. It does not, in my judgment, meet the difficulty, and I fear will make the remedy far worse than the disease.

Mr. MACVEAGH. Mr. Chairman: It is proper to state that the committee having stricken out the word "lateral," the section now prevents any railroad com-

pany from owning a mine, but it allows any mining company to own a railroad to the extent of fifty miles in length.

Mr. BUCKALEW. Mr. Chairman: I desire to say before the vote is taken, that I do not understand the section in the same sense in which it seems to be understood by several gentlemen who have spoken. The word "or" has been stricken out; it is no longer a part of the section. I do not understand, therefore, that the section as it now stands would prevent a man from sending his productions over a railroad, and at the same time being chosen a manager of it. Perhaps others are correct in their construction, and I am not; but with the omission of that word "or" I do not think it bears that construction. I think it applies to corporations and to officers who engage in the business of manufacturing, and does not require them to send their productions over lines of public improvement in which they shall not become officers.

Mr. RUSSELL. Mr. Chairman: I wish to suggest to the chairman of the Committee on Railroads and Canals that the word "or," where it first occurs, ought to be "nor." I move to amend, by striking out the word "or" and inserting "nor," and ask unanimous consent to have the amendment made. It is a mere verbal correction.

Unanimous consent was given, and the amendment was agreed to.

Mr. BOYD. Mr. Chairman: I move that the committee of the whole do now rise, report progress, and ask leave to sit again.

The motion was rejected.

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

On this question a division was called, which resulted, fifty in the affirmative, and thirty-six in the negative.

So the section as amended was agreed to.

The CHAIRMAN. The eighth section will be read.

The CLERK read as follows:

SECTION 8. No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof, and such corporations shall carry the persons and goods of the people of this State on as favorable terms as those of other States brought into or through this State on the works owned or controlled by such corporation; and no higher rate per ton per mile shall be charged for the transportation of goods, or higher rate per mile for passengers, than shall be charged for like service in this State to the people of other States; and the rates for the same classes of freight shall be uniform, and the charges for freights or fares for passengers shall, for equal distances, be the same, and a higher charge shall never be made for a shorter distance than is made for a longer distance, and no drawback shall, either directly or indirectly, be allowed.

Mr. M'ALLISTER. Mr. Chairman: I now renew my offer to amend, by striking out all after the word "section," and inserting as follows:

"Railroads, canal or other transportation companies heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law. And the Legislature shall, by general laws, establish reasonable maximum rates of charges for the transportation of passengers and property thereon, and within the limits thus prescribed by the Legislature, every railroad company shall establish a schedule of uniform rates for the transportation of passengers, per person, and property, per ton per mile, over their road; and during the existence of such schedule, no abatement shall be made from the charges therein set forth, in favor of any individual or individuals, corporations or partnerships, or by the granting of a free pass or special rates, the allowance of drawbacks, or in any other way or manner except in the granting of a personal transportation to the officers and employees of the company, and to poor and indigent persons as objects of charity."

I suggest a verbal correction, to insert, after the word "railroad," where it occurs the second time, "canal or other transportation," so as to make the language then correspond with the first line. I ask unanimous consent to make the amendment.

Unanimous consent was given, and the amendment was made.

Mr. BAER. Mr. Chairman: I move to amend the amendment, by striking out the words "general laws," and insert the word "law."

I wish to give a reason for making that motion. I am afraid that the proposition

embodied in this amendment is a retrograde movement, and goes further than the gentleman from Centre (Mr. M'Allister) wishes it to go. I have never been an advocate of special legislation, but I can see that the term "general laws" would here confine the action of the Legislature to the adoption of the maximum rates of passenger and freight by a general law, which would be utterly impossible, or at least impracticable for all the railroads in the State. As these rates at present exist, ordinarily no railroad has a larger rate of freight than three and a half or four cents per ton per mile. Now, that rate, while it may be fully adequate for any main line, is entirely too low for a railroad of eight or ten miles length. It is utterly impossible for a railroad company to operate a line of that length under a law which would base the maximum rate upon the tolls charged upon the longer roads. Therefore, if you are to fix a maximum rate to apply equally to all the railroads in the State, if you fix the rate upon the present average, you will bankrupt the small companies, and if you increase the maximum to the larger rate charged by the short roads you permit the large companies to charge a much greater price than they are entitled to. For that reason the words "general laws" should be stricken out, and the amendments should be so modified as to permit the Legislature to fix the maximum of each road as the emergency arises.

But the proposition, even with the amendment, does not come up to the requirements of the people. Any proposition that requires that the Legislature shall provide, or that a railroad company shall provide, a uniform rate per ton per mile, is establishing a principle that cannot be carried out without great injustice to the people. No railroad in existence can make a uniform rate per ton per mile, and compete with other railroads outside of this State. If you mean to crush the railroads of Pennsylvania, you can establish such a principle; if not, you cannot. Unless you want to saddle upon the people of this State burdens higher than those now imposed upon them, by making that rate so high that they cannot bear it, you cannot establish any uniform rate under which the smaller roads of the Commonwealth can be operated.

For that reason I would have this proposition amended in such a way as to strike out "per ton per mile." I would compel the companies to go still further, because, though the Legislature may compel a railroad company to fix a uniform rate, that is not all that the people require as against these railroads. You may make a uniform rate, and make it so oppressive that you can crush the people of the interior, or the people of a particular locality, while you are benefiting all the through roads. One of the objections which the people have to the general railroad system, as at present conducted, is that the local freights are too severe and are made to bear the burdens of all the through freight that pass from Philadelphia, for example, to Pittsburg or Chicago One of the evils to be remedied by this Constitution, if we meet the desire of the people in the convocation of this Convention, is to say that no railroad shall charge more freight from here to Harrisburg than it does from here to Pittsburg, or from here to Pittsburg than it does from here to Chicago. This provision will permit them to do that, and in order to avoid that I will move to amend the amendment still further and put this clause at the foot:

"No higher rate for fare or freight shall, at any time, be charged for a shorter distance than is at the same time charged for a longer distance; nor shall a higher rate at any time be charged for a given distance upon any part of a road than is at the same time charged for a like distance upon any other part of the road."

Something of that kind is what is demanded by the people of the interior of the State. Something of that kind is demanded by those who are to encourage manufacturing business outside of the termini of the roads, in order to give them an opportunity to carry on business at other places than in the principal cities. If that is done, then you make it possible for the people to ask at the hands of railroads that they shall not discriminate against them, and that is the great vital question for which the people are to-day asking.

It is not a question of keeping the officers of railroads from engaging in a particular business; but the question is where we shall restrict them so that they shall deal equally with all men, so that they shall not discriminate against one locality in favor of another, or against the people who ship over a short distance in favor of those who ship over a long distance. All this can be remedied by this Convention, without in the least injuring the railroad companies. I doubt much whether the strongest advocates of rail-

roads in this House would go so far as to resist that proposition; and yet I believe the people are demanding it, they are looking for it. In the memorials presented here to-day, signed by hundreds of persons, this great proposition is presented to this Convention, and they are asked to consider it and to embody it in the fundamental law. My friend from Centre goes too far when he undertakes to break down the report of the Committee on Railroads, to as low a standard as indicated by the section he proposes. It is giving far less than the people demand; far less than they should have, and far less than they have a right to have after they have agreed that the property they have owned may be taken and used by these corporations.

While I am in favor of railroads I am only in favor of them so long as you compel them to do what is right. I am in favor of them as against all attacks upon them to restrict them or cripple them or make the railroads of Pennsylvania of less importance than those of the great State of New York. I want our roads to be the greatest and the best in the Union, and this does not interfere with their character as such, and I trust that this Convention will see that this, or something like it, be adopted. I am not particular about the exact words that I lay down; I am not wedded to anything of that kind; but I do insist that they shall consider carefully, and that if possible they will incorporate a principle equivalent to that in this Constitution, so that when we go home the people may see that we have at least done something towards doing good.

Mr. HARRY WHITE. I move that the committee rise; report progress, and ask leave to sit again.

The motion was not agreed to, there being, on a division: Ayes, thirty-six; noes, forty-nine.

The CHAIRMAN. The question is on the amendment of the gentleman from Somerset (Mr. Baer.)

Mr. RUSSELL. The gentleman from Somerset has not yielded the floor.

Mr. KNIGHT. I rose to ask him a question.

The CHAIRMAN. The Chair understood that the gentleman from Somerset had yielded the floor.

Mr. KNIGHT. I wish to ask the gentleman from Somerset why lower rates are charged for long than short distances, if that be the fact? Now, suppose a ton of freight to be carried a thousand miles on the same route, or one hundred, that would reduce it down to carrying it one mile for one cent. I want to know how you are going to load and unload freight for one cent per ton, per mile?

Mr. BAER. That is just my argument. I say it is utterly impossible. It cannot be done.

Mr. MACVEAGH. The gentleman from York, the chairman of this committee—if the gentleman will withdraw his amendment—will explain to the committee that he purposes to add to the section a provision for the use of commutation tickets, and for reasonable discriminations within distances of thirty miles. If these two things are added to the section, it seems to me it relieves it of its difficulty.

Mr. BAER. Mr. Chairman: In answer to the question put by the gentleman from Philadelphia, I concede that there must be a certain amount of discrimination, and the proposition that I have asked to be attached to the amendment of the gentleman from Centre concedes the right of that discrimination. It does not make provision that the companies shall charge just the same rate, but on the contrary, it recognizes the right of discrimination, which I say is an absolute necessity for the railroads, because you cannot handle a car perhaps for less than five dollars, whether it comes a distance of five miles, or fifty. No railroad company can afford to handle a car at all, whether it be empty or full, without some consideration, and nothing less than three dollars would do anyway.

This proposition does not preclude that. It only provides that they shall not charge a greater rate for a short distance than for a long distance; for instance, that the charge from here to Harrisburg shall not be greater than from here to Pittsburg, but it may be as great; or in other words, that a car loaded with goods shipped from here to Pittsburg may be charged the same that you charge from here to Chicago, but the company shall not charge more than they do from here to Chicago. As it is now, I am told, they will take goods in New York and send them through Pennsylvania to Chicago for a less rate than they will send them to the town of Johnstown, which is but two hundred and sixty miles from here. That sort of discrimination is what the people are complaining of, but they are willing to concede a reasonable discrimination, because there must be a reasonable discrimination, and the section, as proposed by the gentleman

from Centre, does not allow that discrimination, and therefore, I consider that in so far it is wrong, because it fixes a rigid fixed rate per ton per mile, and if you fix a rate of that kind no railroad can live and do business.

For these reasons, I trust that this committee, before they vote down this proposition, will consider it well. I am well pleased with the principal parts of the amendment of the gentleman from Centre and with the amendment that I have suggested to it, I think it would cover the ground, and would cover a number of the sections that are contained in the report of the committee.

Mr. BIDDLE. Mr. Chairman: This is a most important section, and it occurs to me that it is better for the committee to rise now and give the gentleman from Somerset, who has just called our attention to this subject, an opportunity of preparing his amendments in such shape that we can act upon them readily. I, therefore, move that the committee do now rise, report progress, and ask leave to sit again.

The motion was agreed to.

The committee of the whole accordingly rose, and the President having resumed the chair, the Chairman (Mr. Broomall) reported that the committee of the whole had had under consideration the article reported by the Committee on Railroads and Canals, and had directed him to report progress and ask leave to sit again.

Leave was granted, and to-morrow fixed as the time for sitting again.

Mr. STANTON. I move that the House do now adjourn.

The motion was agreed to, and at five o'clock and forty minutes P. M. the Convention adjourned until to-morrow morning at ten oclock.

EIGHTY-FOURTH DAY.

WEDNESDAY, *April* 23, 1873.

The Convention met at 10 o'clock A. M., Hon. W. M. Meredith, President, in the chair.

Prayer by Rev. J. W. Curry.

The Journal of yesterday was read and approved.

RESIGNATION OF MR. BARTHOLOMEW.

The PRESIDENT. The Chair has received a communication, which will be read.

The CLERK read as follows:

HON. WM. M. MEREDITH,

President Constitutional Convention:

DEAR SIR: Engagements of no ordinary character force me to do that which I much regret, namely, to resign my place as a delegate in the Constitutional Convention. Please tender to my fellow-members my regrets at this compulsory separation, and trust that I am, as ever,

Your friend,

LIN BARTHOLOMEW.

April 21, 1873.

Mr. DARLINGTON. I move that the resignation be accepted, and referred to the delegates at large elected on the same ticket.

The motion was not agreed to.

NEW ARTICLE ON RAILROADS.

Mr. BROOMALL. I offer the following resolution:

Resolved, That the Committee on Railroads and Canals consider and report upon the following article:

SECTION 1. Any individual or any corporation, organized for the purpose, shall have the right to construct a railroad between any two points in the State, subject to the payment of all damages thereby caused.

SECTION 2. No railroad company or owner shall discriminate unreasonably against the people of this State, or of any section of it, nor in favor of its owners, stockholders or officers in carrying freights and passengers.

SECTION 3. The Legislature shall make all laws necessary to carry these provisions into effect.

The PRESIDENT. The resolution will be referred to the Committee on Railroads and Canals, under the rule.

RAILROADS AND CANALS.

Mr. DARLINGTON. I move that the House resolve itself into committee of the whole for the consideration of the article on railroads and canals.

The motion was agreed to, and the Convention accordingly resolved itself into committee of the whole, Mr. Broomall in the chair.

The CHAIRMAN. The committe of the whole resumes the consideration of the article on railroads and canals. The question is upon the amendment offered by the gentleman from Centre (Mr. M'Allister) to strike out and insert.

Mr. BAER. I wish to ask the Chair at this time whether the motion I made, to strike out the words, "general laws," in the amendment of the gentleman from Centre, when it was last under consideration, would now be in order?

The CHAIRMAN. The question is on the amendment of the gentleman from Somerset, (Mr. Baer,) to the amendment of the gentleman from Centre, that amendment being to strike out the words, "general laws," and insert the word "law."

Mr. M'ALLISTER. With the permission of the gentleman from Somerset, I desire to make a remark.

Mr. BAER. I have no objection.

Mr. M'ALLISTER. What is considered here as an amendment offered by myself to my own proposition seems to be somewhat of an anomaly. The words, "or other transportation companies," were inserted at the suggestion of a number of my friends, and I asked where, and they said in the first line after the word "canal," and they were, without thought, inserted there. Those words were inserted in the wrong place and disorganized the whole section. I moved yesterday to insert the words, "canal or other carrying company," in the sixth line, after the word "railroad," so as to read, "railroad, canal or carrying company." Now, that was

submitted as an amendment. I suggested it as an alteration of my proposition, and I think I was entitled to have that alteration made.

The CHAIRMAN. It was so done. It was not considered as an amendment. The gentleman modified his own motion.

Mr. M'ALLISTER. If it was so done, I ask now simply to strike out the words, "or transportation companies," after the word "canal," in the first line.

The CHAIRMAN. The gentleman can so modify his amendment.

Mr. DARLINGTON. I wish to ask the gentleman from Centre a question. I notice that by the amendment, as it reads, railroads and canal companies heretofore constructed, or hereafter to be constructed, are declared public highways.

Mr. M'ALLISTER. No, railroads and canals. The words, "or transportation companies," are stricken out, and the letter "s" added to the word "canal"

Mr. BAER. Before proceeding with this discussion, I desire to ask the Chair whether it would be proper at this time to withdraw the amendment which I offered before, and present an amendment to the amendment of the gentleman from Centre, which will strike out all of his amendment, and insert a substitute.

The CHAIRMAN. It is in order to withdraw the amendment to the amendment.

Mr. BAER. Will it then be in order to move an amendment to that, to strike out all of his amendment?

The CHAIRMAN. It is in order to offer an amendment to the amendment, to strike out all after the word "section."

Mr. BAER. Then I withdraw the amendment which I offered before, and move to strike out all after the word "canals," in the amendment of the gentleman from Centre, and insert as follows;

"Are hereby declared public highways, upon which, under such regulations as may be prescribed by law, all persons have an equal right of having their persons and property transported, at rates of fare, freight and tolls which shall be the same to all, never higher for a shorter distance than for a longer distance upon the same road, and for equal distances always the same; and the Legislature may, by law, determine the maximum of rates."

The CHAIRMAN. The question is on the amendment to the amendment.

Mr. BAER. Mr. Chairman: By comparing the amendment to the amendment with the amendment itself, and with sections eight and nine of the report of the Committee on Railroads and Canals, it will be found that this amendment which I have offered covers all of these propositions with the exception of that provision which relates to free passes. That will come up as a separate proposition, for the reason that it is one of the non-essentials, and should not be made a part of so great a question as this, which should be submitted separately to the vote of this Convention. This question of uniform rates should stand alone, and it will suffer from being connected with any other considerations. Some gentlemen will be willing to vote for the entire clause containing the restriction on free passes; others will vote for the clause and against this restriction, and *vice versa*. So I have separated the free pass question from the question of uniform rates, and submitted the latter question as a distinct proposition.

Then, analyzing sections eight and nine of the report of the Committee on Railroads and Canals, you will find that the differences in these two sections, when viewed as combined, are these: They provide by law that there shall be no greater charge made for a shorter distance than for a longer distance, and that for equal distances the rates shall be the same; and all railroads are declared public highways. These provisions are all the same in the sections contained in the railroad committee's report, and in the amendments to the section under consideration. But the amendment which I have submitted starts out in a different manner. Both the report of the Committee on Railroads and Canals and the amendment of the gentleman from Centre, start out with the proposition that all railroads and canals are declared public highways, and that all persons are free to transport their persons and property thereon. Now, if by that proposition you mean that all persons are free to put their locomotives and rolling stock upon these roads and have a general jollification and daily smash-up thereon, I am opposed to it; and I think that is precisely the meaning which you would read into these words. For that reason I have changed that language into this form:

"All railroads and canals are hereby declared public highways, upon which, under such regulations as may be prescribed by law, all persons have an equal right of having their persons and property transported."

That will cover the ground, and mean precisely what is intended to be conveyed by the section. About the meaning of the language which I have used, there can be no doubt.

Then next comes in my amendment, "at rates of fare, freight and tolls which shall be the same to all." So far the section of the report under consideration and the amendment agree. But here the amendment goes further than the report. The section reported by the Committee on Railroads and Canals goes so far as to say that the rates of fare and freight shall not only be equal to all, but that they shall be uniform; that there shall be no discrimination against the people of the State in favor of the people of any other State; and that the same rate per ton per mile shall prevail. That is the report of the Committee on Railroads and Canals.

I consider that such an impossibility, such an impracticability, that it would utterly destroy all railroads; and if the Convention will bear with me one moment, I will not go over a long dissertation on railroads, but I will try and give them a mathematical demonstration which will be plain to all men that I am right.

The city of New York is the terminus of a number of the New York roads extending away out in the west, and it has recently became the terminus also of the Pennsylvania railroad, so that there are a number of great competing lines centering at New York, carrying freight all over this country. Now, suppose the carrying lines agree among themselves that they will adopt a rate of tonnage which shall be, say, for the purpose of the argument, at the rate of one cent per ton per mile. Now, take New York as one point, and take Chicago as the other. The distance, I believe, is nine hundred and twelve miles. The maximum tonnage that is permitted to be taken on a car is, I believe, ten tons. At the rate of one cent per ton per mile the freight on that car load from New York to Chicago would be ninety-one dollars and twenty cents. If the Pennsylvania railroad is to do any portion of the trade from that city or any portion of the trade from the far west, she must bring herself down to that same rate. Shall she be permitted to do it? For one, I say yes, and all the people will say amen; but can she do it under this proposition? Let us see. You say yes, she may do it, but if she does it, if she comes down to a rate of one cent per ton per mile to compete with the New York road she shall give to the people in Pennsylvania the same rate per ton per mile, to every village and town in the State of Pennsylvania. Can she do that and live? Let us see.

Let us take two cars from the city of New York, and load them each with ten tons of freight at the same rate per ton per mile; the one car to go to the city of Chicago, and I presume will reach its destination at the close of four days. I do not suppose that the average distance per day of a freight train would be over two hundred and twenty-five miles, and at that rate it would take about four days. I assume that for the sake of the argument. Thus we have a car in use four days, running continuously, on a train of cars propelled by a locomotive, managed by the same set of men, and the whole work is done in four days, and that car earns $91 20. The other car load then is put on the road for one day's journey, say to Harrisburg. The first day you get to Harrisburg, a distance of one hundred and ninety-five miles, which, at the same rate per ton per mile, would make $19 50, and you occupy one day in the transportation of that freight. If that were all there would not be any very great complaint; but when you undertake to transport that freight from New York to Harrisburg, you must remember that when you get to Harrisburg, you must allow at least one day's detention of the car for the purpose of loading and unloading. I believe there is not a railroad company in existence that makes the rate of detention less than one day. I know in our county it is thirty-six hours, but I am taking the lowest, the minimum rate, that will possibly be allowed—one day. Then I have the freight to Harrisburg for that car, $19 50, and I have consumed one day in the use of that car in running, and another day in detention.

I then load that car, and the next day's journey it may run from Harrisburg to Pittsburg, at the same rate per ton per mile, which is two hundred and forty-eight miles, or $24 80. This is doing the exact and equal justice that gentlemen are claiming under this section. When I get to Pittsburg I lose another day with the car, and this detention comes in there for unloading and re-loading, and another day is lost to the company, and I have still not reached my destination. I have now spent four days. I start at Pittsburg. I re-load that car. I take it

from there to Toledo, which, under the same speed, would be another day's journey, and I get, at the same rate, $26 44 freight; but when I get there I lose another day by means of the detention of the car in loading and unloading. From there I have still one day's journey to Chicago, even if I make these long distances per day without any mishap. When I get there I have occupied seven days in bringing the car that I started on its local passage from New York, and it has only earned at the rate of $91 20, while the other car has earned $91 20 in four days, and I lose three days for the company, and I not only lose that time, but while I am losing it to the company, I am losing more by the handling of this car on the way by means of its detention.

Loading and unloading will entail on the railroad company an expense of at least three dollars a day for every car that is so held. Foot up the discrepancy of three days against the lowest rates, and you have still the fixed rate for the use of their car per day. Many of them are paying as high as five dollars a day, and none less than three dollars. At three dollars a day the company is losing the use of the car three days, which would be nine dollars, and the company lose by reason of being compelled to carry at a certain rate.

But you do not stop here. After all this is done you are losing by carrying this local freight, and yet you dare not charge a higher rate; but, at the same time, the through freights are put so low in New York that to carry them for less would be ruinous. What is to be done? You would have to give up the carrying altogether.

Is this the principle on which business men do business? Do they deal in this way? Let us look. The cars that this company put upon the road cost them at least, in solid cash, eight hundred dollars for a box-car, constructed for transportation in the manner that these great lines are expected to transport goods. The captial invested by that company in that car the people have no right to say shall lie idle and unremunerative for a single day in the year. If you say that the railroad company shall be compelled to permit its car to lie over every other day and earn nothing, then it will be unsafe for a man to put out his money in that way. Now, suppose I am putting out eight hundred dollars for seven years to each of two men. To one man I give eight hundred dollars for seven years at six per cent. If he is an industrious, diligent business man he puts his money to work, and when the time comes he pays up the money with six per cent. interest, and does not complain. The other fellow, during the seven years he has got money, only used it for four years, and for the other three he buried his talent, and at the end of the time he will come in and say to the man who loaned him the money: "You must drop the interest on the three years on which I did not use the money." If he is a common sense man he will not endorse a proposition like that; and yet you are asking to apply that same principle to these railroads. You want, in your efforts to reform, to crush the very powers that are making this State and the people great.

If that principle can be maintained, then of course this doctrine should prevail; but it cannot be that the people have such hostility to railroads as to crush them in this manner.

Adopt this theory, and how much freight will come from Chicago and the far west over our railroad? How much passenger traffic will there be from the far west to Philadelphia? There are competing lines, and there are places on the sea-board where all that can be had at Philadelphia can be had without coming here, and where then everybody will go; because these lines which you are crippling here will not be able to carry the western people at that low rate that through lines are doing to New York, for the reason that you will not permit them to make up any portion of it by charges on the short distances that goods are carried over in the State. What is the result? Either you crush our great railroad and this city, or you do something else, you crush the people, and how? You compel these railroads to quit through transportation, to quit going beyond the city of Pittsburg, to confine their business to the affairs of this State; and then they will be compelled to put their rates up to the maximum figures. Then you will have discrimination with a vengeance. Instead of having the benefits of great corporations in your favor, you will be made to suffer, because it becomes a necessity for the very existence of the railroad to charge the maximum rates; they cannot carry your freight upon the same terms that they carry through freight. If you exact it of them by a constitutional provision, you must submit to the burdens that, from necessity, will be imposed.

That moment you do this, you will bring these railroads down. They can only do that which they have the power to do. They have not the power, nor have they the right as against their stockholders, to carry the freights of this Commonwealth for nothing. They have not the power, nor have they the right, to carry them at a ruinous rate to the stockholders, for the accommodation of the people. For this reason the proposition is preposterous, and it ought to be voted down.

Now, sir, the proposition that I submit covers all that ought to be asked. You can adopt this in the Constitution, and it will afford protection to every man, woman and child in the State. "All railroads and canals are hereby declared public highways, upon which, under such regulations as may be prescribed by law," you can have persons and goods transported; nobody complains against that. "all persons have an equal right of having their persons and property transported;" nobody complains against that. "At rates of fare, freight and tolls which shall be the same to all." But that does not prevent these railroads from taking freight over a certain portion of the line at a higher rate than over another portion, for the reason that they will be compelled to charge all people who ship over that short distance the same; and that comes up to the standard of charging all alike, and that is all that the people ought to ask.

Then the amendment proceeds: "Never higher for a shorter distance than for a larger distance upon the same road." That is what the people want. That we all seem to be aiming at. It is fully covered by this amendment.

Then the amendment continues, "and for equal distances always the same." If that is not sufficiently plain it can be amended. I mean, of course, equal distances upon the same road, because I hold, all the time, that you cannot make a rule that shall be inflexible, not yielding, that shall apply to all the roads of this State, great and small.

Then we propose to say, "and the Legislature may by law determine the maximum of rates,"—not that the Legislature shall by law determine it, because only when the people demand it ought they to be compelled to go to the Legislature and ask it. Let us give the Legislature the power, when the people demand it, to define what the maximum of rates shall be, and then that it shall not be by a general law made the same for all the roads in the State, but the Legislature shall have the right to adapt the rate to the circumstances of the road. That is all the people are asking; that is all they should ask; and whenever we give more than that we are going beyond our duties here. We were not sent here to cripple the great enterprises of the people and the great corporations upon which, for many things, we are now depending.

Sir, I feel warmly on this question, not because I have any interest in any main line, not because I am a railroad man; but I have been suspected, and I have even been published, as one of those railroad men who are ready to go the full extreme. I say here now that I am not; that my interest in railroads has always been against myself. The only interest that I ever had, or now have, is that of being associated with gentlemen in my own community for the purpose of building a ten-mile road. For some reason or other they insisted on my being the president of the road. I accepted the position. I accepted it with the express understanding, at the time, that no officer should receive one cent for his services, and I never did. I remained in that position until that little branch road was built. I remained there too long for my own good; but I am not complaining of that. After the money subscribed by the people had been expended, and it was essential to get iron for the road, it became necessary that somebody should come to the front and endorse the paper of the company, because the manufacturing companies would not take it. One other gentleman and myself endorsed the paper signed by the directors the first time. When it came around the next time the directors said to us: "You pay that note and wipe it out;" and thus they kept on until this other gentleman and myself had to take all the bonds of the road and pay for them. We are not complaining of it to-day, although it has been a losing operation. That is my experience in railroads.

But, sir, I have had experience enough in railroads during the time of the building of that road, and one year after it was completed, to know that this restriction would crush it entirely, and every other road in that part of the State. By means of economical management we have worked the road so as to pay the interest on the bonds, with a possibility of getting something for the stockholders; but I say here we would have been prevented from do-

ing that if there had been such a legislative provision as the majority of the committee propose in this case. After we got the bonds, had the iron, had the road ironed, and the roadbed paid for, we were like the man who won the elephant; we had a railroad, but we could not run it by horses, and we had no cars—we had no locomotives. What was to be done? We were poor; we were burned out, the town was burned out, and we had not a dollar left. We first went to one corporation, and then to another; and finally we went to that great monstrous monopoly, the Pennsylvania railroad. We asked them to loan us rolling stock at a given rate per year, and although we do not connect with them, although we do not make any connection with any other road than the Pittsburg and Connellsville road, yet we did lease rolling stock from the Pennsylvania railroad for a term of years, and by means of that are now running the road. By means of their trusting us with rolling stock for an annual rental, we are enabled to develop one portion of the State that never would have been developed otherwise.

It is for this reason that I propose to stand up here, and do, at least, justice to these corporations. I propose to stand up here against the effort to crush them on the pretext that it is in favor of the people. I shall stand here between the people and the railroad on all questions of right, and in favor of both.

The CHAIRMAN. The gentleman's time has expired.

Mr. DALLAS. Mr. Chairman: It seems to be considered necessary for any delegate who takes any less than a very ultra and radical view of all these questions in opposition to railroad companies to explain his personal position. The frank course, perhaps, is the best course; and what I have to say will have no weight whatever unless I make an explanation. I therefore beg to remark, at the outset, that I have nothing whatever to do with any railroad company whatever, and hold no bonds or stock of any such company, and I sincerely and ardently desire that all reasonable and proper restrictions upon corporate power shall be placed in this Constitution; and it is because I am so anxious, as I have before said, that I am desirous that nothing unreasonable shall be adopted.

It was with this view (when the first section of this article was under consideration) that I proposed to insert before the word "discrimination," the word "unreasonable," so as to provide, at that place, that no *unreasonable* discrimination should be made in passenger or freight tariffs. When I proposed that amendment I was met with the reply from the chairman of the railroad committee that the view I had would be more properly attained by moving an amendment to the eighth section—the one now under consideration. It is this:

"No corporation engaged in the transportation of freight or passengers, in or through this State, shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof; and such corporations shall carry the persons and goods of the people of this State on as favorable terms as those of other States brought into or through this State, on the works owned or controlled by such corporation; and no higher rate per ton per mile shall be charged," &c.

The amendment of the gentleman from Centre, (Mr. M'Allister,) in its first few lines, proposes to declare that all railroads and canals hereafter constructed shall be public highways. I do not see the difference between that provision and that which follows in the ninth section of the article as reported. I agree with the gentleman moving that amendment, that railroads and canals should be (but subject, however, to the views already well expressed by the gentleman from Somerset) declared public highways; but I do not see that that subject is properly an amendment to this eighth section, but I think it is simply a proposition to insert in the eighth what we already have before us in the ninth section. But the amendment, like the section which it seeks to amend, provides that there shall be no discrimination *whatever*, and that there shall be the same charge *per ton per mile* over *every* road.

Now, sir, this is the objectionable feature to me. It is objectionable to me that a Constitution framed for the State of Pennsylvania should provide that no railroad company shall ever make *any* discrimination in its charges. I believe that unjust and unreasonable discriminations are evils that have grown up in this State, and which the strong arm of the Constitution should be interposed to prevent for the future, if possible; but to say that no discriminations, whatever, shall be made would be simply to say that which would prevent the rational man-

agement of any railroad company, and practically prevent the proper and reasonable transaction of its business.

The Constitution of Illinois is the only Constitution of any State in this Union in which there is a separate article upon this subject of railroads and canals. In that Constitution we have seven sections upon that subject, but here it is proposed to give us nineteen. In its section upon this special topic of discrimination, the Constitution of Illinois provides that: "The General Assembly shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of frieght and passenger tariffs on the different railroads in this State, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises."

There the only provision is against UNJUST discrimination; and the section is applicable, you will observe, to unjust discrimination *amongst citizens of the State* as well as to discriminations against them and in favor of citizens of other States. But this section, as reported from our Committee on Railroads, is only aimed at discriminations against the people of this Commonwealth as in favor of those who are citizens of other States; and yet sir, it is surely as great an evil that there should be discrimination amongst our own citizens as that there should be discrimination against them all, and in favor of others. Now, sir, at the proper time I will offer an amendment, which I hold in my hand, which is intended to prevent *unjust* discrimination, and to be applicable to all cases. It is much shorter than anything we have had yet, which in itself I hold to be a merit, and I think it covers the entire ground. I will read it:

"No unjust, undue or unreasonable discrimination in rates of charge for the transportation of freight or passengers, or in any respect whatever, shall be made by any railroad or canal corporation; and the Legislature shall provide for the imposition of adequate penalties for breach of this section.

The word "unjust," in my proposed amendment, is taken from the section of the Constitution of Illinois to which I have before referred, and I have added the words, "undue or unreasonable," by way of meeting every contingency. Since it is perhaps possible that a discrimination might be held to be not "unjust," and still be held to be "undue" or "unreasonable," and these last two words I have taken from the act of Parliament known as the railway traffic act, of 17 and 18 Victoria, chapter thirty-one, which provides that:

"Every railway company, canal company and railway and canal company shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivery of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats and other vehicles; and no such company shall make or give any undue or unreasonable preference or advantage to or in favor of any particular person or company, or any particular description of traffic in any respect whatsoever; nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

That act of Parliament was passed, after great deliberation and consideration, for the purpose of meeting just the evils that are complained of here, and the very language used by me, in the most material portion of the section which I intend to offer, is used in that act of Parliament.

Mr. TURRELL. Allow me to ask the gentleman who is to be the judge of what is undue and unreasonable discrimination?

Mr. DALLAS. The gentleman asks me who is to be the judge of what is undue and unreasonable. That is a question that I was just about to answer, and will answer in the course of what I have to say.

I have tried to make myself understood by this committee as asserting that we cannot safely here undertake to say that no discrimination shall ever be made. For just reasons discriminations may arise in particular cases which none of us can foresee; and, therefore, the determination of each particular case, upon the question of the justice of any discrimination that may be complained of, should be left to the courts. Under the act of Parliament to which I have referred it has been left to the courts of England, and they have proved to be amply equal to the duty so imposed upon them; and if we adopt the section which I intend to propose, we will have the advantage of the long line of English decisions as directly applicable to its construction, and as satisfactorily settling its meaning. To

show how favorably to the people the langauge I propose to use has been interpreted, I will, if the committee will indulge me, refer to one or two decisions, principally by Lord Chief Justice Cockburn, one of the best judges England ever saw, in construction of this act of Parliament.

In the case of Harris *vs.* Cockermouth and Workington R. Co., Lord Cockburn said:

"The intention of the Legislature was, I think, to give equal advantages, so far as the rate of charge is concerned, to all individuals similarly circumstanced; and that a railway company, although they should have a right to lay down certain rules in reference to particular circumstances, provided they act *bona fide* with regard to their own interests and the interests of the public, should not be at liberty to make particular bargains with particular individuals, whereby one person is benefited and another injured."

In the case of Baxendale *vs.* the Great Western railway company, the court said:

"Where a preference was given by a railway company to a customer who engaged to employ other lines of the company, distinct from and unconnected with that in respect of which such preference was granted, that it was an undue preference."

Further, the same judge, in construction of this same act of Parliament, says:

"It is abundantly clear, from the statutory enactments which enjoin on railway companies the obligation to afford accommodation on equal and reasonable terms, and from the provisions of the statute by which jurisdiction is given to this court against the affording of undue preference, or the imposing of undue prejudice or disadvantage, that it was not the intention of the Legislature to leave to railway companies the unfettered exercise of their rights as proprietors of their respective lines; but in return for the great power which it has conceded to them, and the monopoly of the carrying business of the country, which in a great degree they have been enabled to acquire, it has imposed upon them the obligation of affording accommodation on equal terms to the whole ot the public."

Mr. Chairman, I pause to ask whether there is any man in this Convention who wants more than that, that railroad companies shall be required to afford accommodation on equal terms to the whole of the public!

"The policy and justice of *such a* requirement are manifest, it being obvious that the powers of a railway company, and its monopoly, under the impossibility of all competition, might otherwise be converted into a means of very grievous oppression by a difference in point of charge or in point of accommodation made in favor of one man at the expense of another, or by disadvantages in respect either of charge or accommodation imposed on one as compared with another. And it is plain that the oppressive effects of such inequality will be equally great whether its motive and operation be to benefit their parties or the railway company itself."

And again, sir, the court says:

"This reasoning appears to us effectually to dispose of the argument that the court cannot interfere to prevent a railway company from fixing the rate of tolls to be taken on its railway, or such manner as shall best promote its own interests in cases where, by so doing, the company subjects others to unreasonable disadvantage or operate, to their prejudice by giving undue preference to third parties."

Mr. M'ALLISTER. Will the gentleman please explain to the committee of the whole whether, at any time or under any circumstance whatever, there is any necessity for discrimination upon the same class of freights between individuals. That is what this amendment proposes to prevent.

Mr. DALLAS. Mr. Chairman: But for the interrogatory of the gentleman from Centre, I had intended to spare this committee of the whole any further reference to that subject. The gentleman from Somerset, (Mr. Baer,) in the view that I take of it, had so completely replied to the question in advance, that it is but telling "a thrice told tale" for me to enlarge upon what he said. But as to this question of tolls, it may be worth while to say, in reply to the inquiry just proposed, that there is, in all charges made by the railroad companies for transportation, what may be called a fixed charge—a charge which they make, and should be allowed to make, whether they go one mile or twenty. The cost of moving, and the cost of stopping, the cost of loading, and the cost of unloading, and the delay required for these purposes, being the same for one mile as for one hundred, and therefore it is not fair to say that they shall be required to charge the same rate per

ton per mile, without regard to the total distance involved.

Mr. M'ALLISTER. If the gentleman so understands the amendment which I have offered, he does not correctly understand it. I take a fixed schedule, and under it a railroad company is empowered and authorized to make, and may make, all these discriminations that he justly thinks are necessary. When the companies find their cars going east, at certain seasons of the year, empty, then they may carry at a less rate; but they must put their rates on their schedule, and they must carry for all men equally. Then if they find their cars going west empty, they may have another schedule and carry at another rate. But they must do that for all men equally, and make no discrimination among men. That is all the amendment which I have offered provides. It does not require (and that is the reason why the amendment should be adopted instead of the report) the same charge per mile and per person, from Philadelphia to Chicago, as to all the intermediate places. That is to go into the schedule, and to be regulated by it.

Mr. DALLAS. I can only reply to the gentleman by reading from his amendment. It reads that "every railroad company shall establish a schedule of *uniform* rates for the transportation of passengers *per* person, and property *per ton* per mile over their road."

Mr. M'ALLISTER. Between what points? From what point to another on the road?

Mr. DALLAS. There is no such thing here as any reference to any points.

Mr. TEMPLE. Mr. Chairman: Will the gentleman allow me to ask him a question?

Mr. DALLAS. I will allow the gentleman to do so, unless it will take me so long to answer it that it will absorb all my time.

Mr. TEMPLE. I desire to ask my friend from Philadelphia whether he does not know that the railway companies never make out their toll tables without taking all these things into consideration, and that the whole matter is aggregated at the time the toll table is made up?

Mr. DALLAS. I believe they do that now; but I very much doubt whether they could do so under such a provision as the gentleman who has been previously interrogating me proposes to insert in the Constitution.

But, sir, Bacon has said that "it is not well to try experiments in State unless the necessity be urgent or the benefit great." By adopting the proposition to prevent all discrimination, and require a uniform rate per ton per mile—which I cannot help understanding this amendment to mean, and whether the transportation may be for a longer or a shorter distance—we should be trying not only an experiment, but a very serious and a very dangerous one; whereas, I have the honor to propose an amendment upon a model which has been held and construed to give everything that I have heard any man on this floor ask for.

Mr. LANDIS. Before the gentleman from Philadelphia takes his seat, I would like to ask, does he not believe that if his section finally prevails, it would give rise to endless litigation, and afford as much annoyance to the shipper as to the shipping company?

Mr. DALLAS. I have no hesitation in answering that question. I believe that if the amendment I propose is adopted, it would lead to little or no litigation, for the reason that every counsellor who could be consulted upon the subject would find, in the decisions I have quoted, a rudder to steer by, and would be able to say precisely what the law would be. It is a subject which has been already explained with sufficient clearness by the courts, while on the other hand the amendment of the gentleman from Centre, (Mr. M'Allister,) which has already required much explanation from the gentleman who has offered it, does not convey the meaning which he claims for it, and would, if adopted, lead to endless litigation.

[Here the hammer fell.]

Mr. ALRICKS. Mr. Chairman: The gentleman has been very much interrupted. May I not ask him to read his amendment for information?

The CHAIRMAN. It will require unanimous consent.

Mr. ALRICKS. I move that unanimous consent be given to enable him to again read his amendment.

Unanimous consent was given, and the amendment intended to be offered by Mr. Dallas was read as follows:

"No unjust, undue or unreasonable discrimination in rates of charge for the transportation of freight or passengers, or in any respect whatever, shall be made by any railroad or canal corporation; and the Legislature shall provide for the imposition of adequate penalties for breach of this section."

Mr. GOWEN. Mr. Chairman: Before entering upon what I have to say, I believe it is necessary, not to explain my present position, for unfortunately that is too well understood, but to try to pacify the Railroad Committee. I want to say to the members of the Committee on Railroads and Canals, so that the thunders of their denunciation may not be again launched upon my head, that whenever the question has come up, in this committee or in this Convention, about referring this report back again to the Railroad Committee and adding other members to that committee, I have invariably voted against it. I have invariably voted in favor of that personal civility and courtesy which, I believe, is due to the members of the Committee on Railroads and Canals, and while I have had some reason to criticise what that committee done, it has been with no view of making any personal reflection upon any of its members.

But, on the other hand, I have been very fiercely criticised by three members of the railroad committee, not so much for the matter that I uttered as for the manner in which it was done. My friend, the chairman of this committee, (Mr. Cochran,) has referred to me as having expended a great deal of declamation on this subject. My friend, the gentleman from Allegheny, on my right, (Mr. T. H. B. Patterson,) has referred to me as having been very theatrical, and my friend from Allegheny, on my left, (Mr. Howard,) has referred to my use of a great deal of lard and butter and other eleaginous lubricating compound, with which I have greased the wheels of my rhetoric.

Mr. HOWARD. I said, as I remember, that the gentleman from Philadelphia complained because I did not lard and butter what I said about the corporations.

Mr. T. H. B. PATTERSON. If the gentleman from Philadelphia will allow me to interrupt him for the purpose of an explanation, I will merely state that the term "theatrical" was never used by myself with regard to the gentleman. If he will look at the stenographic report of the Official Reporter he will see that the term I used was "theoretical. [Laughter.] I spoke of his "theoretical" argument, and the mistake of "theatrical" is that of the Printer. [Laughter.]

Mr. COCHRAN. The gentleman from Philadelphia has been interrupted so much that I suppose he will not object to my interrupting him to say that I am not aware of having found fault with his manner of discussing this question at all. I did make one single slight allusion to some large views that he presented, and that was all I did.

Mr. GOWEN. I think I deserve the personal thanks of many members of this Convention, for I do what I believe a very few of us do. I read very often what they say in the Debates, and I find accredited to my friend from York the word "declamation," and I find accredited to my friend from Allegheny the word "theatrical," and I find, at least, a firkin of lard and a keg of butter placed to the debit of my friend from Allegheny, on my left, (Mr. Howard.) I only want to say to these gentlemen that I was brought up as a country lawyer, in a little country town, and I have not had the advantages which some of them have, and therefore—

> "If I chance to fall below
> Demosthenes or Cicero,
> Don't view me with a critic's eye,
> But pass my imperfections by.
> Large streams from little fountains flow."

Gentlemen know the rest of the quotation, [laughter,] and when I come to be as old as they are, (for I believe all of them are nearly old enough to be my father,) I shall probably be able to express my matter without accompanying it by a manner so offensive as to make it annoying to the gentlemen who are obliged to listen to what I say.

One word more about the manner in which a Constitution should be formed. I believe we were sent here by our constituents in the hope that, by uniting our mental qualities, there would be found among the representatives of the people of Pennsylvania, among one hundred and thirty-three of her citizens, a sufficient aggregate cerebral development to produce a Constitution. I think the burden was imposed upon us. It was not to be supposed that each man would have sufficient brains to make the whole instrument. One man might have the genius to suggest a thought, another man might have that peculiar character of brain in which this thought would take root and be improved; but the hope of the people of Pennsylvania, I think, was that her own citizens possessed, as I may call it, an aggregate cerebral development sufficient for all the obstetrical assistance necessary to bring into being a new Constitution. [Laughter.]

Therefore, when objection is made against the adoption in Pennsylvania of any particular section, I take it, it is not

an argument addressed to our reason to read the Constitution of the State of Illinois, and to show that another State has adopted it. Certainly we are not going to admit that the people of Illinois are any wiser than we are, and certainly it will not do to put upon the published Debates of this Convention anything which would say that the aggregated wisdom of Pennsylvania, assembled within these walls, must go out to dry-nurse or to wet-nurse to the statesmen of Illinois, in order to develop a sufficient amount of ability to make a Constitution.

Again, I believe there are some gentlemen in this Convention who have grievances of their own. My friend from Allegheny, (Mr. Howard,) who is the Achillas of this campaign, has had some loved Patroclus of his own in the shape of a colliery, or something else, that has been ruthlessly slaughtered by the Pennsylvania railroad company, and the Vulcanian armor with which he has clothed himself, in order to destroy this great Hector that oppressed him, is composed of the robes of a constitutional delegate.

There is one quality above all others in this world which is entitled to admiration, and that is sincerity. Nobody doubts the sincerity of my friend from Allegheny. Nobody doubts that his greatest triumph would be to have the "nervous ancles" of my friend, Mr. Scott, bored with a double wound, and his body tied at his chariot wheels, and to parade him up and down Spruce street, while the weeping Andromache of this present Iliad, in the shape of my pathetic friend, (Mr. Cuyler,) would look through the blinds of the front windows at the melancholy spectacle. I do not think we ought to punish the whole State of Pennsylvania for an injury committed by one corporation, or that all corporations should be punnished because one corporation has been guilty of oppression.

Again, if we are to punish the guilty, let us pick out the guilty agents and punish them. The gentleman from Armstrong county, (Mr. Gilpin,) who spoke the other day, very pointedly called the attention of this Convention to what I think they are about to do, and that is this: The stockholders of the corporations in this State have been, over and over, punished by the very acts of the guilty officers, which have called upon their devoted heads of corporations the ire of this Convention, and instead of punishing those guilty authors you propose again to punish the stockholders. Now, I take it, Mr. Chairman, that if every railroad company in this State for the last thirty years had confined itself legitimately to the business that it was organized to carry on; if no one of them had ever been guilty of any discrimination; if no private enterprise had been stricken down to help the personal interests of the officers of a company or those who were in a ring, there would be no feeling of animosity against corporations whatever, and this Convention might have been held without the word "railroad" being mentioned in it once. If, therefore, the cause of this animosity; if, therefore, the well-founded complaint has been that unjust discrimination has been used, that personal rings and personal cliques have benefited at the expense of the community, let us direct our thunders against the guilty agents and punish them; but do not let them go scot-free, and punish the poor stockholders who already have suffered sufficiently from the very injury that we are called upon to redress.

If these general views are correct, let us stop here and see what we have already done. Let us see if we have done anything, up to this time, that is at all calculated to cure the evil. We have declared that there shall be a free railroad law. That I admit to be a right act; but we have already a free railroad law in Pennsylvania, and a most excellent one; therefore the new Constitution proscribes nothing more than that which already exists in this respect.

We have in the sixth section declared that no railroad company shall ever hold the evidence of indebtedness of the individual.

Mr. KAINE. Will the gentleman allow me to suggest that, during the past session of the Legislature, the Pennsylvania railroad company attempted to repeal the general railroad law?

Mr. GOWEN. I hope they did not succeed.

Mr. KAINE. They did not.

Mr. GOWEN. And never will. I am willing, and very glad that a free railroad law is provided for by the Constitution. I think it ought to be there, but I say it is nothing new, for we already have it; and a number of railroads in Pennsylvania have been built under that free railroad law.

In the sixth section we have declared that no railroad company shall ever hold any evidence of indebtedness of any indi-

vidual. After that I do not know what railroads are to do with their bills receivable.

In the seventh section we have declared that no railroad company shall ever be a mining company; but we have also provided that every mining company may be a railroad company. In the seventh section we have further declared that no officer or manager of a railroad corporation shall ever engage in doing business for others for transportation on the line of his road, but we have carefully permitted him to do it for himself, which is the very evil that we hoped to cure. We have provided that no railroad company shall ever purchase mineral land, forgetting that nearly every railroad company that now owns mineral land holds it already by virtue of a title, which is protected by the Constitution of the United States, and against which the thunders of this Convention will be hurled in vain; and, therefore, we have simply declared that nobody else shall do what the existing railroad companies have a right to do, and we have, therefore, permitted them to buy up all the lands in their neighborhood in the future, at their own prices, because no other corporation can come in and oppose them. I take it, therefore, that up to this time the amendments adopted in the committee of the whole have not been productive of any good.

Now, we are coming to a subject which, I admit, requires some action at the hands of this Convention; but I will tell the gentlemen of this Convention that when they want to embody a toll-sheet for a railroad company in the Constitution of the State of Pennsylvania, the section that embraces it will have to be about the size of this volume (holding up the file of committee reports.) I do not think there is any large railroad company that has a well regulated public toll-sheet, which is open to the whole world without discrimination, and without secret drawbacks, that does not occupy a space fully as large as the volume which I hold in my hand. Therefore it is utterly impossible to prescribe in the Constitution what the tolls of a railroad shall be; and the mere fact of prescribing the tolls will not enable gentlemen to cure the evil that they hope to abate. The term that we must use is "unjust discrimination," because the tolls may be perfectly right, the tolls may be open to everybody, there may be no drawbacks, there may be no secret rates, and yet a man who wants his goods carried may find that he has no cars to take them, or if he gets the cars, he may find that there is no train passing at that particular hour, and he may lose nearly twenty-four hours out of the day, waiting for his chances.

The phrase to be used is, "no unjust discrimination against any traffic of any kind, or of any body, or of any corporation, for any purpose whatever, either on account of the personal ownership of the property or on account of the geographical position which it takes in coming upon the line of the road." And whatever we may put in this Constitution upon that subject is already the common law of the State of Pennsylvania, but I admit that it should go into the Constitution. I admit that it should be made one of the fundamental laws of the land that there should be no unjust discrimination whatever in any respect; and the moment that you declare a railroad or a canal a public highway, which forever shall be free and open to the unrestricted transportation of the product of anybody or of any person or of any railroad company, without unjust discrimination in any respect whatever, you do all that can be done by a Constitution to cure the evils of which you complain.

Let me tell gentleman how a toll-sheet is generally made up over one particular line of road, and in this I will assume that there is but one particular line. There is always taken by the company, and there always should be taken, a certain sum of money, which is called a constant quantity, and which is charged against the article to be transported irrespective of the distance it goes over the road. In other words, to send out a crew with an engine, to send out a number of cars, to have them loaded, to put the engine to them, and to get ready to start, costs a certain amount of money irrespective of where the article to be transported goes to; and that sum of money, at the start, is just as great if the article is to go half a mile as if the article is to go a thousand miles. It is the cost of getting ready; it is the cost of having the engine and crew on hand; it is the cost of the engine waiting and loading up its fuel.

Mr. AINEY. I should like to ask the gentleman this question: Cannot any railroad company fix a reasonable compensation for that trouble, and make it certain?

Mr. GOWEN. Certainly.

Mr. AINEY. So that we could arrive at a tangible price per mile for any distance.

Mr. GOWEN. No. You can, if you have but one article to deal with. If that article is coal, that constant quantity might be stated at twenty-five cents a ton. That is about what it will cost to get ready. But if the article is bank notes, you cannot carry bank notes for twenty-five cents a ton, and start off and have some one to rob your whole car load and make you pay a million dollars damages. If you lose a car of coal in carrying it, it is only a loss of eight or ten dollars; but if you lose a car of bank notes when you are carrying them, it may be a million dollars; and the risk incurred, the liability to reclamation from the public for loss of freight, is a legitimate subject of cost. Therefore, no constant quantity can be adopted which will answer for all kinds of traffic. But this constant quantity, assuming it to be upon an article of mineral produce, like coal or iron ore, can be fixed very readily, and when that constant quantity is once established, then the rate ought to be exactly the same per ton per mile to everybody, no matter how far you carry the freight.

But remember, Mr. Chairman, this is only upon one line of railroad. Many companies in this State have twenty or thirty. The corporation with which I am connected, I think, have twenty-three or twenty-four. Now, you cannot adopt the same rate per ton per mile for equal distances even throughout the entire extent of one road, much less can you do it upon different roads.

The CHAIRMAN. The gentleman's time has expired.

Mr. TEMPLE. I move that unanimous consent be given to the gentleman to continue his remarks.

Mr. HOWARD. I second that motion.

The CHAIRMAN. Unanimous consent is asked for the gentleman from Philadelphia to proceed with his remarks. The Chair hears no objection.

Mr. GOWEN. I shall confine myself very strictly now to dry facts. When I have the consent of the Convention to trespass, I shall say nothing but what I think is entirely applicable to the subject.

You may have a railroad that is built on level ground, like a prairie, where a first-class railroad of a single track might be built for fifteen thousand dollars a mile. You may have another railroad on which a tunnel of one mile would cost two million of dollars. Is it to be for one moment supposed that the corporation owning the road that costs fifteen thousand dollars a mile shall charge exactly the same for transportation as the one that owns the road that costs two million dollars a mile? Certainly not. Therefore, if you use the word "uniform" in the fundamental law, you must make a corporation carry at the same rate per ton per mile through a tunnel that costs two millions of dollars, or over a bridge that costs half a million, as they would over a line of road that costs but fifteen thousand dollars a mile.

Again, there are some railroads in this State with grades as high as one hundred and seventy-six feet to the mile. An engine will pull probably fifteen car loads of material or of produce up that grade. On a level road an engine will pull one hundred car loads. It must be evident to every one that a certain proportion of the expense of moving the material is just six times as great where the product carried is only one-sixth as much as it is where the produce carried is six times as great. Therefore you can have no uniformity of rates whatever.

Again, the amount of business done by one railroad company enables it to do business much cheaper than others, and the railroads that ought to charge the most are the very ones, sometimes, that are in the poorest country. The usual charge for carrying a first class passenger is about three cents per mile. I suppose that a legislative prohibition against charging more than three cents per person per mile might not be obnoxious to most of the railroads, and yet, to allow every railroad company to charge three cents per mile per passenger would enable some roads to reap untold wealth. I myself have something to do with a very small railroad that carries four millions of passengers per annum, and the usual charge for a season ticket, which everybody buys who lives on a suburban road, is about seven-eighths or nine-tenths of a cent per person per mile. If we were to charge three cents per person per mile, the wealth coming in from the use of that road would be almost fabulous.

The word to be used, and the only word to be used in a fundamental law, is the word "discrimination," coupled with the word "unjust." When you use that, you cover everything, and you do nothing more then than is now the law; but as that law in Pennsylvania is either statute law or common law, and therefore may be avoided by a statute, it is well enough to

put it in the Constitution, so that no future legislation shall enable a railroad company to escape the liability they are now under.

The cases in England, to which my friend from Philadelphia (Mr. Dallas) has adverted, are legion. Every lawyer who has had anything to do with railroad practice knows them almost by heart. The principles decided by them have never been invoked in our courts in vain. The cases are numerous in which, where a railroad company, which to a certain extent had an unlimited right to charge what it pleased, was restrained from unjust discrimination by the courts, and the money extorted obliged to be refunded. I have a case in my mind that some of the gentlemen from the oil regions or the west may know something about. My friend from Philadelphia (Mr. Cuyler) may know the name of the case. But the principle of it was this: Oil was taken from Pittsburg to Philadelphia, or from the oil region to Philadelphia, at a certain rate per hundred pounds or per barrel, and if that oil afterwards was reshipped to New York by a certain other route, there was an abatement of six cents on the hundred pounds. Some oil shipper who wanted to come to Philadelphia with his oil, but either wanted to compete there with the New York market, or wanted to send it to New York by some other route, refused to pay this six cents, or paid it under protest, and filed a bill against the company; he obtained an injunction which wiped out the extra charge, and obtained an order for the refunding of the money he had paid with interest.

Now, for the protection of private shippers, as well as the protection of minority stockholders, or the protection of any one who has a pecuniary or contract relation with a railroad company that gives him a status in court, there is no tribunal now existing, and you cannot create any tribunal, with the exercise of all the wisdom you have, that will be more efficacious than the tribunal of the courts of justice, where law is properly administered by honest judges. Every minority stockholder has a status in court, and can file his bill in equity; every shipper has a status in court; and we have a statute upon the books of Pennsylvania, which might be put into the Constitution, which gives to the Supreme Court of the State sitting in equity, peculiar charge over the affairs of corporations.

The doctrine of a corporation created by statute law, in its origin, necessarily should imply, and always ought to imply, that there should be some visitor of that corporation. Do not make the Legislature the visitor, for in American Commonwealths the tendency of the Legislature is to become degraded. Make the visitor, if there is to be a visitor, the courts of Pennsylvania as they are now by statute. Use the words "unjust discrimination," which not only covers the toll-sheet, but covers the distribution of cars and motive power and terminal facilities and speed and promptness and everything else. But to sit here and to attempt to make a toll-sheet for a railroad company is a task which, if gentlemen pay proper attention to facts, known facts, they will find they cannot accomplish in less than two or three months, and which, when done, will occupy a volume, the perusal of which will almost disgust anybody with the Constitution of the State of Pennsylvania.

Mr. HOWARD. Mr. Chairman: I was not aware, until I learned it from the distinguished gentleman from Philadelphia, (Mr. Gowen,) that I had received any injuries or had any grievances to redress with the Pennsylvania or any other railroad. I certainly have not any. I do not own a railroad. I am not a shipper. I have nothing to ship except my own person. But I live in a community who are very largely interested in railroads, and in shipping their products on railroads.

Something has been said here in regard to the rates, the cost of transportation, &c., and as to whether the rates could be fixed. Perhaps they could not be fixed for all time, and it would not be fair that they should be; but I find, so far as the Pennsylvania railroad is concerned, that the president of that road, under oath, in his report of 1871, has made a return to the Auditor General, and has fixed the cost of carrying a ton of freight per mile at about seven-eights of a cent per mile, and the cost of carrying a passenger is fixed at one and seven-eighths cents per mile, and the charge for carrying what they call through and local freight is a little over one and one-third cents per mile, making more than thirty-three per cent. profit over the cost, according to their own statement. That is their lowest rate. The lowest possible rate for their freights gives a profit of over thirty-three per cent.

Mr. CUYLER. Will my friend allow me to interrupt him at that point?

Mr. HOWARD. Certainly.

Mr. CUYLER. That statement does not include one single dollar for interest on the vast investment of capital, but is the simple cost of transportation; and, in the second place, that cost varies with the changing price of every article that enters into the consumption of the railroad in making this carriage.

Mr. HOWARD. Certainly. Of course this profit of thirty-three per cent. upon the lowest rates is to be consumed in defraying, first, all expenses; and what is left, we understand, goes to pay dividends, or it ought so to go; but it is generally sunk, a great deal of it at least, in construction account. That is an account which the public are very greatly interested in, also. We find the charge for first class through passengers to be two and a half cents, first class way passengers three cents.

Mr. Chairman, I only refer to this incidentally; I rose for the purpose of referring briefly to section eight, which is now under consideration.

I am very much obliged to the gentleman from Philadelphia (Mr. Gowen) for his statement that we ought to use the words "unjust discrimination," in order properly and fairly to fix this matter in regard to tolls. The committee have thought proper to leave out the qualifying word "unjust." I agree with the gentleman from Philadelphia that I do not like all that was done in Illinois, and I have taken care myself not to refer to it, because I do not believe we are bound by that, so far as our action is concerned. We must keep clear simply of the Constitution of the United States and the decisions of her courts. There is our rock. Let us keep clear of that. What do we care for Illinois, any further than, if she has expressed anything that is proper and right, as a light and a guide, we should profit by it? That gentlemen should offer that seriously, as though it was a binding rule to be observed by this Convention, is a matter that I do not myself take into very much account.

Now, I will explain in a few words the idea that prevailed in the committee in the preparation of this section eight, and I will say here that if the amendments offered to it shall be voted down by the Convention, as I hope they will be, when we come to act on the section itself I shall propose to divide the section in the seventh line, after the word "corporation;" and I desire gentlemen of the committee to understand that point, because down to the word "corporation," and including the word "corporation," in the seventh line, it embraces a subject complete, full in itself. Now, let us see what that is:

"No corporation, engaged in the transportation of freight or passengers in or through this State, shall make any discrimination in charges for the carriage of either freight or passengers against the people of this State."

They may discriminate as much as they please in their favor, but we say that corporations engaged in the transportation of freight or passengers, in or through the State, shall make no discrimination *against* the people of this Commonwealth. Now, is there any delegate upon this floor who is willing to say that they shall or dare make discriminations against the people of this Commonwealth? I know they have dared to do it; I know they have done it; and I know that they have made us merely the tools to foot what they call the balance and loss account in Pennsylvania, but we hope the time will come when it will be understood that the people of Pennsylvania are to be treated as well as the people of other States.

Mr. Chairman, we want to bring them right down to that test. We say to them, "gentlemen we will not fix your rates; we do not call upon the Legislature of Pennsylvania to do it, as is provided for in the amendment of the delegate from Centre," this Legislature that this committee have said that they would not trust; and when the fifth section of this article was voted down, the principal denunciations were hurled against it, because they would be compelled to go to the Legislature of Pennsylvania and ask for the endorsement of that body; but by this amendment the whole thing, from beginning to end, is left to the Legislature of Pennsylvania.

Why, what is the charge, time and again, that has rung through the Halls of this body? It is that the great corporations of the Commonwealth have controlled the Legislature of Pennsylvania, that the people's representatives there have been like putty and wax in their hands. I have avoided, as far as I was concerned, as much as possible, and I believe it was the intention of the committee, as far as posisble, to steer clear of that body. They did provide, in the fifth section, for asking the approval of the Legislature in the leasing of railroads, because believing that there should be some public power that should have authority to

sanction such proceedings, they could provide no better mode than the consent or dissent of the Legislature.

Now, Mr. Chairman, just a word further on this section. Let us see how it reads:

"Against the people thereof; and such corporations shall carry the person and goods of the people of this State on as favorable terms as those of other States, brought into or through this State, on the works owned or controlled by such corporation."

In the first line it provides that there shall be no discrimination in charges for freight or passengers against the people of this State. That is perfectly fair; it is precisely what the distinguished delegate from Philadelphia says should be provided, except that he uses the qualifying word "unjust." Why did we not use that word, which is in the Illinois Constitution? It is because it is a qualifying word, and it would lead to endless litigation. It would be a question to be decided in every single case of discrimination, and the point would be, is it just or not? They could have a rule for every man, and a rule for every man's goods, and it would be a question for the courts to decide, and these railroad men, under that, might litigate with all their customers. The truth is that, should we use that qualifying word, there is not one shipper in a thousand who would dare to contest with a railroad company.

Mr. Chairman, since I have been a member of this Convention and of the Railroad Committee, and in consultation with shippers along the lines of these railways, I have had men talk to me in a whisper; they were not even willing to commit it to writing that they were unjustly dealt with by these corporations, because they were afraid of them. They said: "Let it be known that I have complained to you, that I have told you the truth about these transactions, and their superintendents of transportation will oppress me in my business, and I shall lose by it." They are afraid of them, and they would not litigate with them. Put in the word "unjust," leaving them that qualifying word to quibble on, and they will go on with their discriminations precisely as they have made them in the past, and we know that, of the people concerned in shipping on their roads, there would not be one in a thousand who would dare to contest the question with them at all.

I have heard a good deal from my distinguished friend, the delegate from Philadelphia, and he has talked about the thunder that should be hurled against the guilty ones. I should like to see his thunder put right down on paper with good ink, so that we could see it. I think that is the way to do business. Let him put his thunder down in that way, and bring it here, so that we may see precisely what his thunder means. But, sir, if it is a puff of smoke merely, and we have got to stand the charge of grape and cannister that may come hereafter, I should like to see the thing put in a right shape now, so that we can judge of it. He has got the report of the Railroad Committee. It has been written and printed. Here it is, and you can all judge it.

Mr. Chairman, this eighth section (and I only speak of it now down to the point where I have indicated that I shall ask a division when we come to have the vote upon it, if we shall reach that point, as I hope we shall at some time,) is, I think, one of the best provisions that could be devised for the consideration of the Convention; and how does this regulate the subject matter of tolls in this State? It says to the railroad managers: "Gentlemen, you may go on fixing your rates for passengers, fix your rates for freight, but at whatever rates the carrying companies, who have their lines extending into different States, bring freights and passengers into the Commonwealth of Pennsylvania, and carry them through our State for, under our own noses, at those same rates they shall carry passengers and freights for our people.

Now, is not that honest? Is it not right? Is it not fair? Certainly it is. I should like to see a man, to test the fairness of this thing, get up before an audience of Pennsylvanians and begin to talk to the people upon this question. Let him get the most intelligent men in the Commonwealth before him, and say to them, "we should like the privilege of bringing outside manufactures and articles from beyond the line of Pennsylvania into your State; we want to take possession of your own markets; we want to drive the people of Pennsylvania out of their own markets, by giving better rates to the people beyond the line of your Commonwealth than we give to the people of the State that created us and gave us our existence." Why, Mr. Chairman, that is not right in any sense whatever.

Gentlemen may say, perhaps, that this is an interference with railroad companies' charters. So far as the Pennsylva-

nia railroad is concerned, they surrendered their charter when they got the repeal of the tonnage tax. So far as the fixing of their freights was concerned in the State of Pennsylvania, they have got now an act of Assembly which is the same authority that they have for their bonds. We hold no bonds to-day against the Pennsylvania railroad company, not a dollar. Those bonds were all virtually cancelled at the time the act of assembly was passed by which the tonnage tax was repealed. True, they lie in the State Treasury as an evidence merely of indebtedness, and hardly that, because they were superseded by the act of Assembly, and by their acceptance of that act of Assembly they agreed still to pay the State the amount of money called for by the bonds. Some people think they can take out the bonds and sell them, but they cannot do it. The State does not own those bonds.

They got an act of Assembly by which the Pennsylvania railroad company, when they agreed to this arrangement about the tonnage tax, agreed to a different rate of freight that should be charged both east and west the length of the main line of that road; so that, so far as their original charter is concerned, if it is different specifically from that act of Assemby, their charter has gone by the board, and they stand upon that act of Assembly, just as we stand upon that act of Assembly, for the money they owe the Commonwealth. I have the act of Assembly here in my desk; but twenty minutes is hardly time enough to refer to it.

Mr. BUCKALEW. You can refer to it in your next speech.

Mr. HOWARD. I will reserve it for the next speech. That is all they have got.

Now, Mr. Chairman, it seems to me that no more reasonable provision could be presented than this. It is a provision that ought to be at once accepted by these companies. They ought to say at once, "why, yes; you leave us the right to fix our tolls as we please in regard to the freights, in regard to the carrying of passengers that we bring into or through the State of Pennsylvania, and then require us to give the people of the Commonwealth the same rights that we give to strangers."

Mr. Chairman, the people of this State must have that rule, and why so? If we do not get that rule what will be the result? Just over the border they start some great manufacturing concern, they give them a special rate, they come into Pennsylvania, and they can break up and ruin our manufacturers engaged in the same business. They have done it, and they will do it again. The other day here, when I heard a gentleman who has long been a director in the Pennsylvania railroad company, say that he never had received any special rates, I believed every word he said. Why, sir, it has come to be perfectly understood that the board of directors is counted as of but little account in the real management of these railroads; they are nothing but cyphers in the hands of the superintendents. The executive officers—the great Goliaths—manage them. They have got too big for the stockholders, too big for the directors; they are altogether too big for the people. The stockholders are nowhere. We understand that perfectly well. I do not think the directors *are* so much to blame; it is the executive officers that have the practical management. If that gentleman does not know that special rates are fixed, I can tell him they are fixed every day; and if a man does not attend and get his special rates as he ships from time to time, and he has to ship under the regular schedule rates, then he has to go to the office, and gets a drawback.

The CHAIRMAN. The gentleman's time has expired.

Mr. CUYLER. I move that it be extended by unanimous consent.

Objection was made.

Mr. COCHRAN. I should like just here, with the permission of the committee, to make a few practical remarks, without going into anything beyond that, because I want to indicate as clearly as I can what I think is the proper course to be pursued on this question.

Both the amendments pending, that of the gentleman from Centre, and that of the gentleman from Somerset, I think do not meet the justice or the point of this case in a proper way, and I am free to say that the section offered by the committee should properly undergo some amendment, and that amendment at the proper time I am prepared to propose.

It is very different, sir, on a question of this kind, to speak directly to the point, and to take everything up in that order which would be satisfactory to the committee. I must do the best I can in as few words as I can use.

The original section, as it is printed in the report of the committee, evidently contemplated two things in my judgment. One was to provide that the people of this

State should not, on the corporations created by themselves, be put to a disadvantage in comparison with the people of other States. That they should not be compelled to pay more for transportation over their own soil than a citizen of Illinois, or a citizen of any State further west. That is the first proposition of the section, that no corporation engaged in the transportation of freight or passengers in or through this State, shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof, and such corporations shall carry the persons and goods of the people of this State on as favorable terms as those of other State is brought into or through this State, on the works owned or controlled by such corporation. That is the provision of the first part of the section. The second part relates to discrimination within the territory of the State, as among the people of the State themselves, as well as in their relations with the people of other States. As to that, I think the terms of the section —and I believe that nearly all of those with whom I have consulted will agree with me—are on that point too strong. I think I need not say more on the first branch of the section, at this time at least, than has been said by the gentleman from Allegheny, (Mr. Howard,) who has just closed his remarks.

Upon the second branch of the section, I want to say a few words. That brings up the question of discrimination. I am not one of those who believe that the doctrine of a uniform rate of freight per ton per mile, should be applied unyieldingly to railroad companies.

I think that I know this much, that to carry freight over a very short distance for the same rate per ton per mile as would be charged for carrying it over a longer distance, would not be endured, and it could not be done. I know that the costs and charges on such a short distance are so much increased, proportionately, that the work cannot be done for the same price, and I am not, therefore, in favor of applying that rigid rule, however equitable it may seem on its face, because I do not think it is equitable in fact. Therefore I think there ought to be some modification of so stringent a provision as that, and I think that we ought to allow some discriminations in regard to these lesser distances. I do not think that the man who carries freight a short distance on a railroad, or is himself transported as a passenger a short distance on a railroad, should be compelled to pay in the aggregate, more than is paid by a man who transports freight, or is himself transported, a longer distance. I think there is equity in the case, that if a man travels five miles on a railroad he should not be compelled to pay more than a man who travels one hundred miles, or that if a man transports freight five miles he should not be compelled to pay more than he who transports freight thirty miles in the aggregate. That, it seems to me, is just and fair; but I would allow discriminations on freight within the limitation of what I suppose would answer the purpose, say thirty miles.

Gentleman say that in an instrument of this kind it is impossible to regulate this matter; to make toll-sheets for railroads. That is not designed nor intended by the Committee on Railroad and Canals; nor will the adoption of the report of that committee have that effect. It is not intended to make the toll-sheet of one railroad the toll-sheet of another railroad. It is not intended to apply a Procrustean rule to a railroad which costs $50,000 a mile, and that has a legal right to charge more than another road, and make it transport for the same as another road that has, perhaps, cost $30,000 a mile. Nor is that the effect of this section, as I understand it. The intention of the section is, that when a man goes upon a railroad at a certain point, and travels upon that railroad any particular distance, he shall pay as much, and no more, as his neighbor who travels the same distance on the same road, and that his freight shall pay no more for traveling the same distance on the same road.

The idea is, that the publication of a toll-sheet, as suggested here, would be a remedy and protection. Why, how, let me inquire, would the publication of a toll-sheet be a remedy? That toll-sheet when published, may contain these very discriminations of which the people complain. You may make a toll-sheet of a railway company as large a volume as the gentleman from Philadelphia (Mr. Gowen) stated it to be, and that toll-sheet may contain very much heavier charges for a short distance, comparatively, than for a longer distance. Not only so, but absolutely so. You may make a toll-sheet that would charge just as much for transportation from here to Harrisburg as it would from here to Pittsburg. That would be a toll-sheet, and the publication of that toll-sheet would not prevent the

mischief. A toll-sheet, if it contains the price of conveying passengers, might be so constructed that you can charge a man as much for traveling from here to Harrisburg, as you would from here to Pittsburg, or more. There is nothing to prevent it unless you transcend the rate prescribed in your charter by the government.

Now, the unjust discriminations complained of here by the people of this State, place them at a disadvantage. Take any place you please in Pennsylvania. Take York as an illustration. We have often to pay for transportations from the points above us in the direction of Baltimore, as much, or more, to York as they pay all the way through to Baltimore. And I take it that that kind of discrimination exists all along the line of railroads in this State. It certainly is a complaint that I have heard made from various parts of the State. Is it right that this should continue? Is it right that one place in this Commonwealth should have to pay more for transportation to it, unless it be within a very limited distance, than you would pay for transportation to a point far beyond it?

But, it is said, that this difficulty will all be covered by the qualifying adjectives proposed by the gentleman from Philadelphia, (Mr. Dallas,) and we have had read here the decisions of English courts in explanation of those adjectives. The very great trouble in regard to these qualifying adjectives is that we do not know how our courts would construe them. It seems that under the cases read here, they have construed them one way in England, but it does not follow that the courts of this State will construe them the same way. In the State of Illinois there was a provision of this kind:

"And the General Assembly shall, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on the different railroads of this State."

"*Reasonable*," you observe! Now, that word "reasonable" gave rise to a great deal of trouble. The Legislature of the State of Illinois, under that section, undertook to pass a law, saying that no greater charges should be made for carrying a shorter distance than there should be for a longer distance. I do not mean the rate per ton per mile, but in the aggregate. When that law came before the courts of Illinois they said that it was unconstitutional; that the word "reasonable" there meant that there might be a reasonable discrimination in carrying these distances, therefore the Legislature had no right to pass a law, saying that there should be no greater charges for a shorter than a longer distance, and the result of it was that the law of the State was abrogated and set aside, and from that arose all this excitement and popular disturbance, which is now sweeping the State of Illinois like a tornado, and is extending from that into other States. I want to have no such section as that regulating the case in Pennsylvania. I want, if possible, to have a regular, defined, distinct clause here, that will not lead to any such interpretation or consequences.

It cannot be disguised. It is not, I believe, denied, that these discriminations which are complained of by the people, whenever you hear them speak on the subject, do exist. It is also certain that you can get no remedy by any power in this State short of this Convention. I had handed to me, a few moments ago, a copy of one of the most respectable journals of this city, in which I find this paragraph:

"In this country corporate monopolies have already taken possession of our legislative halls and our courts of justice, and if they do not defy them, they do that which is worse—subsidize and corrupt them until the very existence of political integrity has come to be doubted. In the great west a vigorous and unrelenting war has been inaugurated against monopolies, and the chief corner stone of the platform of the farmers' league is that all combinations which interfere with the natural order of business must be suppressed, that open and fair competition in every branch of business must be sustained, and not "sold out" to monopolies, and prices governed by the law of supply and demand, and not by combinations and arbitrary agreements among those who have goods, capital, skill, labor or transportation to sell, which is a step in the right direction."

I read that, not for the purpose of indulging in denunciations of the Legislature, but to show the general opinion, the public impression, that has gone abroad, that this thing is not to be remedied by legislation. No effort, if made to-day to correct it by appeal to the law-making power, would succeed. I remember an attempt was made twenty years ago to get the Legislature to do this, but it failed, and the people have never since been able to

get the Legislature to take up this subject and to provide against these discriminations. Then there is a duty imposed on the Convention in this matter, and if it is not met and fulfilled, we shall fail to meet the reasonable requirements of the people, for anything unreasonable, I am no more disposed to concede than any other gentlemen on this floor. That would be a species of demagogical action, that, if I know myself, I deprecate as much as any member.

I want this original section to be so amended in the last clause, after where the gentleman from Allegheny (Mr. Howard) concluded, as to read:

"And the charges for freight and fares, for passengers, shall, for equal distances, be the same, and a higher rate shall never be made for a shorter distance than is made for a longer distance, and no drawback shall, either directly or indirectly, be allowed, but commutation tickets to passengers may be issued as heretofore, and reasonable discriminations may be made in charges for any distances not exceeding thirty miles."

I think that will meet the difficulty here proposed, that where a railroad company takes passengers on at the same place to go to another same place, that the charges shall be the same. But I do not, as the gentleman from Philadelphia (Mr. Gowen) will observe, and I see that he is observing me very closely, use the word "uniform" at all in this clause. I do not propose to use the word "uniform," which seems to be a bugbear. I propose to omit that and to make the section, as I would amend it, a simple practical regulation, that is, from one place to another, of equal distances, the charges shall be the same, and that no charge shall ever be made for a shorter than for a longer distance. That means in the aggregate.

Mr. D. N. WHITE. Then put in "in the aggregate."

Mr. COCHRAN. It does mean it. If you charge a man for the distances, it means in the aggregate.

[Here the hammer fell.]

Mr. CUYLER. Mr. Chairman: I move that unanimous consent be given to extend the time of the gentleman from York.

No objection was made.

Mr. COCHRAN. Mr. Chairman: I say then, that in that respect it is fair and right that there should not be a larger charge for a shorter distance than there is for a longer. It is simply fair and right. Now, according to that, the companies are not restricted in their charging to the same rate per ton per mile. That is not the idea, but it is a general provision that it shall not be more for a shorter distance than it is for a longer. And there comes in at the close, the clause that if the company chooses to apply it, there may be a discrimination made for distances not exceeding thirty miles. That is intended to provide for, what I stated before, the increased expense of transportation for short distances.

With this provision, I believe, this section will be just and fair and equal, and will meet the expectation of the people. But if it does not do that, it will at least protect them in all their material interests in this regard. I do not think it would bear hardly or injuriously or improperly so, at least upon any of the railroad companies or any of the other transportation corporations of this State. I have used the exact words of part of a statute of Illinois; that is, that the charges shall not be greater for a short distance than for a long distance, and the application of that statute was made in the aggregate, and was not per ton per mile. I contend that the true construction of it is, that it is an aggregate charge, no more charge for a greater than a shorter distance. If that plan is adopted, you reach a rule which, I admit, is not thoroughly equal. I admit that it is not entirely fair to the people who ship or travel on the shorter distances.

But then, sir, I admit also that it is not possible to us to come right down here and make the thing exactly equitable; we cannot do it. It is an approximation in general terms to effect that which we cannot completely and entirely effect; and if it is adopted, the operation of the section will be that no man can see freight pass his station, wherever it may be, a hundred miles beyond it for less than he has to pay to his station; and if that is not just and right I do not know in what justice and right consist. I shall say no more at this time, at all events, upon this subject.

Mr. J. W. F. WHITE. I ask the indulgence of the committee for only a few minutes, while I indicate very briefly the reasons that will influence my vote upon the section now before us, and the subsequent sections in this report. I confess, Mr. Chairman, it is a subject that I am not very familiar with, for I never was connected with any railroad company, and

I am not, and never have been, the attorney of any railroad company.

When this report came in I undertook to study it very carefully. I read it over over repeatedly, and have listened very attentively to the speeches that have been made by various gentlemen since it has been before us for discussion; and, sir, the impressions that I formed upon reading the report and studying it, have only been confirmed by the discussion. I came to the conclusion, after reading over the report very carefully several times, that I should vote against every section as reported, except some three or four.

I regretted that this report came up for discussion before we had the report of the Committee on Private Corporations, and I think I have seen in this discussion and in this report one of the difficulties that we have experienced in our Convention by having the great number of committees we have, and by having no system whatever as to the order in which the subjects shall come before us. My own judgment would be that the matter of railroads is a part merely of what should be the article in our Constitution on the subject of corporations, and that many of the provisions applicable to railroads are applicable to all other corporations, and that we could more intelligently discharge our duties in reference to railroads if we had the whole subject of corporations before us. I know that there are several propositions before the Committee on Private Corporations which will apply to railroads, and which will, I think, supersede several of the sections in this report, and that is one reason why I shall vote against several of the succeeding sections in this report.

It seemed to me that the report was based on the idea that railroads are a public evil, and that all men connected with railroads, as officers or otherwise, are not to be trusted. Now, Mr. Chairman, although I am not connected and never have been, in any shape or form, with any railrood company, yet I confess to being a railroad man. I believe railroads are absolutely essential to our State and to its prosperity. They have developed the resources of our State, and added more than double, nay, quadruple, to the value of our State. I do not believe there is a town or a locality in the State that has not been greatly benefited by railroads and that will not be further benefited in the future.

Further than that, Mr. Chairman, my own experience and observation in the world have satisfied me that there are just as honorable, honest and upright men connected with the railroads as in any other business or department in life. Further than that, I believe that nearly all the evils that we have heard of here, or which are offered as objections to railroad companies will be corrected in the natural course of events without any special legislation or without any special provisions in our Constitution.

A great deal has been said in reference to the discriminations made by railroad companies in the fare and rates that have been charged; and the sections reported by the committee, and even as proposed to be amended by the chairman, would prevent and prohibit all discrimination on freight coming from the west into Pittsburg, and from Pittsburg to Philadelphia. I think I know something of the feeling, at least, of our merchants and shippers in Pittsburg. I do not believe that our business men there were ever so unreasonable as to say that the railroad company may not make some discriminations in favor of through freight. That is not the source of complaint there. As an individual, I think it would be very unreasonable and unwise in us to say that the Pennsylvania railroad company or any other company that may be formed hereafter, running the entire length of our State, might not make some discriminations in favor of freight brought from the west, in cars from the west, that just pass through our city eastward to Philadelphia or eastward to New York. That is not, I repeat it, the source of complaint there; but we do object to this, that freight shall be carried from points far west, through our city, cheaper to Philadelphia than they can be shipped from Pittsburg to Philadelphia. A gentleman from Philadelphia some weeks ago told us that he knew the fact that freight could be shipped from Pittsburg to points in Ohio, and then shipped back through Pittsburg to Philadelphia cheaper than the same thing could be shipped from Pittsburg to Philadelphia.

That is a kind of discrimination which ought to be stopped; and I apprehend it is an evil that might be remedied by legislation and by our courts now, because all such manifestly unreasonable and unjust discriminations will not stand the test when they are brought before our courts. It is an unpleasant thing for shippers to get into a controversy with railroad com-

panies, and therefore they wish to avoid it. But I believe no man in the State of Pennsylvania will object to a reasonable, proper discrimination in reference to through freights, if that discrimination does not work to the injury of the local shippers.

I am opposed to the section as reported by the committee, and opposed to all of these amendments, because they make it absolutely impossible for a railroad to make any discrimination in favor of long distances or through freights. I shall not favor the amendment proposed by the gentleman from Centre, (Mr. M'Allister,) because I think there are other unreasonable things in those two section reported by him. If I understand the language of his section, the charge for passengers and for freight must be uniform, no matter what kind of freight it is, whether it is coal, iron, flour or gunpowder, as the gentleman from Clarion suggests.

If I understand the section, it is that there shall be uniform rates upon freights per ton per mile—all kinds of freight. Is there any person in the State of Pennsylvania who wants a section of that kind?

Mr. M'ALLISTER. I would say to the gentleman that is not the understanding of the minority who offered it, and that if there be any obscurity—which I think there is not—I would propose to settle that question and all discussion upon it, by striking out the words, "of uniform rates," in the sixth line, and inserting in the seventh line, after the word "road," the words, "uniform as to each class of freights and tickets," so that it would read thus:

"Railroads and canals, heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law. And the Legislature shall, by general laws, establish reasonable maximum rates of charges, for the transportation of passengers and property thereon, and within the limits thus prescribed by the Legislature, every railroad, canal or carrying company shall establish a schedule for the transportation of passengers, per person, and property, per ton, per mile, over their road, uniform as to each class of freights and tickets, and during the existence of such schedule, no abatement shall be made from the charges therein set forth, in favor of any individual or individuals, corporations or partnerships, or by the granting of a free pass or special rates, the allowance of drawbacks, or in any other way or manner, except in the granting of a personal transportation to the officers and employees of the company, and to poor and indigent persons as objects of charity."

Mr. J. W. F. WHITE. It is very likely that the modification suggested by the gentleman who offered this amendment may relieve it to a certain extent of the objection I have urged against it; but I have no doubt that if it should be passed in the wording it has here, there would have to be uniform rates, as it says upon persons per mile, and upon freight, no matter what it is per ton per mile. Still the form in which he has suggested the amendment may raise another question: Shall there be uniform rates upon all the railroads? It is open to that question, whether it does not mean that every railroad shall have the same charge for passengers and freights. I think, as was clearly shown by the gentleman from Philadelphia, (Mr. Gowen,) that would be an unjust and unwise provision.

I have other objections to this section, Mr. Chairman. I object to the language contained in the second line, which was designed to be remedied by the amendment offered by the gentleman from Somerset (Mr. Baer.) According to the wording of the section, every person has a right to put a locomotive or a car upon any railroad in the State, not only the right to have himself and his property transported over the road, but the right to put on cars, and put on a locomotive and run on the road as a public highway.

That was the theory at one time in existence in this State, because it was supposed that only on that ground could railroads be incorporated at all; but it has long since been exploded, and I trust never will be revived in the State, because, if you establish that principle in your Constitution, that railroads are public highways and every person can run a locomotive or a car upon them, in a very short time you will have all our railroads in inextricable confusion, for there must be system; there must be time tables; there must be proper regulations, in order that the people shall be accommodated. Another objectionable feature in this section, and I apprehend the same objection applies to the amendment proposed by the gentleman from Somerset, is, that it will utterly prohibit all commutation tickets, all

excursion tickets, all abatement of fare to accommodate local trade. A gentleman on my right says it has also another feature which is a perfect humbug, and that is in reference to passes. I admit that, too; but I call attention now to the feature of nearly all these proposed amendments which would prohibit commutation tickets and excursion tickets, not only as to persons travelling over those roads, but also in reference to the accommodation of the local trade, in reference to freights. I presume everywhere in the country, on all railroads going into the large cities, there is a discrimination in favor of the local trade, and persons travelling upon what are called accommodation trains. The fare upon those accommodation trains is always less than it is upon the through or express trains, and very frequently the charge for a certain distance is less on those accommodation trains than it is on the express trains for a shorter distance. That will be prohibited by all the sections before us, and would even be prohibited by the section as proposed by the chairman of the committee. Even limiting the section in the manner he has indicated he would propose, to thirty miles, it is unreasonable. Very frequently these railroad companies give excursion tickets over the whole length of their roads. Those excursion tickets are greatly for the accommodation of the public, and also a source of revenue to the roads themselves. Why should we undertake to destroy what has been known as the established policy of all the railroads in Europe and America down to this time. We would here be inserting in our Constitution a principle that is in direct conflict with the management of railroads the world over, and we are to do this under some imaginary notion that we were sent here to pass statutes in reference to railroads.

Mr. Chairman, there is danger in trying to go down into details in a constitutional provision. I believe that we do not need more than two or three sections on the subject of railroads. After we shall have adopted those provisions in reference to corporations, applicable to railroads as well as other corporations, I believe we do not need more than two or three sections exclusively on the subject of railroads, because I think all other matters will be embraced in the general sections applicable to all corporations.

I believe that we ought to open wide the door to competition. We should have a free railroad law, giving to no corporation any exclusive rights, privileges or immunities whatever. Establish that principle by your Constitution, and you open a fair field to competition, and wherever a railroad company is making extravagant profits, at once you will find capital flowing in to create and establish a rival road.

Then I believe we ought to insert a section, giving the right to any railroad company to connect with any other railroad, and providing, also, that the freight and passengers brought by one road shall be transported over the other without delay and without any discrimination against them. Then there should be a third principle, that there shall be no preference, favors or special privileges granted to any person, company or corporation; in other words, that the railroad shall be free and open to all the citizens of the State upon the same terms and conditions.

Now, sir, I believe that, with those three principles established, not extending over three sections, in connection with the general provisions in relation to corporations, we shall have all that we need on this subject; and, therefore, I intend to cast my vote against all these sections that are now before us.

Mr. TURRELL. Mr. Chairman: I have but a word or two to say. We have had a very wide discussion on this subject, and theories almost without number have been advanced. We all come here, probably, with impressions produced on our minds by some facts connected with the operation of railroads that have come to our knowledge. I have come here in that situation. It is that which has developed the sentiment of this Convention as to the necessity of doing something to correct the evil which is felt by all.

Let me narrate a circumstance related to me by a gentleman connected with a large manufacturing interest in the western part of the State as within his personal knowledge. If I were to give his name, he would at once be recognized as one of the first business men in the State, whose word would be taken as a guarantee of the truth of any assertion he might make. Perhaps I shall be justified in mentioning his name, as the fact I am about to state is well known in his vicinity. I allude to Hon. D. J. Morrell. That gentleman is connected, as you all know, with a large manufacturing interest, employing five or six thousand men. In connection with that, they started the manufacturing of boots and shoes in his

town for the benefit of their own men, as well as for the community. They employed some two hundred men in that establishment, and succeeded in getting into fair operation; but owing to the fact that freights could be carried from the east to Chicago and the west for so much less than freights in the State of Pennsylvania, the leather could be taken to Chicago, manufactured and returned to this place for so much less than they could do it, that it broke up the manufactory entirely, and they had to cease operations. They applied to the railroad company in the meantime for a concession in relation to freights, but could not obtain it, and the result was as I have stated. This is a brief statement of the facts.

Now, sir, in that case that industry, which was of great advantage to that community and to that part of the State, was destroyed, crushed out, and had to be abandoned because of the discrimination against them in freights for the material which they manufactured. It is apparent to everybody, from the mere statement of such a fact, that there is a wrong in this system somewhere. How and where it shall be corrected is the point we are aiming at. Other facts of a similar character undoubtedly exist throughout the State and have developed this effort which the committee are here endeavoring to chrystallize into form, as well as they may, to correct this evil.

It is evident from the dicussion we have had here that it is a difficult subject. Railroads have grown to that immensity that railroading may be dignified as a science. It is a great subject, and it is only those, as I think has been shown here, who have paid careful attention to it who are able to grapple with it and place it in the position it ought to occupy in our fundamental law. I think this must be apparent to everybody. A great many of us are groping in the dark in relation to it and as to how this shall be done.

The remarks of the gentleman from Philadelphia (Mr. Gowen) this morning, I am sure, must have opened to many minds here a new page in relation to this subject. I confess I was greatly gratified to hear the remarks that he made, and in apparently so candid a manner, and the manner in which he was listened to satisfied me, and, I hope, satisfied him and others who are conversant with the subject. I hope the gentleman from Philadelphia who sits before me (Mr. Cuyler) will also be heard from on this subject. Why? Because those two gentlemen, perhaps, more than any others in this Convention—I hope they will pardon the allusion to them—have made this subject a study. They are better versed in it than almost any other men here; and if they will put forth the effect, as they will pardon me for saying I think they are in duty bound to this Convention to do, this subject may be reached in a manner satisfactory to the Convention, and with justice to the interests of the people and of the corporations that are interested.

I do not believe, as is suggested by my friend from Somerset, (Mr. Baer,) that there is any disposition here on the part of anybody to crush railroads. It is not so. What is desired here is simply to correct an evil, which almost every man whom I have heard speak has conceded. We do not desire to destroy the railroads, but to regulate them fairly, honestly and properly, with reference to the rights and interests of all concerned.

Perhaps I have said enough on this subject. I have certainly said all that I desire to say. I express again the hope that the gentlemen to whom I have referred, and others, if there are any others who are as well versed in it as they, will give us the benefit of their experience and their knowledge, and aid us, and for one I say in advance that I will accept their efforts as made in good faith, and that I would not distrust them. I certainly do not distrust their ability. I will not distrust their honesty; and I hope they will give us the benefit of their knowledge and experience.

Mr. LANDIS. The hour for taking a recess is approaching, and I do not intend to trespass very long on the time of the committee. I have discovered, in the progress of the debate on this article, that it has been very much the custom of gentlemen who find themselves opposed to the provisions of the article, to base their opposition on critical remarks upon the language of the article itself. They seem, in some way or other, to find some kind of excuse for their course, when they have brought themselves to the conclusion to vote against the article by annexing thereto the reason that it is inartificially and unskilfully drawn; but had it been couched in other words; had other phraseology been used, they might, perhaps, have favored this or that measure of reform and voted for it. I have nothing more to say about that than simply to advert to it. Of course that can have little

or no weight on the mind of any gentleman of the committee.

I am not a member of the Railroad Committee, but it must be obvious to every one that they have had a task of great magnitude devolved upon them. They have had duties imposed upon them which they could not shirk, and in the mass of propositions submitted to their consideration, they have had a heavy labor to perform in educing some kind of a digested report for the Convention.

Perhaps there is no one subject in connection with the question of railroads that is more important to the people and to the railroad companies themselves than this question of discrimination in freights. I think it will not be denied by anybody that one of the great evils of the day is this evil of discrimination; in fact, it is admitted by candid railroad men themselves. How then can those who are not railroad men bring themselves to the conclusion that it is not. It is an evil that we desire to correct as well for the companies themselves as for the people.

It is a most distasteful and lamentable fact to the people of Pennsylvania that they are discriminated against in favor of the citizens of other States. There is no other one fact in connection with this question that they more deplore, that they more lament, than that they are compelled to bear the burden of a cheap transportation for the citizens of other Commonwealths. Should not this be remedied? Should the people of Pennsylvania be required to bear from day to day these great burdens? Why, sir, these corporations are created by us. They derive all their franchises from us. They are our own. They are created by our own capital. They are supported by our people. All our industries, all our labor, are tributary to them and their welfare. And yet we find that they are turning their backs upon us; we find that they are imposing oppressive burdens upon us. Now, we ask that this state of things shall no longer continue, not that these corporations shall not be properly supported, not that they shall not be duly protected in the enjoyment of all their legal rights, but that it shall be done in such a way that the people of Pennsylvania shall not suffer.

Now, sir, how can the evil be reached? There has been a large number of amendments submitted, and it is very difficult to determine exactly what is the proper line which will afford a remedy; but if we look at all of them I think we shall discover that all these propositions embrace two leading ideas: one under the head of forbidding an *unjust* discrimination; the other a prohibition of any discrimination *save within a certain limited distance*, and thirty miles has been named.

I do not know that I am exactly prepared to say which would be the better plan; but I find that my mind tends towards something like the latter. That is, that there shall be no discrimination against any class of freight, or in charges for the carriage of passengers for any distance, save, however, that for distances less than thirty miles there may be a just and reasonable discrimination. I will agree to this for the reason that I think the railroad companies should be protected, and I, for one, am prepared to vote for this. In fact, from what little knowledge I have of the transportation business, I know that a railroad company cannot carry freight for a short distance at the same rate per ton per mile that it can a longer distance. I think, therefore, that for short distances there should be allowed a just and reasonable discrimination. My objection to the other plan is that I think it would give rise to very extensive litigation; and if there is anything unpleasant and disagreeable to a shipper, it is to be compelled to bring an action at law against the transportation company that is carrying his products to market from day to day, and besides there is no telling when a legal conclusion might be reached. There is no knowing the trouble, the loss of time, the great expense that shippers would have to incur if they were obliged to protect themselves under that provision by constantly seeking the intervention and protection of the courts. Indeed, I know some railroad companies, that when litigation is threatened against them, threaten the party that they will refuse him cars; so that, with such a company, if a man undertakes to seek redress at law he would suddenly find that his business would be stopped and he, perhaps, be ruined.

Now, in regard to this matter of discrimination, it has been suggested here that there ought to be some discriminations for the reason that cars which carry freight over regular lines of road come back empty, and that, therefore, they ought to be allowed to carry back freight in one direction cheaper than they take their loaded cars in the other. On its face that might seem plausible, because these gentlemen say all the freight they carry back they

will carry back at the same rate, and there will be no discrimination.

Mr. Chairman, just here is something which I desire to call the attention of the committee to, and that is that there is in this matter a very great mistake, because you may, in carrying back your empty freight cars, interfere with or cripple some industry at the other end. For instance, suppose cars are shipped eastward to Philadelphia, loaded with bituminous coal. Suppose those cars are permitted to carry back to some point in the bituminous region anthracite at some nominal rate, is it not manifest that that anthracite coal would interefere with the bituminous coal business?

As a case in point I may cite this: I know a place in the bituminous region where coal is delivered every day from the coal banks, twenty miles off. Coal has been delivered there from the bituminous collieries from year to year for many years. That coal has been used in the manufacture of iron. Very recently, according to the method suggested by somebody of bringing back freight instead of empty cars, they have been carrying anthracite coal at a merely nominal rate, and putting it down at that point at so low a rate as to prevent the miners and shippers of bituminous coal from any longer selling their coal to those purchasers whose patronage they had for years.

Thus, sir, it is evident that a policy of this kind would operate disastrously. Men in the bituminous regions have invested thousands of dollars for the purpose of taking out bituminous coal, and they find that, in pursuance of a policy of this kind, they are daily being ruined. Men who have been their customers for years are leaving them for the purpose of purchasing anthracite coal, because they can get it at a less price per ton of metal than they can get the bituminous coal. The bituminous men have put their prices for coal down as low as they can, consistent with a living profit, and they are charged a high rate for transportation, while the anthracite men are charged the lowest rates for transportation, and are consequently enabled by this favoritism to undersell the bituminous men in their own region, though the anthracite is carried more than two hundred miles to the point referred to.

A gentleman near me (Mr. Fell) suggests that this operates advantageously to the iron men. So it may; but then I answer by saying that it destroys the bituminous coal men, who have thousands of dollars invested in their business, and who had been encouraged by the railroad companies to embark in that species of industry. Then he says you build up the anthracite men in the other region. So you do, but to the destruction of the bituminous men, and it is just that very evil which I desire to correct. I say that you should build up no one class to the destruction of another, and you should not build up the anthracite men so as to destroy the bituminous men. We are all equally interested in this matter, and you have no right to fasten upon the people a policy which shall destroy one class and elevate another. I am thankful to the gentleman (Mr. Fell) for the suggestion.

Now, sir, it is the whole people of Pennsylvania that we desire to protect. There is no one question in which they are so much interested as this. There is no one matter in which they desire the intervention of this Convention so much as in this matter of railroad discriminations; and if this Convention do not do something in this direction, their meeting here and their labors will have been in vain. Why, sir, talk about the Pennsylvania policy of protection! You send your members of Congress to Washington, and ask them to see there that Pennsylvania industry and Pennsylvania products are protected. I ask you, sir, what boots it to the citizens of Pennsylvania if you obtain what you ask there, if discrimination at home is fixed on the products of our mines and manufactures, so as to swell excessively their cost when delivered in the markets of the country. If you desire that the Pennsylvania policy shall be carried out in Washington, you must assist in carrying it out here, and one method of doing it is not to discriminate against the citizens of Pennsylvania, to the advantage of the citizens of other States, nor to discriminate between citizens of the Commonwealth so as to favor classes or particular localities.

I hope, therefore, that whatever conclusion may be reached, it will be some conclusion which will protect all classes of people in Pennsylvania, from whatever point they may ship their produce, so that all will be placed upon an equal footing, so that all may be placed in their business upon such a basis as shall ensure them some protection from what has been hitherto a very great evil.

Mr. STANTON. Mr. Chairman: I move that the committee of the whole now rise, report progress, and ask leave to sit again.

The motion was agreed to.

The committee rose, and the President having resumed the Chair, the Chairman (Mr. Broomall) reported that the committee of the whole had had under consideration the article reported by the Committee on Railroads and Canals, and had instructed him to report progress and ask leave to sit again.

Leave was granted the committee of the whole to sit again this afternoon.

Mr. LILLY. I move that the Convention take a recess until three o'clock.

The motion was agreed to, and at twelve o'clock and fifty-five minutes P. M. the Convention took a recess until three o'clock.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

The PRESIDENT. There is not a quorum of members present.

Mr. BOYD. I move that we adjourn for the want of a quorum.

The motion was not agreed to, ayes, four, noes not counted.

The PRESIDENT. (At three o'clock and four minutes P. M.) A quorum of members is now present.

PETITIONS AND MEMORIALS.

Mr. CORSON presented a memorial of the Gwynedd monthly meeting of the society of Friends, asking for the adoption of a provision in the Constitution prohibiting punishment by death, which was read and ordered to lie on the table.

RAILROADS AND CANALS.

Mr. MANN. I move that the Convention go into committee of the whole upon the article on railroads and canals.

The motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Broomall in the chair.

The CHAIRMAN. The committee of the whole resumes the consideration of the article on railroads and canals. The question is on the amendment to the amendment to the eighth section, offered by the gentleman from Somerset (Mr. Baer.)

Mr. MINOR. Mr. Chairman: I would not venture, after the lengthy discussion we have had, to add any remarks were it not that one or two points seem to have been overlooked or misunderstood, and I can only give the reason for speaking that Chief Justice Swift gave when he wrote a law book. So many books had already been written that it was necessary to write one more, that their contents might be reduced into smaller space. Allow me, therefore, as briefly as possible, to state, so far as I am able to apprehend it, just where we stand, and what we have got to do upon the question and section now before us. If I apprehend it aright, we are substantially limited to one of three propositions, all of which have been discussed. One is, that we must adopt a provision which forbids all discriminations; or, second, we must undertake ourselves to give a statement in detail describing what kind of discriminations may be permitted and may not; or, third, we must use a general expression, and leave that to be enforced by the courts and jurors, and, perhaps, by the Legislature, under the limitations that we prescribe.

Now, sir, after looking the subject all over, it seems to resolve itself into one of these three propositions; and while no one is perfect, or can be made perfect in its application, we must decide which, on the whole, will be the best.

The first question is, can we undertake to forbid any discrimination whatever in those terms, or by the use of the word "uniform," or others which are equivalent? I will not undertake to go over the argument that was introduced by the gentleman from Philadelphia (Mr. Gowen) and others in detail. I will simply call attention to one or two leading facts in connection with that proposition. One is, that if we forbid all discriminations; we necessarilyand unavoidably,ourselves, create an injustice. Under that you cannot properly run a railroad, and communities cannot do justice by each other, for it is a fundamental principle in the changeable nature of human affairs, that differences often give rise to exact justice, and that a Procrustean bed, as to times, or places, or compensations, or anything of that kind, is, necessarily, in some of its applications, wrong. In this connection I desire to call attention to the legal propositions which I understood the chairman of the Committee of Railroads and Canals to make.

If I understood him he stated that the law of Illinois had been declared unconstitutional, because it made unjust discriminations. If I misunderstood him, I beg to be corrected.

Mr. COCHRAN. The gentleman from Crawford, I understand to be referring to what I said was the decision of the Supreme Court of Illinois. That Supreme Court decided that the act of Assembly of that State was unconstitutional. The Constitution having provided that unjust discriminations, or something to that effect, should not be made, and the Legislature having passed a law that no more should be charged for a shorter distance than a longer distance, the court said that the act was unconstitutional. That was the decision.

Mr. MINOR. Then I misunderstood the chairman of the Committee on Railroads and Canals in part, and understood him in part. The Constitution itself used the term "unjust," forbidding unjust discrimination. The Legislature then passed a law forbidding all discrimination in the matter referred to. Under that law a railroad company undertook to charge more for a short distance than it did for a long distance, over the same road. The parties against whom the greater charge was made, brought suit. The Supreme Court decided that the Constitution was correct, that it was in pursuance of the common law of this country, and the law of England, but that the party had no remedy under the statute, because the statute itself cut off all discrimination. The decision then went on to show that the law itself was wrong, not only as being against the Constitution, but wrong in principle, because a law arbitrarily requiring that a tariff of rates should press alike upon all cases, might be unjust to some, and hence the court said in substance, that it was a matter of the highest justice that every individual, and that every railroad charged with an unjust act, should have the right of showing that the act itself, under the circumstances, was right, and therefore, that the Legislature had violated a fundamental principle in ethics and in law as well as the Constitution, when they undertook to say that there should be no discriminations. They held that the railroad ought to have had an opportunity of showing that the act was right and not unjust. There then, is where the matter stands in that State. The decision was not thus given because the Constitution was wrong, but because the law was wrong.

Now, the error into which gentlemen have fallen in this section lies right here, that instead of copying within the law of England and of this country, or Constitution of Illinois, they have copied the act of the Legislature of Illinois, saying that there shall be no discrimination, and by saying that, they prevent the parties oftentimes from doing that which is right, or even proving it, and compel them oftentimes to do that which is wrong. There is the point. The very moment you leave out the word unjust so that the courts shall not apply it, that nobody shall apply the term unjust, but use simply the term discrimination, then you establish a proposition that is necessarily unfair in its practical application.

Now, sir, if I have succeeded in making that idea clear, I am content upon that point. I say, therefore, that it does not answer for us to put our Constitution in the same position that the statute of Illinois stands, because, if we do we fall into the same error. I refer now to the decision itself which lies before me.

The Chicago and Alton railroad company, *vs.* the people, *ex rel.* Koerner and others. In its syllabus, it says:

"The Legislature has the clearest right to pass an act for the purpose of preventing unjust discrimination in railway freights, whether as between individuals or communities, and to enforce the observance by appropriate penalties."

"No prosecution can be maintained under the existing act, until amended, because it does not prohibit unjust discriminations merely, but discrimination of any character, and because it does not allow the companies to explain the reason of the discrimination," &c., &c.

I feel anxious, that we should not by arbitrary words, saying there shall be no discrimination, or saying that rates shall be uniform, or anything that is equivalent actually compel some persons to do wrong, and others to suffer wrong, and put it beyond their power to have any remedy. Hence I say, that when we take into consideration the differences of kinds, the differences of place, the differences of material, the differences of men, of location, of circumstances, of distances and so on, enumerating a list, the name of which would be legion. I say, when we, by a set phrase, cut off the possibilities of allowing for any of these differences, we would prescribe a Procrustean bed, which necessarily must work more injury than good, in the long years that are yet to come.

That is the objection to the section. Now, that same objection lies, if I understand it, to the amendment offered by the gentleman from Centre, (Mr. M'Allister,)

because he uses the term, "uniform," which every one would understand as having precisely the same effect, and so with the other amendments, some of which have been laid on our desks.

As I said, I will not dwell longer upon that, but I do desire members to consider that fact, that uniformity forbidding discrimination will inevitably compel injustice. You cannot carry iron and gold at the same rate. You cannot carry iron itself at the same rate at one time that you can at another, over one road as you can over another, or from one place as you can from another.

I pass on to the next proposition, that is, whether you can define a list of prices and a list of discriminations, and make them perfect, so that they shall work no injustice in the future, by prescribing them in the body of the Constitution. But, as that has been adverted to, I will not enlarge upon it, excepting to suggest one or two points in connection with it. I know of circumstances of the most fearful discriminations. I will give one which came within my own knowledge, and one in which we would have been saved a great deal of trouble if we had had the word "unjust" in our Constitution. A contract was signed—for I saw it, the original—by some four or five of the leading railroad companies of this country, whereby they agreed to transport oil from the oil regions to the seaboard for certain individuals at an average rate of about one dollar per barrel. And at the same time they agreed that they would charge every person outside of that combination an average of about two dollars per barrel—it was so stated in substance in the bond. The railroads and the parties thus signing the agreement, made a most terrible and odious discrimination, and more than that, they further agreed that of this two dollars that was to be charged to outsiders, one dollar should be retained by the railroad companies, and the other dollar should go to the particular individuals who were in the combination with them.

Thus the practical effect of it was that for every thousand barrels of oil that an outsider paid two dollars per barrel for, an insider had a thousand barrels carried for nothing, because he paid a dollar a barrel on his thousand, and he would receive a dollar a barrel on any thousand that anybody else carried. That was a very unjust discrimination.

I might mention other discriminations. I will give but one instance of another nature. A person applied for transportation for a large amount of oil. He was informed that the cars were not to be had. He pointed out, I think, one hundred cars then standing idle on the track. He was forbidden their use, unless he would pay a rate nearly double that which they were charging to other parties at the same time. That is another kind of discrimination.

So I might go on and give a list of discriminations covering everything. Another discrimination was between this State and the State of New York. Still another was between this State and the State of Ohio. So, I say, that the list would be practically endless; yet all that we might enumerate would be unjust, and a great many more. The defect, then, of that attempt to enumerate a list is that you cannot make it complete, and you may leave outside of the list worse things than you put in it.

I pass on, then, to the third proposition. As I say, I am anxious to get the best that we can, in the light of experience, as a guide for the future, so far as we can understand it. Then, sir, what shall we put in? It seems to me that we have the light of experience. I believe I am correct in stating the following as a legal proposition: That the universal rule of the common law, and also that upon which statutes purport to be based, is that a person is held accountable for that which is wrong, at the time and in the manner that it is done, although the same act may not be wrong at another time and at another place, under other circumstances.

Under the section which we have already adopted, any individuals or the mining company may build a railroad. They may be engaged in other kinds of business. Now, as to every other kind of business, and at all other times and places, and under all other services and prosecutions, the rule is, you must do that which is right at the time and under the circumstances when and where it is done. The courts apply that as the law, and that is the guide to the juror, so that a railroad company would be declared as doing right in charging a certain rate, perhaps, during the war, when the same rate would have been an extortion ten years before; and in the one case a jury would have said the charge is just, and in the other case they would have said it was unjust, and yet in dollars and cents it would have been precisely the same. If that is the rule of

law as to all persons, as to all services of every nature, as to all other corporations and individuals, is there any possible sufficient reason for making another rule, an arbitrary statement as to a part of the business of a railroad company? Where shall we, on the whole, get the best and most complete protection?

Can we anywhere find a better protection, on the whole, than the construction of this term "unjust" by the courts, and its applications by the jurors of the country? Is there any danger that the jurors, coming direct from the people, will misapply that term to the injury of the community in which they live, and in favor of the railroads? Can we not better trust the circumstances and facts to the charge of the court at the time, and their application by the jury understanding the whole subject? Can we not generally get better justice in that way than we can by prescribing an arbitrary rule or an arbitrary list of discriminations here in the Constitution? The word "unjust" applies as it goes along; it lays its hand everywhere, and says whenever or wherever, in all the multitude of phases of human affairs, the thing is wrong, there the jurors shall so pronounce it; though, as I have already shown, it may be different at one time from another.

Let me ask a question again. Has there been shown upon this floor anything which would require that we should apply a different rule to railroads from what we apply to all other persons; yea, to railroads themselves, upon all other subjects?

Therefore, sir, I must vote against these propositions and vote for one similar to that which the gentleman from Philadelphia (Mr. Dallas) has suggested. I had designed to read from the body of the opinion of the court in the case referred to. It is here, but I refrain.

[Here the hammer fell.]

Mr. WORRELL. Mr. Chairman: There is one objection that I shall have to make to the section now under consideration; and it follows from what I take to be the legal meaning of its language. I understand the section to embrace two propositions: First, that there shall be no discrimination against the people of this Commonwealth, with regard to the charges for freights, tolls or fares for the carrying of passengers; and second, that the corporations referred to, both domestic and those running through this and an adjoining Commonwealth, shall adopt a uniform schedule of rates, including, as well, charges for the carrying of passengers, as for the transportation of freight. If this be the fact, I object seriously to the second proposition, because the general language of the section, to wit: "No corporation engaged in the transportion of passengers" shall make this discrimination, and all shall be governed by a uniform schedule of rates, would apply to the street passenger railways of the various municipalities of this Commonwealth.

I think it is clear that they are included in the language, "corporations for the transportation of passengers;" and if it is intended, as it seems to be, that this section shall apply to that class of carriers, I desire to say its provisions would be perfectly impracticable, and I submit to this Convention that there can be no schedule of rates adopted for the carrying of passengers by street passenger railways upon a uniform basis of a certain rate per passenger per mile, unless the charges as they now exist be increased by the various companies, as the passengers generally ride but short distances.

I think that there should be some amendment which would exclude this class of carriers from the effect of this proposition, or a proviso that the section shall not apply within some specified short distance, and I should like to call the attention of the members of the Convention to the fact that this section, if adopted as it now stands, will practically destroy this branch of the business of carrying passengers; or unfairly oppress those who reside in the suburbs of the city, reached by a street passenger railway.

Mr. J. PRICE WETHERILL. I hope the Convention will pardon me for saying a word or two on this section. I cannot help thinking that we have a very difficult patient to deal with, from the number of panaceas that I find on my desk, and therefore I very modestly approach so difficult a subject. But I think, when we come to look at it in its length and breadth, we can surely be satisfied with the general proposition that no unjust discrimination by railroad or canal companies should ever be made. If we can all agree upon that as a general proposition, there may be no trouble. But the point is, how can we ascertain whether discriminations, unjust or otherwise, have been made. We can certainly arrive at that without any very long list of tolls or freight charges. We do not want to go to

a railroad company and ask them for this list. We can simply say that they shall be compelled to publish a list of their freight charges. That would not be so long or so difficnlt a matter as probably many of the members of this Convention may imagine.

Goods shipped are composed of four or five classes, and all we have to do is to compel the railroad companies to issue bulletins of the charges to be paid under those four or five classes; and when they discriminate, as my friend from Allegheny says, let them be punished as shall be prescribed by law. Is there any difficulty in that? Is that a difficult matter to fix? For instance, I feel that I have been aggrieved; I feel that an unjust discrimination has been made against me; I ask for the list, and I find that I am unfairly dealt with by that list, or if so, I can go and make the demand, and if the demand is not granted, I can see to it that the railroad company shall receive the penalty for disobedience of law. The penalty is a very easy matter to arrange also, because I am a creditor of that railroad company to the amount of my freight bill, and if I have been discriminated against unjustly in my freight, their punishment will be that I need not pay it. It does seem to me that if we can adopt some such proposition like that, it will be remedying this very difficult matter in what, in my humble opinion, I conceive to be a very easy way.

Now, in regard to the objection urged by my friend over the way, he and I are perfectly satisfied upon one point: That when transportation companies come upon the line of road, in direct competition with the freight and in direct competition with the profit of the stockholders of that road, it is an unjust and unfair thing, and it should also be regulated by law. I hope I shall be pardoned for alluding to what the president of the Pennsylvania railroad says on this subject. He states, in a report made in 1866:

"That, after many years of unsuccessful efforts to induce the New York lines to abandon their policy of committing a share of their freight business to private freight expresses, the Pennsylvania railroad company, for the purpose of counteracting the diversion of traffic from its route, caused by these organizations, and to provide at least equal facilities for the merchants of Philadelphia, assented to the introduction of similar lines upon your railways."

Why is it that we have these vast freight lines? Why is it that we have these South improvement companies, which can get their oil carried for a dollar a barrel, and the charge to other shippers is two dollars? Simply because the company has been so sharp; simply because the New York and Erie, the New York Central, and the Baltimore and Ohio railroad have connected their roadways with these competing transportation companies, over which the directors have no control, but from which, perhaps, those who manage the companies derive some profit. These are the companies that seem to be outside of the railroads, and out of the reach of law, that are giving us so much trouble.

Let us adopt a provision that every railroad or canal company shall allow any individual, or any transporting company, to use its roadbed and its motive power, by a regular, stated, and fixed tariff of toll. Then the Union line, the Empire line, the South improvement company, against which we find so much fault, and all these other companies, will be placed on the same footing as any other company wanting to break up these transportation monopolies, or any individual who feels himself aggrieved by them. Then, having fixed the rate, if there is any discrimination as to motive power, and as to the use of the roadbed, punish the railroad company violating the same, by a provision as prescribed by law. Enact such a law, and if they violate that law, let the penalty, as the gentleman from Philadelphia said, come with swift and sure justice to the parties violating them.

With these few remarks, I beg leave to offer the following, in the hope that, perhaps, it may assist the Convention in settling this very difficult point:

"No unjust discrimination in charges for freight or passengers, in any respect whatever, shall be made by any railroad, canal or transportation company, and such companies shall publish the rate of freight upon which each class of goods shall be carried by them over their respective roads, and such penalty as shall be provided by law, shall be imposed for any deviation from the published rates; and each railroad or canal company shall publish a tariff of charges at which they will furnish roadway and motive power for cars or boats of individuals or companies, and a penalty shall be imposed by law for any deviation from said published tariff."

Before presenting this amendment, I desire to say that we have heard here to-day what may be called the professional opinion in regard to this section, and in regard to the management of railways. I present this in my humble way as the mercantile opinion of the method of settling this difficulty, and to substantiate what I say, and to endorse the remarks I have made, I hold in my hand a report of the Committee of the Philadelphia Board of Trade on Inland Transportation, recommending the two provisions which I have presented.

Mr. M'ALLISTER. Mr. Chairman: I desire to say a word before the Convention passes upon the amendment that I have offered. It is designed as a substitute for the eighth, ninth and twelfth sections reported by the committee. I object to the ninth section as reported by the committee:

First, because it introduces unjust discriminations against the trade and commerce of other States.

Second, because it interferes with the ancient and well-defined rules of trade, which have never before been interfered with, the difference in freight rates, if any, being the same as regulate the wholesale and retail trade of merchants.

Third, because the section would impose upon the great mass of our people more and greater evils than those now complained of, in the increased price of breadstuffs, building materials, &c.; this increase being inevitable because of inadequate supply arising from increased rates of transportation. The western producer will not, of course, ship at a sacrifice, and upon the eastern consumer will fall the entire burden of increased transportation. I object, then, to this section, because it goes further than it should.

I object especially to the twelfth section, because it does not go as far as it should. What, let me ask the committee, will be the effect of the adoption of this provision? It attempts to establish, on any series of railroads incorporated by this and other States, leased by a Pennsylvania corporation and under one general control, a uniform rate of fare and freights, and to secure for persons and transporters from one extreme of the State to the other no higher charges for fare for each person per mile, or for freight for each ton per mile than a *pro rata* of the charges from San Francisco or from Chicago to Philadelphia or New York, or from New York to Baltimore, Washington, Norfolk, Richmond or New Orleans; the manifest effect of which would be to divert the travel and commerce of the west and the east, the north and the south, from the railroads of Pennsylvania to the competing railroads of adjoining States, to the loss of our railroads, and to the great injury of our cities.

Now, Mr. Chairman, the amendment proposed is designed to avoid these evils, and to remedy the specific evil complained of; and let me say here in explanation that, without special rates, Pennsylvania can never thrive as a State; her mineral and manufacturing resources never can and never will be developed. We must have special rates; and the amendment is not designed to prevent special rates to things: it is designed to prevent, and does prevent, special rates to persons. It is the special rate to the individual person that is the evil, and not the special rate to the thing.

Let me explain this. Just now men are out all over the breadth of Pennsylvania inquiring for sites for manufactures of iron, for manufactures of woollens, for manufactures of machinery, for all kinds of improvements. The very first inquiry that they make when they get to a place is, what does transhipment cost, shipment to the east, shipment to the west? And when they receive an answer to this inquiry, in nine cases out of ten they say, "we cannot live here, we cannot establish our manufactory here without special rates," and they go to the railroad company to get these rates, and in nine cases out of ten they get them. Why do they get them? Because it is for the interest of the railroad to have these articles manufactured, that their material for shipment may be increased, and therefore they grant the special rates.

Now, what does this amendment do? It does not prevent the granting of these special rates, but it says when they are granted to A, they shall be granted to B, who goes to manufacture at the same place. There shall be no preference to an individual, whether he be inside the ring, and inside of the corporation, or outside of it. If you give it to one, then you must give it to any citizen of this Commonwealth who will go to manufacture the same thing at the same point. Is not that right? Is not that just? Surely it is. The resources of the State will then be developed, and when special rates are granted everyone will have them. We are building houses now in Bellefonte out of stone obtained

in Cleveland under a contract for special rates by a builder.

Now, this proposition would require these same special rates to be extended to every builder in Bellefonte who wanted stone from the same place. It is right that he should have it, and he will get it, because it increases the tonnage upon the railroad.

Mr. Chairman, having but a very limited time, I beg leave to say a few words upon another branch of this first section, which has not been touched; and it is the subject of free passes. We have had a great deal said about the transportation of the productions of the earth outside of man, but in reference to the transportation of man we have heard very little said. Shall there be any preferences given to the man? I trow not. The section strikes at all free passes. They have been given to members of our Legislature; they have been given to our executive officers; they have been given to our judiciary the moment they entered upon the discharge of their offices; and why? To conciliate favor, and for no other purpose on the face of this earth; and if to conciliate favor, then it is a corrupt purpose, it is a purpose on which this Convention should set its seal of disapprobation. Let us have no conciliation of favor with the Legislature and the executive officers—the Treasurer, the Auditor General, and all the men who are to act upon these corporations; and above all, Mr. Chairman, let us have no such thing in the judiciary, Time and again my clients have come to me in my practice and said to me: "Mr. M'Allister, we have no faith in a judge who, for the last ten years, has been riding at the expense of this corporation with which we are in contest." It is time that this thing should stop.

It may be said that this is a small thing. Let us see how small. I live myself in the centre of Pennsylvania, and Harrisburg is not very far from my home, and yet it takes four dollars and seventy-five cents to take a man from Harrisburg to Bellefonte. Our members of the Legislature go and come once a week during the legislative session, uniformly. That is nine dollars and fifty cents; thirteen times nine dollars and fifty cents, supposing the session to be thirteen weeks, and it is generally longer, would be one hundred and twenty-three dollars and fifty cents. I was told by a member of the Legislature that, at the last session, just on the eve of the passage of the bill which gave the Pennsylvania railroad company increased powers, its agents came along and the agents of other companies, besides, I believe, called for their tickets and endorsed on them "and family," so that the whole family were transported, the head of the family at a cost of one hundred and twenty-three dollars and fifty cents, and the family say at a like cost, one hundred and twenty-three dollars and fifty cents; and thus we have at least two hundred and forty-seven dollars a member. But the ticket is for the year and not for the session. We must put it then at four times one hundred and twenty-three dollars and fifty cents, and we have four hundred and ninety-four dollars—almost five hundred dollars—one-half the member's pay.

But suppose, what can be shown to have occurred, that thirty tickets are given to a member of the Legislature and thirty tickets to certain candidates to secure their election. These are given only to favorites, but they are given to enable them the better to electioneer. That is done time and time again; and we had it stated in committee by a gentleman, that a member of the Legislature told him, that he would rather have those tickets than five thousand dollars to secure his election. Suppose, then, that we count nothing for the electioneering tickets, but count thirty tickets to the member, we have $14,790 as the expense of one man in the Legislature. Multiply that by 133 and we have $1,974,770 as the cost to the railroads of the free tickets. I believe this greatly below the mark. I believe the Pennsylvania railroad company alone has granted free passes to the extent of two millions a year. But these tickets are furnished by all the railroads in the State; all poured into the lap of the legislator to conciliate his favor; all poured into the lap of the Executive and the executive officers to conciliate their favor, and into the lap of the judge the moment he is elected.

Now, let us see one moment what Mr. Ames, a man of some notoriety, said on this subject, and how he looked at it; and you know he is an *honest* man—Oakes Ames. [Laughter.]

"It is impossible," said he, in his defense in Washington, last winter, "it is impossible to impute to me the purpose to corruptly influence members of Congress by conferring upon them pecuniary benefit without adequate consideration, unless the benefit conferred is of such a character as to necessarily create an incli-

nation to aid the donor to the detriment of the public. There is but one escape from this position, and that leads to a lower deep. It may be said that the giving by any person and the receiving by a member of Congress of any gratuity whatever, or, what is identical therewith, selling and buying at an inadequate price, imports corruption in both the giver and receiver, the buyer and seller."

Just so I say. I agree with Oakes in that:

"Whoever proclaims this doctrine should instantly set on foot the inquiry how many railroad presidents and superintendents have presented to members of Congress the value of transportation over their respective railroad lines, and by whom the same have been received, to the end that justice may be done, and the one presented for indictment and the other for expulsion. The dimensions and value of the gratuity have nothing to do with the question. There is no middle ground on which to stand."

So Oakes Ames considers the giving of these railroad passes the initiatory step to all corruption; and it is a fact.

Mr. HAZZARD. May I ask the gentleman a question? His amendment allows the furnishing of free transportation "to poor and indigent persons, as objects of charity." Are not the members of the Legislature in that category? [Laughter.]

Mr. M'ALLISTER. If they are objects of charity, if they do not get adequate compensation, that is a sufficient reason why their compensation should be increased. If the Executive and the executive officers do not get a sufficient compensation, if the judiciary do not, in the name of all that is just give them a proper compensation. I would rather give them fifty thousand dollars a year even, directly, than to allow this bonus to come to them as a subsidy from our railroad corporations. It would be better, infinitely better. It is the leading step to corruption, and the people of the community see it in that light, and they say: "If the members of the Legislature can receive these subsidies, why shall we not receive a bonus for our votes; why shall we not participate in the spoils?" It is not only corrupting the Legislature, and the Executive and the judiciary, but the great masses of the people themselves. It is spreading its evil like a poison throughout the entire community.

I object to the twelfth section of this report, because it only prohibits railroad, canal and other corporations engaged in the business of common carriers or transporters to do transporting gratuitously. It may be evaded like an act of the New York Legislature was evaded, when they prohibited free passes, and the next day the railroads issued a card for travel, and charged twenty-five cents for it, and therefore could say it was not gratuitous. I object to it upon that ground. Let us have no such evasion, and let us begin reform at home.

The CHAIRMAN. The gentleman's time has expired.

Mr. HUNSICKER. I ask that, by unanimous consent, the gentleman be allowed to proceed.

Mr. REYNOLDS and Mr. WHERRY. I object.

Mr. HUNSICKER. I do not intend to make a speech, Mr. Chairman; but I rise simply to finish the speech of my friend from Crawford (Mr. Minor.) His time was up before he got through, and I wish to conclude his argument. The case that he cited was the case of the Chicago and Alton railroad company *vs.* the People, *ex rel.* Koerner *et al*, and the question decided in that case was this: The amended Constitution of Illinois, which is the model that some members have set up for this Convention, contained this provision: "The General Assembly shall pass laws to correct abuses and prevent unjust discriminations and extortions in the rates of freights and passenger tariffs on the different roads in the State, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises."

Under that article of the Illinois Constitution, the Legislature of that State passed a law against any discrimination at all, and the Supreme Court of that State decided that that was unconstitutional. I propose to read a paragraph or two from that decision, so that gentlemen can see exactly what was decided.

Mr. COCHRAN. Will the gentleman permit me a moment? I understand the gentleman from Montgomery to say that the Legislature of Illinois passed a law forbidding all discrimination whatever?

Mr. HUNSICKER. Yes, sir.

Mr. COCHRAN. The law of the Legislature of Illinois was that there should be no higher rates charged for shorter than for longer distances.

Mr. HUNSICKER. I have the decision here, and I think I had better read a part of it; and I do, as follows:

"This provision expressly directing the Legislature to pass laws to prevent *unjust* discriminations, is a recognition"——

Mr. DALLAS. Will the gentleman from Montgomery allow an interruption?

Mr. HUNSICKER. Certainly.

Mr. DALLAS. From what paper are you reading?

Mr. HUNSICKER. The Chicago *Legal News*.

Mr. DALLAS. Of what date?

Mr. HUNSICKER. Saturday, March first, 1873. That is late enough.

Mr. DALLAS. I have the paper, and it is good authority.

Mr. HUNSICKER. Mr. Chairman: The decision which I was about to read, and which, in this case, has such practical application, is this:

"This provision expressly directing the Legislature to pass laws to prevent *unjust* discrimination, is a recognition of the palpable fact that there may be discriminations which are not unjust, and by implication it restrains the power of the Legislature to a prohibition of those which are unjust. That was undoubtedly the object of the Legislature in passing the existing law. This is clearly shown by its title. But the act itself goes further."

Now, if the chairman of the Committee on Railroads and Canals will pay strict attention to this decision he will see that it was the act of Assembly itself which was declared unconstitutional.

"It forbids any discrimination whatever under any circumstances"—[Mr. Cochran. "The judge was wrong."]—The judge may be wrong, but that is what he says: "It forbids any discrimination whatever, under any circumstances, and whether just or unjust in the charges for transporting the same classes of freight over equal distances, even though moving in opposite directions, and does not permit the companies to show that the discrimination is not unjust. The mere proof of the discrimination makes out a case against the railway companies which they are not allowed to meet by evidence showing the reason or propriety of the discrimination, and then, upon this sort of *ex parte* trial, imposes, as a penalty for the offense, a forfeiture of the franchise, which would often be equivalent to a fine of millions of dollars. The object of the law is commendable, but such a proceeding, to be followed by such a penalty for the first offense, cannot be sustained."

Then he winds up the opinion of the court as follows:

Mr. CAMPBELL. Will the gentleman allow me to interrupt him?

Mr. HUNSICKER. I am almost done, and then the gentleman from Philadelphia can have the floor. I am not making a speech; I am only reading the decision of the Supreme Court of Illinois.

"The opinion of the court is, that while the Legislature has an unquestionable power to prohibit unjust discrimination in railway freights, no prosecution can be maintained under the existing act until it be amended, because it does not prohibit unjust discrimination merely, but discrimination of any character, and because it does not allow the companies to explain the reason for the discrimination, but forfeits their franchises upon an arbitrary and conclusive presumption of guilt, to be drawn from the proof of an act that might be shown to be perfectly innocent. In these particulars the existing act violates the spirit of the Constitution.

"The judgment of the district court, ousting the appellant of its franchises, must therefore be reversed."

Mr. CAMPBELL. Will the gentleman from Montgomery read a little further?

Mr. HUNSICKER. I have read the conclusion of the opinion.

Mr. CAMPBELL. Well, read a little further.

Mr. HUNSICKER. I will read the next line. "Judgment reversed," is the next line after that. [Laughter.]

Mr. CAMPBELL. Will the gentleman read the next line?

The CHAIRMAN. The gentleman from Philadelphia must address the Chair.

Mr. HOWARD. Did not the judge in that case decide the act of the Legislature to be unconstitutional, simply and solely, because the word "unjust" was used in the Constitution of Illinois, and was omitted in the act of Assembly?

Mr. HUNSICKER. No, sir; not upon that ground only, not in that exact form.

Mr. HOWARD. That was the decision as I read it.

Mr. HUNSICKER. The discussion, as I have just read it, was that, because the Constitution contained the words, "unjust discrimination," and because the act of Assembly said that there should be no discrimination whatever, just or unjust, the Supreme Court decided that act unconstitutional.

Mr. CAMPBELL. Mr. Chairman: The gentleman has just read from the opinion of the majority of the Supreme Court of the State of Illinois, in a recent case, which has attracted a great deal of attention, and which, I understand, has not yet been finally determined, but is to be taken up to the Supreme Court of the United States. The gentleman from Montgomery says that the judge may have been wrong in his opinion. Well, now, as this question interests the people very much, I would like to state how the people of Illinois regard the decision of their Supreme court in the first place, and the question of railway freights in the other.

When that decision was rendered in Illinois there was a howl of indignation from one end of the State to the other. The judges of the Supreme Court were denounced at public meetings, by the farmers and others of the people. The public press took up the subject, and so much bitterness and opposition were developed, that a judge (the chief justice, I believe,) of the court which delivered that opinion condescended to publish, in one of the Chicago journals, an anonymous communication, in which he attempted to pacify the people by *explaining* the opinion of the court, and not only that, but he had himself interviewed by a reporter of one of the papers, and the conversation purporting to be had at that interview was also published. It appears on the very journal from which the gentleman from Montgomery has read. This incident shows the interest that the people of Illinois are taking in this great question. The same interst is taken all over the north-western States, and to a large extent in this State also, and we had better, if we can, in this Convention, adopt some provision by which we can do away with the evils regarding discrimination, that the people are complaining of so bitterly. I think we ought to vote down all the amendments which have been offered except the one proposed this morning by the chairman of the committee allowing certain discriminations to be made in the carrying of freight within very short distances, and then adopt the section, with his amendment added thereto. That would accomplish some good, and give to the people something that they really want.

Mr. COCHRAN. I only want to say a few words by way of explanation, with regard to this Illinois case, which has been so much talked about. That case came up in the first instance before a judge of the circuit court, and he sustained the act of Assembly. It so happened that when I was studying up this subject, I came across that decision upon the act of Assembly, which was published and quoted, and I quoted these very words: "No greater charges shall be made for a shorter than a longer distance." Those words are a literal extract from the act of Assembly of the State of Illinois. The question that came up before the judge of the circuit court was, I believe, against the Chicago and Alton railroad company. They had charged more to carry from some intervening point than they did to carry to Bloomington, some ten or twelve miles less distance than it was to Bloomington. The Chicago and Alton railroad charged a man to carry him to that point more than they did to carry him to the other, and he brought suit under that act of Assembly, which prohibited charging more for shorter than for longer distances. It was on that very case that the question was decided in Illinois.

The CHAIRMAN. The question is on the amendment to the amendment.

Mr. WHERRY. I ask that it be read.

The CLERK. It is to insert, after the word "canals," in the first line, these words, "are hereby declared public highways, upon which, under such regulations as may be prescribed by law, all persons have an equal right of having their persons and property transported, at rates of fare, freight and tolls which shall be the same to all, never higher for a shorter distance than for a longer distance upon the same road; and for equal distances always the same; and the Legislature shall by law determine the maximum of rates."

Mr. WHERRY. Mr. Chairman: I ask for a division of the amendment at the words, "the same to all."

Mr. BUCKALEW. The amendment cannot be divided in that manner.

The CHAIRMAN. Where does the gentleman from Cumberland desire a division?

Mr. WHERRY. After the word "all," and before the word "never."

The CHAIRMAN. The Chair is of opinion that it is not divisible at that point.

Mr. WHERRY. That at the words, "upon the same road."

The CHAIRMAN. At the end of the words, "always the same," this amendment would be properly divided.

Mr. WHERRY. I desire it divided after the words, "upon the same road."

The CHAIRMAN. Then the second branch would have no meaning. The only place where the amendment is divisible is at the word "same," at the close of the paragraph. It can be so divided, if that will answer the purpose of the gentleman.

Mr. WHERRY. No, sir. That would not.

The CHAIRMAN. Then the question is on the amendment to the amendment.

The amendment to the amendment was rejected.

The CHAIRMAN. The question is on the amendment of the gentleman from Centre.

Mr. M'ALLISTER. The alterations suggested during the argument of this afternoon, of the gentleman from Allegheny, were, as I understood, to strike out the word, "uniform," and to insert, after the word "road," the words, "uniform as to each class of freight." Now that amendment so made——

The CHAIRMAN. No amendment of that kind was offered. That modification was suggested.

Mr. M'ALLISTER. I understood the modification to be inserted.

The CHAIRMAN. It was suggested, not made.

Mr. DALLAS. Mr. Chairman: I now propose to offer the amendment of which I gave notice, and which I explained this morning, as a substitute for the amendment offered by the gentleman from Centre.

The CHAIRMAN. A substitute is not in order. The gentleman must offer it as an amendment.

Mr. DALLAS. Then I offer it as an amendment, and move to amend the amendment by striking out all after the word "section," and inserting——

The CHAIRMAN. The amendment to the amendment will be read.

Mr. J. PRICE WETHERILL. Is an amendment to that in order?

The CHAIRMAN. Not now. An amendment to the amendment has been submitted, and will be read.

The CLERK read the words proposed to be inserted by Mr. Dallas' amendment, as follows:

"No unjust, undue, or unreasonable discrimination in rates of charge for transportation of freight or passengers, or in any respect whatever, shall be made by any railroad or canal corporation; and the Legislature shall provide for the imposition of adequate penalties for breach of this section."

Mr. D. W. PATTERSON. Mr. Chairman: I had not intended saying anything on this subject, but desired simply to vote continuously and constantly in favor of what I conceived would tend to reform certain abuses. But there are so many gentlemen on this floor who have stated that nothing can be done in this direction, or that what is attempted to be done is not right, but on the contrary, will aggravate the very evils of which we complain, that I am induced, under these circumstances, to make a few remarks. It seems to me that this question is one, if not the most important, at least as important as any that have come or can come before this Convention. I have always been under the impression that two great questions which we will have to act upon as a Convention superinduced the calling of this body. The public interest on two great questions, and the general belief that reform was indispensable in each, brought this Convention into existence to afford the needed relief. One of these was the desire to correct special legislation, to throw restraints around the power of the Legislature, and the other was the apprehension in the public mind that the power of the corporations, and particularly railroad corporations within the State of Pennsylvania, was becoming so great as to threaten the public safety.

When the former subject was before this Convention, the correction of the evils of special legislation, it found many champions upon this floor. The gentleman from Centre, (Mr. M'Allister,) the gentleman from Carbon, (Mr. Lilly,) the gentleman from Fayette, (Mr. Kaine,) the gentleman from Montgomery, (Mr. Hunsicker,) and several gentlemen from the city of Philadelphia, were the great advocates of reform, when reform was directed to the curing of legislative ills. But now, when it is attempted to correct abuses, the evil of which, and the prevalence of which, throughout this State, more than any other cause, brought this Convention together, these gentlemen, as a general thing, rise and express their indignation at any measure that aims at reform, or else remain perfectly mute, and as quiet as the grave, suffer the debate to go on without participation as far as they are concerned.

There may be several reasons for this apparent want of consistency, and one of

them, I conceive, is this: We know that immediatly after the election of delegates to this Convention, it was publicly announced that there were eighteen or twenty-three delegates elected to this body who were either officers or directors of corporations, or their hired counsel. The statement was uncontradicted, and therefore may be accepted as true. It has never, to my knowledge, been denied, nor have I ever heard of the declination of any of these gentlemen, who hold seats on this floor, of any of their respective positions in these corporations. These gentlemen, no doubt, honestly desire the perpetuation of railroad power. They are officers, directors and counsel of railroad corporations, who, having been born, raised and educated in connection with these great companies, seriously and honestly consider them the benefactors of the public. They honestly—and I speak my serious convictions when I affirm it—they honestly believe that it is only when these corporations retain all the powers they have, and secure all the privileges that it is possible for a free people to grant, that the public are benefited and general prosperity will prevail. I give them the credit of sincerity in this conviction. It is natural they should believe so, and hence it is not strange that they, occupying their business position with these corporations, so educated by and intimately connected with these great financial companies, should here denounce any attempt to reform the abuses of this corporate power, of which we have not heard to-day for the first time, but which have been publicly specified and complained of for months and years past.

Another reason for this inconsistency may result, as I have said, from the fact that beyond those particular officers and gentlemen who are raised up in connection and closely associated with these corporations, there are other gentlemen who are yet occupying positions in relation to these corporations, and which bind them to take positions on this question which are inconsistent with reform. And hence it is that some gentlemen who, when the first section was introduced, and in which it was left to the Legislature to give some effect to the section, object to it, because that provision was in it, and immediately jumped up and moved to strike that out because that branch of the government, as they alleged, was unworthy to be trusted in correcting abuses, and was not a fair agent to represent the public. Now, here is an amendment offered by the gentleman from Centre, that provides in two instances that the subject be made effective by the law power and under regulations prescribed by the Legislature, and we have not heard any objection from those gentlemen on account of that peculiar wording and provision of this proposed amendment.

In looking on here, the last two or three days, and calmly surveying all the course of those gentlemen, some of whom have spoken on this floor, and others of whom have remained as silent as the grave, I am apprehensive that we shall not meet the expectations of the people of the Commonwealth. We find one gentleman in one part of this Hall, when a section in this report is read, get up, and with all the gravity possible saying that he cannot understand this section, and he does not know what it means, and he would like it to be explained, because it appears to be entirely ineffectual or inoperative, when that gentleman, in all other things, is well known by every member of this Convention to be alive at all times, and have a sufficient discernment to understand anything in relation to law. You will hear another gentleman, in the same part of the Hall, get up and say "Halt! I ask gentlemen to halt;" And another will get up and say, "why, the railroads can afford to pay thirty millions, if this report is adopted;" and the next moment those gentlemen vote against this report in all its provisions; and then another gentleman, from Philadelphia, will get up and proclaim, in the face of this Convention that he, too, is in favor of reform, but that the section here means nothing; that it will effect nothing; and, therefore, he cannot support it; and then another gentleman will get up and say, "I think it entirely out of the question to adopt this report; it is not in the proper words, nor has it had proper consideration, and I move that it be re-committed, and that four railroad men be added to this committee"—a direct reflection and insult to the committee; but, sir, from my knowledge of the gentleman who made the suggestion, I know it was not so intended. Every person knows where that gentleman stood in regard to corporations. And thus it is that all around me men get up here and pursue a course calculated to deceive the artless and the unsophisticated, if there are any such in this Convention, and with all the innocence imaginable,

intimate that they want to reform, and want to correct abuses, but that there is nothing here which will do it.

Mr. CUYLER. Mr. Chairman; I rise to a point of order. The point of order is, that the proper discussion of a question is not the arraignment of the motives of gentlemen who differ in opinion from the speaker, and that the imputation of an intent to deceive is not parliamentary.

Mr. D. W. PATTERSON. I stand corrected, if the gentleman so understood my remarks.

The CHAIRMAN. The Chair sustains the latter branch of the point of order.

Mr. CUYLER. The gentleman charged some members, directly, with intent to deceive.

The CHAIRMAN. There is necessarily a good deal of latitude to be allowed in debate, but the gentleman will confine himself to the merits of the question.

Mr. D. W. PATTERSON. I certainly shall not charge any gentleman on this floor directly with intent to deceive. I was only trying to explain as well as I could the apparent inconsistency of some of my friends occupying places on this floor.

Now, as regards this question, I certainly have no prejudices against railroads or corporations. I am an old Whig myself. In 1846, when this Pennsylvania railroad company was incorporated, I was a corporation man. In 1847, when they wanted additional legislation, and did not get it until 1848, I was in favor of corporations to develop the State of Pennsylvania. I think them indispensable. I think they are benefactors of the people, when acting within their proper sphere, and I have always supported them when in the public councils of the State, provided they were kept within their proper sphere.

Now, why is it that so much apprehension is manifested in the public mind? Because these corporations have all got beyond their proper sphere; they have got beyond common carriers. They were not satisfied with obtaining the right of carriage and charging fair rates for carrying individuals and freights; but they wanted the right to go into every ramification of the industrial interests of this Commonwealth and other Commonwealths, and they have now gotten it. Now, how many supplements do you suppose our friends of the Pennsylvania railroad have had since their original act of incorporation in 1846? I do not know how many they have had in the last seven years, but up to 1865, they had just seventy-one supplements passed to their original charter, and I am told by a gentleman familiar with the subject, that they now number one hundred and twenty-one, though that may be too great. How many additional supplements to the original act, another great corporation has got since its original incorporation, I cannot tell, as I have not had the time or opportunity to count them. But when the people see that to be the cause, and see that the Legislature is completely in the hands of corporations, that passing acts of Assembly, like the acts of 1861 and 1869, allowing these large corporations to unite, and to consolidate with every ramification of public improvement in the way of railroads or canals, it is no wonder that they are apprehensive. Why, just listen to this section of the act of 1861:

"It shall be lawful for any railroad company chartered by this Commonwealth to merge its corporate rights, powers and privileges into any other railroad company so chartered, connecting therewith; so that by virtue of this act such companies may be consolidated, and so that all the property, rights, franchises and privileges then by law vested in such company so merged may be transferred to and vested in the company into which such merger shall be made."

And the acts of 1865 and 1869 are just as broad, if not broader. Why is it that the public mind is apprehensive when they find that consolidation has taken place, with almost every other improvement throughout every little valley in all this Commonwealth? Why, they know that the object of corporations of this character, as admitted by my friend over the way the other day, is to make money. That is one reason why the public mind is apprehensive, and other reasons of the unrest of the public are that they see these companies not only going into the carrying trade, but becoming merchants and manufacturers and traders, and thereby crushing out all individual enterprise, all individual industry and productive engergy along their lines, and because it is impossible for an *individual* to compete with the combined power of money and men.

I do not blame those gentlemen who occupy positions at the head of these corporations for trying to make money—gentlemen who believe as they do. I have no reflection to cast upon their character as business men or as private individuals.

I have known many of them long by reputation, and many personally. I respect their high talents, their great executive ability, and I believe they would do nothing but what they profess to do; but I say the effect and use of their great corporation powers is such that there is an unrest in this Commonwealth that will not down until something is done to correct these abuses. And again, because this report prevents consolidation, and prevents these companies in the future from buying land and becoming owners in fee simple and engaging in manufactures, some of my friends on this floor begin to fear the truth of certain answers given to questions by gentlemen on this floor, to wit: That nothing can be done to correct the abuses that now exist, that corporations having already had their grants—gentlemen say those grants cannot be taken away; and under that impression my young friend from Luzerne and others say, "if that is the case, then let us attempt nothing, because the young corporations that are to grow up in the future under legislation, will have no chance at all." I would say to my friend from Luzerne, and others on this floor, do not vote against this report for that reason. These abuses will be corrected. If the Pennsylvania Legislature grant privileges that are detrimental to the great mass of this Commonwealth, and go beyond their powers, it will be corrected, for although we call the Pennsylvania Legislature the supreme power of this Commonwealth, there is a power higher than that.

The CHAIRMAN. The gentleman's time has expired.

Mr. G. W. PALMER. I move that the gentleman's time be extended.

["No!" No!"]

The CHAIRMAN. Objection is made. The question is on the amendment of the gentleman from Philadelphia, (Mr. Dallas,) to the amendment of the gentleman from Centre.

Mr. ADDICKS. Let it be read.

The CLERK read as follows:

"No unjust, undue, or unreasonable discrimination in rates of charges for transportation of freight or passengers, or in any respect whatever, shall be made by any railroad or canal corporation; and the Legislature shall provide for the imposition of adequate penalties for breach of this section."

Mr. DODD. I wish to say a word in relation to the amendment now pending. In my opinion, it is not sufficiently specific to cure the evils under which we are now suffering, and which it is the evident desire of this Convention to remedy, if possible.

I have before me, and would like to refer this committee to, the decision of the Supreme Court in the case of Sanford *vs.* the railroad, in 11 Harris. It will be found by that decision that the common law of this State is now all that will be obtained if this amendment is carried; in fact, the court, I think, goes a little further than this amendment would go. Judge Lewis in that case says:

"That by the act of June 16, 1863, the court have powers, as a court of chancery, in regard to the control of corporations, except municipal. A railroad is a public highway for the public benefit. It is bound to receive and carry all goods offered for transportation. It results from the nature of the privileges conferred by the charter that the benefit should be extended to all alike, and that no special privileges should be granted to one man, or set of men, and denied to others. The power to regulate the transportation on the road does not carry with it the right to exclude any particular individual, or to grant exclusive privileges to others. Competition is the best protection to the public; and it is against the policy of the law to destroy it by creating a monopoly of any branch of business. Limited means may, perhaps, limit the amount of business done by a railroad company, but it can never furnish an excuse for appropriating all its energies to any particular individual. If it possessed this power, it might build up one set of men and destroy others; advance one kind of business, and break down another, and might make even religion and politics the test in the distribution of its favor. A regulation depriving any person of the benefit of the road, or granting exclusive privileges to others, is against law, and void."

That is the law in Pennsylvania to-day; but in spite of this decision, and in spite of the law, we well know that almost every railroad in this State has been in the habit, and is to-day in the habit, of granting special privileges to individuals, to companies in which the directors of such railroads are interested, to particular business, and to particular localities. We well know that it is their habit to break down certain localities and build up others, to break down certain men in business and build up others, to monopolize certain business themselves by means

of the numerous corporations which they own and control; and all this in spite of the law, in defiance of the law.

The gentleman from Crawford has referred you to the South improvement company's company scheme, which transpired but a year ago, when the leading lines of this State, and of other States, conspired together to grant rates of freight to a corporation which they owned and controlled, that would give that corporation the monopoly of the entire oil business of this State, amounting to twenty millions a year. That corporation was created by the Pennsylvania Legislature, along with at least twenty others, under the name of improvement companies, within a few years past, all of which corporations contain the names, as original corporators, of men who may be found in or about the office of the Pennsylvania railroad company in Philadelphia when not lobbying at Harrisburg. The railroads took but one of those charters which they got from the Legislature, and by means of that struck a deadly blow at one of the greatest interests of the State. Their scheme was contrary to law, but before the legal remedy could have been applied, the oil business would have lain prostrate at their feet had it not been prevented by an uprising of the people, by the threatenings of a mob, if you please, by threatening to destroy property, and by actually commencing to destroy the property of the railroad company; and had the companies not cancelled the contract which Scott, and Vanderbilt, and others, had entered into, I venture to say there would not have been one mile of railroad track left in the county of Venango; the people had come to that pitch of desperation.

Now, sir, I say here, that unless we can give the people a remedy for this evil of discriminations in freight, they will sooner or later take the remedy into their own hands.

It is well enough to say that there shall be no *unjust* discriminations; but the railroads can enter into such a contract in relation to certain business, and have the entire control of that business, monopolize it, whether it is the lumber business of Williamsport, or the coal business of Scranton, or the oil business of Venango, before you can appeal to the law or prevent their action. What I desire to say here is, that we must be specific in relation to this matter; we must ourselves declare certain things to be unjust. We need not leave it to the Legislature, and we need not leave it to the courts; we can say here that certain discriminations are unjust and shall not be made; and we must say, if we mean to give our words any effect whatever, that if such discriminations are made, it shall work a forfeiture of the charter. Without that, our language will be worthless.

There is nothing before us that has met my views entirely; but I am in favor of something like the amendment that has been offered by the gentleman from Centre (Mr. M'Allister.) I would strike out all that is said in relation to passengers. You cannot do a community much injury by discrimination in relation to passengers. That effects the individual. It may be wrong; but we might apply the maxim, *de minimis non curat lex*. But the moment you discriminate against any locality, or against any business in freights, when you allow a secret drawback or rebate to one man, or one set of men, or one manufacturing company, you destroy the business of every one in competition with that company; and by allowing railroads this power you place every business interest in the State, whether it be mining or manufacturing, or whatever it be, at the mercy of the railroads.

I wish to retain the language of the latter part of this section, that "no abatement shall be made in favor of any individual or individuals, corporations or partnerships, either by the granting of special rates, the allowance of a drawback, or in any other way or manner." I would not be less specific than that; and I hope that we shall adopt entirely the second section in relation to other corporations which are owned and controlled by the railroads, and that we shall annex the penalty to both sections or forfeiture of charters. We will not remedy this evil in any other manner. I am more particular about the penalty than anything else.

The CHAIRMAN. The question is on the amendment of the gentleman from Philadelphia, (Mr. Dallas,) to the amendment of the gentleman from Centre (Mr. M'Allister.)

The amendment to the amendment was rejected, there being, on a division, ayes, forty; noes, forty-nine.

The CHAIRMAN. The question now is on the amendment of the gentleman from Centre (Mr. M'Allister.)

Mr. J. PRICE WETHERILL. Now I desire to offer the following amendment to the amendment:

"No unjust discrimination in charges for freight or passengers, in any respect whatever, shall be made by any railroad, canal or transportation company; and such companies shall publish the rate of freight upon which each class of goods shall be carried by them, and over their respective roads, and such penalty as shall be provided by law shall be imposed for any deviation from the published rates. And each railroad or canal company shall publish a tariff of charges at which they will furnish roadway and motive power for cars or boats of individuals or companies; and a penalty shall be imposed by law for any deviation from said published tariff."

Mr. LILLY. I suggest to the gentleman from Philadelphia that he strike out all that refers to passengers.

Mr. J. PRICE WETHERILL. I have no objection to that modification.

The CHAIRMAN. The amendment to the amendment will be so modified.

Mr. D. W. PATTERSON. I desire to say on this amendment about "transportation companies," they are the very creatures of the carrying corporations— the creatures that my friend on the right (Mr. Wetherill of Philadelphia) made a big speech about this morning, condemning them, and strangely passing over the authors of their being. A few words now in conclusion of some remarks that I made on a previous amendment.

When my time expired, Mr. Chairman, I was remarking that there was a higher power than the Legislature, and that was the Constitution of this Commonwealth; and when we read the provisions of the Bill of Rights, we need not apprehend that abuses that affect the whole body politic injuriously will not be corrected. I have great confidence in the people, and when their rights are backed up by fundamental law and fundamental provisions, they will be heard, and legislation which is injurious, or which goes beyond the powers delegated, will be brought back to a proper and safe position. The first section of the Bill of Rights of the Commonwealth of Pennsylvania reads thus:

"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."

The second section says:

"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."

As long as we have that to stand upon, depend upon it, whatever powers may be granted to corporations, however large in wealth and influence and number they become, whatever may be the decisions of the State courts or of the Supreme Court, if they take away those fundamental and inalienable rights of the citizen, the evil will be corrected sooner or later.

And in regard to the legislation of this State, it is within the province of the courts to-day to correct it the same as they corrected the legislation exempting from taxation a large corporation, after the sale of the public works. The Supreme Court of this State decided in that case, Mott *vs.* the Pennsylvania railroad company, that it was not competent to alienate a right of sovereignty such as taxation. Neither is it competent for the Legislature, on the same ground, presuming to proceed upon the right of eminent domain, to give your land or mine away to any corporation of men for the purpose of enriching individuals when the public are not benefited. The definition of eminent domain, if I recollect it aright, is the "right of the State to appropriate the property of the subject or citizen *for public uses*, at the same time affording him a compensation for such taking." But whenever those grants of the Legislature go beyond that, and appropriate your property or mine, not for public uses, not for the public benefit, not for *the public convenience*, the courts to-day can put their hands upon every particle of an act of the Legislature that grants powers beyond that.

Is it not true that powers have been granted to corporations away beyond the province of common carriers, and beyond that province where the public, as a public, are interested? I need not repeat to this intelligent Convention the powers that these companies have now, of buying land, of digging coal, retailing coal, manufacturing iron. Ninety-one thousand acres of the anthracite coal fields are already owned by one great corporation, and only about thirty-four thousand of that great field is left. Another great corporation is buying up all the bituminous coal fields

on the eastern slope of the Alleghenies. A few are combining and buying up all the lumber and timber land of the State of Pennsylvania? Is that for the public benefit? Is that for public uses? It may not be known to all the gentlemen on this floor; but when they advocate privileges in derogation of the rights guaranteed to every man in this Constitution, and the Supreme Court of the Commonwealth say that those privileges cannot be withdrawn or corrected, it is fearful.

It is well known that one great corporation obtained its original act in 1846; in 1848 it had a supplement passed; in 1849 the general railroad law was passed, providing for the assessment of damages for land, when these corporations took it for their own use, and allowing an appeal to the juries and the courts, if you were not satisfied with that assessment. After the passage of the act of 1849, the provisions of which affected every corporation in this Commonwealth *but one*, that one took an individual's real estate for its own use, and for public uses, as it alleged; and when an appeal was attempted to be taken, so that the case might be tried by a jury of your country, which this Constitution guarantees to every citizen of the Commonwealth, the Supreme Court decided that that great corporation, the Pennsylvania railroad, was not subject to the provisions of that act of 1849, and to-day, if that road runs through your land, and you petition for the assessment of damages, and the court appoint five men, which the act of 1848 provides for, and you are not satisfied with the award of damages, think it too little, as it almost always is, you cannot appeal to the courts and try that difficulty and disagreement before twelve men of your country. All the remedy you have is to try and file exceptions to the report; and if it has been drawn up by a gentleman of ability, who has made that matter a specialty, you can find no flaw in it, and you are bound to take the assessment made by those five men, whether it is little or great, whether it is quarter of the damages you suffered or the whole.

It is these peculiar prerogatives, Mr. Chairman, that have produced this unrest, this dissatisfaction, this apprehension in the public mind. They complain not only of the competition against private enterprise and private industry, but of this assumed right to take your land and mine without having the question of its value determined, when that point is in dispute, before a jury of your country. That has been the decision of the Supreme Court of this Commonwealth in the face of the Constitution, which is a higher authority than either the Legislature or the Supreme Court. Ought they not to be governed by it, the Constitution, which provides in section six:

"That trial by jury shall be as heretofore, and the right thereof remain inviolate."

And again, in a subsequent section:

"That all courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by the due course of law and right and justice administered, without sale, denial or delay."

Hence it did not astonish me, but it did many in the Convention, when the declaration was made on this floor, "that corporation influence had gotten up to the platform of the judiciary."

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

Mr. D. W. PATTERSON. Certainly.

Mr. CUYLER. My question is, whether the most valuable rights of property may not be, and are not constantly disposed of by courts of equity; whether the citizen has any right of trial by jury there; and whether that interferes with the constitutional provision to which he refers?

Mr. D. W. PATTERSON. That is the choice mostly of the person injured, if he goes into equity, because it cannot be reached by the courts at common law.

Mr. CUYLER. The choice of the complainant. He may file his bill, but he must submit the adjudication of questions of fact to a single chancellor, and ultimately to the five judges of the Supreme Court, who will not go into the question of fact, but will accept the master's report as the final determination of the question of fact. I want to know whether the one is more unconstitutional than the other?

Mr. D. W. PATTERSON. The gentleman is right. Where the common law will not afford us a remedy we have to go into equity in cases of that kind, partnership, fraud and all that kind of thing, but not where it is a question of damages to real estate, and when, in the estimation of the people, through their representatives, they afforded to every party injured, in every other case, an appeal to the courts to have the matter disposed of by a jury of the country.

I say it is these peculiar prerogatives, exercised every day, besides the question

of building up some points and tearing down others, that is producing this unrest in the public mind and has superinduced this Convention, for the very purpose of correcting abuses, not of breaking down common carriers, because they are benefactors of the Commonwealth and the country. So far as my humble agency will go, I want to be a benefactor both of the companies and the people, because if the courts go on in this way, and if this Convention affords no remedy, I apprehend that before ten years there will not be a yard of railroad left uninjured in the State of Pennsylvania. I do not wish to see anarchy or violence. I want to prevent it, and I hope there is wisdom and independence enough in this Convention to correct these abuses in a legal, constitutional and peaceable way.

That is the reason that I am so interested in this question, and have sat here the last two days and a half, and listened to every word spoken, and every motion made. For the last three or four days I have seen flitting through this House four or five strange faces, many of whom are known, and their history is known to be that of men to have been subservient to corporations throughout their whole public and private life, not members of this body. That is the reason why I am apprehensive about this matter. It is because I want to see these abuses corrected in a peaceable, lawful and constitutional way.

I am sorry to hear so many reflections cast upon this Committee on Railroads. If the gentlemen who make these reflections would sit down and undertake this work, this being a new question comparatively, they would find it required more ability, and more labor, and more skill to put this article into shape, than was required to make any report that has yet been made to this Convention. I hope we shall go on coolly, and calmly, and deliberately, hearing the views and sentiments of gentlemen here, attributing to each one sincerety in all that he says, but weighing their arguments and judging for ourselves. I would be the last man to attribute improper motives to any gentleman on this floor. If I should unwittingly have done so in language, I would not have them for a moment believe that I designed it.

This is the reason, Mr. Chairman, why I want this Convention to well consider this matter. We have been going on under the sneers of some and the denunciations of others, because some men will sneer at that which upholds and that which pulls down; they will laugh and consider that nothing in a Commonwealth is worth anything unless it contributes to their own aggrandizement or to their own interest; they look at politics, not as a noble science, the object of which is the improvement and the salvation of mankind in a pecuniary sense, but as a question of mixed chance and skill, by which they may be personally interested, their personal ambition satisfied, or they themselves individually aggrandized. Now, the question before us is a political question, the object of which is the prosperity and happiness of the people, and it is one of great moment, and it ought to be considered well and fairly by every gentleman in this Convention. All I have to say is that unless we do go some length in restricting and wiping away these abuses, unless we attempt to do something in that direction, we shall not meet the expectations of the people, nor can we expect to see this Constitution ratified by the votes of the people.

For that reason I would beseech gentlemen to give their views, to offer their amendments, and if they think the report requires correction to correct it. The chairman of the committee very magnanimously and truly said, and all the members of the committee have said, their propositions were not perfect, and they did not expect to present a perfect report, but that they did the best they could, and submitted it to the judgment and the free and candid consideration of this Convention. And if the sentiment of this Convention is in favor of reform, is in favor of stopping abuses, and not of crushing down these corporations, (because, as I say, they are indispensable, they are benefactors when kept within their proper sphere and proper scope,) let them go on peaceably, and consider that not only one day or two days, but two weeks or three weeks are well spent if we can, without doing injustice to these corporations, correct abuses, and thus satisfy the public mind and protect and preserve the rights of every individual in the Commonwealth.

I should like, in conclusion of my remarks, to read a few lines, the product of one of the greatest writers and most distinguished statesman of his day, Macaulay. I was reading his history of England the other day, and he writes thus:

"In the Middle Ages *resistance* was an ordinary remedy for political distempers. If a popular chief raised his standard in a popular cause, an irregular army could be assembled in a day. Regular army there was none."

But he says, (speaking of his own day, the middle of the nineteenth century:) "As we cannot, without the risk of evils, from which the imagination recoils, employ physical force as a check on misgovernment, it is evidently our *wisdom* to keep all the constitutional checks on misgovernment in the highest state of efficiency, to watch with jealousy the first beginnings of encroachment, and never to suffer irregularities, even when harmless in themselves, to pass unchallenged, lest they acquire the force of precedent."

These are words of wisdom. And we, as a Convention, should learn wisdom from them.

The CHAIRMAN. The gentleman's time has expired. The question is on the amendment to the amendment, offered by the gentleman from Philadelphia (Mr. J. Price Wetherill.) Is the reading called for? ["Read it."]

It will be read.

The CLERK read the amendment.

Mr. CUYLER. I call for a division of the question, so as to make a separate paragraph of the part that relates to the publishing of the tariff of charges for transporting private cars—the last clause.

The CHAIRMAN. The gentleman from Philadelphia calls for a division of the question, at the word "rates," in the eighth line.

Mr. COCHRAN. Let us hear the first division now, Mr. Chairman.

The CHAIRMAN. The first division will be read.

The CLERK read the first division of Mr. Wetherill's amendment, as follows:

"No unjust discrimination in charges for freight in any respect whatever shall be made by any railroad, canal or transportation company; and such company shall publish the rate of freight upon which each class of goods shall be carried by them and over their respective roads; and such penalty as shall be provided by law shall be imposed for any deviation from the published rates."

The CHAIRMAN. The question is on this division of the amendment.

The division was rejected.

The CHAIRMAN. The second division of the amendment will be read.

The CLERK read as follows:

"And each railroad or canal company shall publish a tariff of charges at which they will furnish roadway and motive power for cars or boats of individuals or companies, and a penalty shall be imposed by law for any deviation from said published tariff."

The division was rejected.

The CHAIRMAN. The question is on the amendment of the gentleman from Centre (Mr. M'Allister.)

Mr. ALRICKS. I offer the following amendment:

"All railroads and canal companies incorporated under the laws of this Commonwealth, shall carry freight and passengers, on such reasonable maximum terms as may be prescribed in the act under which they have been incorporated, and they shall make no unreasonable discrimination against the citizens of this State; and all transporters over said highways shall be treated alike under the penalty of forfeiting the charter of the company; and no drawbacks shall, either directly or indirectly, be allowed; and no free passes shall be given, except to officers and employees of the corporation, or to indigent persons as objects of charity."

The amendment to the amendment was rejected.

Mr. S. A. PURVIANCE. I offer the following amendment to the amendment:

"The Legislature, by general law, shall establish a system of tolls for the regulation of railroad, canal and transportation companies, as nearly uniform in the different classes of freights as possible, throughout this State, and all discrimination in such rates, whether between the people and freights of our own State, or between the people and freights of other States and those of our own, are hereby prohibited."

The amendment to the amendment was rejected.

Mr. COCHRAN. I offer the following amendment to the amendment of the gentleman from Centre, to strike out all after the word "section," at the beginning, and insert the following:

"No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof; and such corporations shall carry the persons and goods of the people of this State on as favorable terms

as those of other States, brought into or through this State on the works owned or controlled by such corporations, and the charges for freight and fares for passengers shall, for equal distances, be the same, and a higher charge shall never be made for a shorter distance than is made for a longer distance; and no drawback shall, either directly or indirectly, be allowed; but commutation tickets may be issued as heretofore, and reasonable discriminations may be made in charges for any distance not exceeding thirty miles."

Mr. Chairman, I just want to state, in a word or two, that that is the amendment which I indicated this morning. I wish gentlemen simply to observe that it modifies the section very materially; that it has a regulation which is, I think, what the gentleman from Venango (Mr. Dodd) would call more specific, and which is proper and right to protect the people, and correct the evils which have been complained of here. That section is not so inflexible, as it now reads, as several of those which have been proposed. It does give play and room for proper regulation, as I apprehend, by the railroad and other transporting companies, and it is very much less stringent than the section which was reported by the committee. There is nothing about uniformity of tolls in it. It simply provides that there shall be no discrimination against the people of this State, that charges for equal distances shall be equal, and that there shall be no more charge for a shorter than a longer distance, with a provision that there may be commutation tickets issued as heretofore, and that there may be reasonable discriminations on freight within thirty miles.

Mr. LILLY. I wish to ask the gentleman from York if his section, as now amended, will not still allow special rates to be given?

Mr. COCHRAN. I think not. I do not think it allows any special rates to be given. I do not understand it so.

Mr. LILLY. As I understand it, it does not prevent special rates. It specially excepts drawbacks, but not special rates.

Mr. COCHRAN. It certainly specifies drawbacks and prohibits them, and it says that the prices shall be the same for equal distances, which I apprehend does not permit special rates; because if the rates were special the prices would not be the same. That is what the section means, and in that view of the question—for I see that the committee of the whole is impatient of talking—I shall submit it without further remarks.

Mr. LAWRENCE. I desire to suggest to the chairman of the Committee on Railroads and Canals, my friend from York, to strike out "thirty miles," and insert "fifty."

The CHAIRMAN. Will the gentleman from York modify his amendment?

Mr. COCHRAN. I hope the gentleman from Washington will make that motion himself, and let the committee act upon it. I shall not oppose it.

The CHAIRMAN. That would not be in order. There is already an amendment to the amendment pending.

Mr. COCHRAN. Then I will accept the modification.

The CHAIRMAN. The amendment is modified by the substitution of "fifty" for "thirty."

Mr. HOWARD. Mr. Chairman: Before the vote is taken on the amendment offered by the chairman of the Committee on Railroads and Canals, I desire to ask in what position would stand the section offered, as a substitute for section eight, by the gentleman from Centre (Mr. M'Allister?)

The CHAIRMAN. This section now pending would take the place of that.

Mr. HOWARD. Then if this section which the chairman of the Railroad Committee has just submitted takes the place of section eight, it will not only take the place of section eight as reported by the Committee on Railroads and Canals, but, if adopted, it will also defeat the section offered by the delegate from Centre.

The CHAIRMAN. Yes, sir.

Mr. HOWARD. Then I am in favor of it. [Laughter.] I think the section offered by the chairman of the committee is a good one, and it has been modified to meet the views of a great many members of the Convention.

Mr. D. N. WHITE. Let the section be read as it will stand if amended.

The CLERK read as follows:

SECTION 8. No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof; and such corporations shall carry the person and goods of the people of this State on as favorable terms as those of other States brought into or through this State, on the works owned or controlled by such corporations; and the charges for

freight and fares for passengers shall, for equal distances, be the same, and a higher charge shall never be made for a shorter distance than is made for a longer distance; and no drawbacks shall either directly or indirectly be allowed; but commutation tickets to passengers may be issued as heretofore, and reasonable discrimination may be made for any distances not exceeding fifty miles.

Mr. COCHRAN. Mr. Chairman. I now wish to modify the amendment, by inserting before the word "drawbacks," the words "special rates or," so as to make the sentence read "and no special rates or drawbacks shall either directly or indirectly be allowed."

The CHAIRMAN. The amendment will be so modified.

Mr. GOWEN. Mr. Chairman: I desire to call the attention of the gentleman from York, who has offered this amendment, to one sentence in it, which I do not think is at all necessary. That is the sentence which states that the charges for equal distances shall be the same. A great many railroad companies carry on one branch of their road for twenty miles at a great deal less than they do upon another branch. You cannot expect a railroad to carry freight up hill for twenty miles at the same rate at which they will carry goods down hill. If that were out of the section—and being in, I do not know what good it accomplishes—and if the word "aggregate" were put before the word "charges," in that part that relates to a charge being no higher for a short than for a long distance, then I think the whole clause at the bottom, about reasonable discriminations within fifty miles, may be left out altogether.

Mr. COCHRAN. Very well.

Mr. HAY. I was about to suggest to the committee of the whole, as I have just suggested to the chairman of the Committee on Railroads and Canals, that after the words "equal distances" the words "in the same direction," should be inserted for the very reason mentioned by the gentleman from Philadelphia.

Mr. GOWEN. Anything of that kind will do.

Mr. HAY. I think the insertion of the words "in the same direction" will answer that purpose.

Mr. GOWEN. Very well, then. I am satisfied.

Mr. COCHRAN. I accept the modification, and will insert the words "in the same direction," after the word "distances."

The CHAIRMAN. The amendment will be so modified.

Mr. GOWEN. One more suggestion here. The word "aggregate" or "total" ought to be put in that part of the amendment which says that the charges for shorter distances shall never be greater than for a longer distance. That means that the total charge shall never be greater, yet the rate per mile is always greater, and the gentleman from York, and all other gentlemen here, admit that it should be greater. Does the chairman of the Committee on Railroads and Canals understand me?

Mr. COCHRAN. That is just what the amendment says, as I understand it. I comprehend the gentleman's idea.

Mr. DODD. Mr. Chairman: I think that we have at last reached a point where, if I understand the temper of the Convention, we are about ready to vote upon the section, and in order that we may consider all these verbal suggestions and amendments, and little alterations, and not act hurriedly, and without mature deliberation, I move that the committee of the whole do now rise, report progress, and ask leave to sit again.

The motion was not agreed to.

Mr. LANDIS. Mr. Chairman: I would like to ask the gentleman from Philadelphia, (Mr. Gowen,) if you make a modification in this amendment, of charging for equal distances in the same direction, will that not permit discrimination in the opposite direction? For instance, if loaded cars go east to Philadelphia, could you not discriminate by sending freight back in those cars westward?

Mr. GOWEN. I think you could; but you could not do it unless there was some reason why a court should say it ought to be done. If it was on the same level, or the same grade, it could not be done.

Mr. LANDIS. That is one of the things under which the people of this State are now suffering.

Mr. GOWEN. Whenever you go down hill you have to go back, and the cheaper you can carry goods down hill, where the cars will descend by their own gravity, the more it costs when you have to surmount that grade on the return trip.

Mr. STRUTHERS. Mr. Chairman: I desire to ask the chairman of the Committee on Railroads and Canals why discriminations should be made even in distances. I do not see why we should discriminate at all; but perhaps the gentleman from

York can give some explanations on the subject, and furnish reasons which at present I do not understand.

Mr. COCHRAN. I will answer the gentleman from Warren in this way: I think a railroad company cannot carry for a short distance for the same rate per ton per mile as they can for a long distance. As far as these shorter distances are concerned, I want to allow them to make a reasonable discrimination, in order that they may be able to compensate themselves for the cost of carrying the shorter distance, and for the expense of handling, the demurrage of cars, &c., which are as great for a transportation of freight for five miles as they are for a transportation of one hundred.

Mr. STRUTHERS. Mr. Chairman: It appears to me that the chairman of the Railroad Committee has chosen the wrong word to express his idea. What I understand by discrimination is favoring one trader as against another trader, one shipper as against another shipper. If you carry for one shipper for a given price for five miles, you must carry for another shipper five miles for the same price. Then there is no discrimination. If you charge a little more proportionately for five miles than you do for ten miles, that is no discrimination; you charge all alike. In every instance you charge the greater or the lesser price to all shippers. That is not discrimination. It is adding to the price on account of the shortness of the distance. I think the language should be modified. The idea is one that meets my approval, but I desire to see it expressed in words that will more clearly present it. I am satisfied that the idea is right; but it is not discrimination to prescribe one rate for all shippers to and from the same points, and I hope the chairman of the Committee on Railroads and Canals will devise a better means of expressing the idea. Since the beginning of our legislation in regard to the railroad system, I do not think we have ever passed any law that recognized the fact that there could be discrimination between shippers, and I do not think it is now desirable to introduce it into our Constitution.

Mr. DODD. While I am in favor of the general principles of the amendment of the gentleman from York, (Mr. Cochran,) I desire to say that, like the snake, it carries its sting in its tail. The last clause, allowing discriminations within fifty miles, spoils the whole thing.

Mr. COCHRAN. I want only to say, in reply to the gentleman from Warren, (Mr. Struthers,) that if I am not mistaken the word "discrimination" applies as well to distances as it does to persons. The idea was that the discrimination applied to distances. I may be wrong in that, but that was my idea, and those with whom I consulted always understood it to be so. I always supposed that discrimination could apply to distances as well as to individuals.

Mr. STRUTHERS. Then say that it shall apply to distances, in order that the section shall never be misunderstood.

Mr. COCHRAN. Mr. Chairman: Will the Clerk read the last clause?

The CLERK read as follows:

"And the charges for freight and fares for passengers shall, for equal distances in the same direction, be the same; and a higher charge shall never be made for a shorter than is made for a longer distance; and no special rates or drawbacks shall either directly or indirectly be allowed; but commutation tickets to passengers may be issued as heretofore, and reasonable discrimination as to charges may be made for any distance not exceeding fifty miles.

Mr. COCHRAN. I will modify the section, by inserting after the word "reasonable," instead of the word "discrimination," the words, "extra charge within the limits of the charter."

The CHAIRMAN. The modification will be made as suggested.

Mr. NEWLIN. Mr. Chairman: It seems to me, from the shape that this amendment has taken, and from the number of suggestions that are made from time to time in different parts of the House, that it is perfectly evident the Convention does not understand what it is acting upon, and we had better adjourn. I move, therefore, that the committee do now rise, report progress, and ask leave to sit again.

On the question of agreeing to the motion of Mr. Newlin, a division was called for, which resulted thirty-six in the affirmative and fifty-six in the negative. So the motion was not agreed to.

Mr. BUCKALEW. Mr. Chairman: I desire to make a single remark in reference to this subject. We have now about arrived at a point of agreement upon this section, upon which we have expended so much time and so much debate. There will be ample opportunity in the two subsequent readings that are before us to cor-

rect any inaccuracies or mistakes into which we may now fall, and I submit that the best thing we can do now is to sit this out, and get done with this section before we adjourn.

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

Mr. J. R. READ. I should like to have it read.

The CHAIRMAN. The amendment will be read.

The CLERK read as follows:

"No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof; and such corporations shall carry the persons and goods of the people of this State on as favorable terms as those of other States brought into or through this State on the works owned or controlled by such corporations; and the charges for freight and fares for passengers shall, for equal distances in the same direction, be the same, and a higher charge shall never be made for a shorter distance than is made for a longer distance; and no special rates or drawbacks shall, either directly or indirectly, be allowed; but commutation tickets for passengers may be issued as heretofore, and reasonable extra charges within the limits of the charter may be made in charges for any distance not exceeding fifty miles."

Mr. GOWEN. The latter part of that section meets with the objection of the gentleman from Venango. Now, if the suggestion I made about the former, that is, the aggregate charges for a shorter distance shall never be greater than for a longer, the whole of that latter part might be left out. ["No." "No."]

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

The amendment to the amendment was agreed to, there being, on a division, ayes, fifty eight; noes, twenty-seven.

The CHAIRMAN. The question now is on the amendment as amended, which is the same thing that has just been voted on.

The amendment as amended was agreed to.

The CHAIRMAN. The question now is on the section as amended, what has just been adopted, having been substituted for the original section.

The section as amended was agreed to.

Mr. WHERRY. I move that the committee now rise, report progress, and ask leave to sit again.

The CHAIRMAN. The Chair would suggest that the ninth section be read.

Mr. WHERRY. I withdraw my motion.

The CLERK read section nine, as follows:

SECTION 9. All railroads and canals are declared public highways, and all individuals, partnerships and corporations shall have equal right to transport persons and property thereon, except officers and partnerships or corporations composed in whole or in part of officers of each respective railroad or canal, who are hereby prohibited from engaging in the business of forwarding or transporting on the lines thereof; and all regulations adopted by the companies owning, controlling or managing such railroads or canals, having the effect of hindering or discriminating against individuals, partnerships or corporations, except as above excepted in the transportation of property on such railroads and canals, shall be void; and no railroad corporation, nor any lessee or manager of the works thereof, shall make any preference in their own favor, or between individuals, partnerships and companies shipping and transporting thereon, in furnishing cars or motive power, but shall supply the same in equal ratable proportions to each shipper or transporter in the order in which cars and motive power shall be called for and needed by them as shippers or transporters on said railroad.

Mr. WHERRY. Mr. Chairman: I move that the committee of the whole now rise, report progress, and ask leave to sit again.

The motion was agreed to.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Broomall) reported that the committee of the whole had had under consideration the article reported by the Committee on Railroads and Canals, and had instructed him to report progress, and ask leave to sit again.

Leave was granted the committee of the whole to sit again to-morrow.

Mr. PARSONS. I move that we adjourn.

The motion was agreed to, and at five o'clock and thirty-six minutes P. M., the Convention adjourned until to-morrow morning at ten o'clock.

EIGHTY-FIFTH DAY.

THURSDAY, *April* 24, 1873,

The Convention met at ten o'clock A. M., Hon. W. M. Meredith, President, in the chair.

Prayer by Rev. J. W. Curry.

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

PETITIONS AND MEMORIALS.

Mr. VAN REED presented a petition of the members of the bar of Berks county, praying for the abolition of the grand jury system, which was read and ordered to lie on the table.

Mr. CAMPBELL presented a memorial of upwards of one hundred and fifty merchants and citizens of Philadelphia, praying for the adoption of certain restrictions on railroads, proposed in the report of the Committee on Railroads and Canals, which was ordered to lie on the table.

Mr. J. N. PURVIANCE presented two petitions of a similar tenor, which were ordered to lie on the table.

Mr. COCHRAN presented four petitions of a similar tenor, signed by citizens of Philadelphia, which were ordered to lie on the table.

Mr. RUSSELL presented a petition upon the same subject, which was ordered to lie on the table.

THE REPORT OF THE COMMITTEE ON THE JUDICIARY.

Mr. STANTON. I offer the following resolution:

Resolved, That the report of the Committee on the Judiciary be made the special order for the fourth Monday of May.

Mr. TEMPLE. I move to lay the motion on the table.

The PRESIDENT. No motion being made to proceed to the second reading and consideration of this resolution, it is laid upon the table.

LEAVE OF ABSENCE.

Mr. KAINE. I ask leave of absence for Mr. Hanna, of Philadelphia, for this afternoon.

Leave was granted.

Mr. ALRICKS asked and obtained leave of absence for Mr. M'Allister, of Centre, for a few days, on account of sickness.

PERIODICAL GEOLOGICAL SURVEY.

Mr. PATTON. I offer the following resolution:

Resolved, That the Committee on Agriculture, Mining, Manufactures and Commerce be requested to report the following article, as supplementary to their report:

"ARTICLE —. The Legislature shall, before the fourth day of July, 1876, and in each period of twenty years thereafter, authorize a geological and mineralogical survey of the State, and the publication of the report of the same.

The resolution was referred to the Committee on Agriculture, Mining, Manufactures and Commerce.

RAILROADS AND CANALS.

Mr. DARLINGTON. I move that the Convention resolve itself into committee of the whole, upon the report of the Committee on Railroads and Canals.

The motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Broomall in the chair.

The CHAIRMAN. The question is on the ninth section of the article reported by the Committee on Railroads and Canals.

Mr. DODD. I offer the following amendment: Strike out the section to the word "all," in the sixth line; in the seventh line strike out the words, "the companies owning or controlling or managing such;" in the eighth line, to add after the word "canals," the word "companies," and in the ninth line to strike out the words "except as above excepted," so that the section will read, if amended as I propose:

"All regulations adopted by railroad or canal companies, having the effect of hindering or discriminating against individuals, partnerships or corporations in the transportation of property on such railroads and canals, shall be void; and no railroad corporation, nor any lessee or manager of the works thereof, shall make any prefer-

ence in their own favor or between individuals, partnerships and companies shipping and transporting thereon, in furnishing cars or motive power, but shall supply the same in equal ratable proportions to each shipper or transporter in the order in which cars and motive power shall be called for and needed by them as shippers or transporters on said railroad."

The CHAIRMAN. The question is upon the amendment of the gentleman from Venango (Mr. Dodd.)

Mr. S. A. PURVIANCE. I move to amend the amendment, by inserting in the fifteenth line, after the word "proportions," the words "to the extent of whatever may be on hand;" that is, the motive power and cars.

The CHAIRMAN. The question is upon the amendment of the gentleman from Allegheny to the amendment of the gentleman from Venango.

Mr. T. H. B. PATTERSON. Mr. Chairman: I wish to explain to the members of the Convention as briefly as possible, in order to save their time, the object aimed at by the Railroad Committee in this section.

Before proceeding to discuss the section precisely, I wish to remark, by way of thanks to the gentleman from Philadelphia, (Mr. Gowen,) that I am much obliged to him for the extreme age and wisdom which he attributes to me, and I hope he will listen to such words of wisdom as may fall from my lips, as a child should listen to a father.

In reply to the arguments that have been made generally on this subject, and not specifically applying to the section that is passed, or to this section, with regard to the question of the vested rights of such corporations as may now be in existence and exercising the powers of transportation companies or of railroad companies, I will briefly say that, for myself, I take it that the people of Pennsylvania of to-day are merely trustees of the public power and eminent domain, and public property rights of the State, not for themselves alone, but for posterity, and that any delegation of legislative power by the people of this day, or any other day, must be subject to this trust, and therefore, that any rights which any public corporations may have to-day in Pennsylvania, are subject to the question as to whether they are the mere custodians of public property and public power as trustees for the people of Pennsylvania of to-day and for their posterity. The question of vested rights, which has been so learnedly discussed by both the gentlemen from Philadelphia and other delegates on the floor of this House, is a question which involves entirely a question of the distinctions between public property and public rights, and private property and private rights, and is a question which goes into the whole domain of how far corporations, in their public capacity, are trustees for the people and for their posterity, and therefore, I take it, a question for judicial ascertainment, and not a question to be discussed at length by delegates on the floor of this House.

In deciding the question involved in this section, and in other sections that have come up, or may come up hereafter, I take it that we, as the representatives of the sovereign people, in Convention assembled, and in our own rights, acting in the nature of a peaceful revolution, as far as the action of the Legislature or of their creatures may have been injurious to the welfare of the people and of the State, and prejudicial to the trust for posterity, should adopt those measures which we think best for ourselves, for the people of Pennsylvania, and for posterity, without regard to the questions of private vested rights, and leaving those questions to be entirely determined by judicial decision. And as far as the rights of corporations, or of individuals, are vested, we have no power to disturb them. So far as they are not vested, we have a right to call them to account for their trust, and have a right to adopt useful regulations. So that, I take it, in the discussion of the rights of common carriers and transportation companies, under this section and all the sections of this report, the question of vested rights is not a proper question for the display of an affectation of legal lore on the floor of this House, and upon which to occupy the attention of the Convention. I hope that in the future, in the comments upon the report of the committee, and the discussion of amendments, gentlemen will confine themselves to the expediency, usefulnss and proper character of the regulations proposed, and leave the question of private rights, and the distinctions relating thereto, for the judicial decision of the courts of our land.

One word, sir, as to the misconduct charged upon the Committee on Railroads and Canals, of which I am a member, by a colleague of mine from Allegheny county (Mr. J. W. F. White.) I wish to say here, in vindication of the report of the

committee, that we waited up to the last hour for the report of the Committee on Private and other Corporations; that we met in consultation with them, and any subject which they claimed belonged to the province of their committee, or which they notified us they desired to act upon, we handed over to that committee. If the gentleman from Allegheny, or any other member of that committee, unfortunately carried in his pocket sections or propositions upon which that committee proposed to act in the course of time, and gave no notice, and made no demand on the Railroad Committee in regard to them, it is so much the worse for that member of that committee, and that committee, because, I take it, that committee having been fully organized, ought to have discharged its duties, and ought to have made a report to this House before this time. If it did not do so, I do not think it is matter of criticism and reflection on another committee of this body that it did discharge its duty and did not stop the machinery of this Convention, in order to wait on the slow movements of another committee.

I make these remarks before proceeding to the consideration of this section, because I do not wish to speak again on this subject.

With regard to the general remarks and objections, that all the wrongs suffered by individuals at the hands of common carriers, corporations, can be remedied in the courts, under the statute, by equity and by common law proceeding, I will simply say here, that that is no remedy whatever for the wrongs of the shippers of this State; and there is not an honest delegate on the floor of this Convention who knows anything of the wrongs of the business men of the State, with regard to the shipment of property, who does not know that any business man who attempts to go into the courts of this State for remedies against the common carrier corporations will find his business gone or ruined before he secures his remedy for the particular wrong that he complained of. This is a sufficient answer to that point. There can be no protection to the people of Pennsylvania, with regard to the rights of shipment of property, except by the insertion of some stringent provision in the Constitution that will make such an infringment a forfeiture, thus placing this matter under the protection of the fundamental law of the land, giving the citizen the protection of the public, and not compelling him to take individual action in the courts.

The gentleman from Allegheny, and the other gentlemen who have spoken on the power of this body, have objected, generally, to all of the provisions of the last section and many other sections; and in that respect I was surprised that my colleague from Allegheny, the learned gentleman from Sewickley, opposed here yesterday, openly and boldly, all the provisions of the section then under discussion, and all the amendments, and all the proposed remedies from that section down to the close of this report, which would include the section now under discussion, in a clear and decided manner; whereas, it is not many days since that gentleman himself proposed to this body such provisions as will be found on the one hundred and ninth page of suggestions handed in to this body, viz:

"SECTION 9. All railroads and public highways in this State shall be equally free to all citizens of the State. No discrimination or special privileges shall be allowed to any person or class of persons that may not, under like circumstances, be enjoyed by all. And no discriminations in favor of through freight or through passengers shall be made to the injury of citizens of this State."

Which embodies the principles of the section under discussion yesterday in so many words; and yet our learned colleague from Allegheny then disclaimed all such principles, and suddenly and completely changed his opinion on the corporation question.

Mr. J. W. F. WHITE. Will my colleague give me the page of the Journal?

Mr. T. H. B. PATTERSON. I gave the page—page 109, of Suggestions and Amendments.

Now, Mr. Chairman, the question immediately involved by this section is a similar question to the one we have been discussing for days. It is simply some mode of providing a remedy against discriminations in carrying by the common carriers, so deemed, of this State. There are two methods, and I would ask the attention of delegates for a few moments, as I have not occupied one-half hour of the whole time of this House since it assembled.

There are great evils existing in this State, owing to the fact that inside lines and transportation companies, composed of the officers and managers of the various railroad companies of the State, have been

organized under various combinations and names, such as the Star line, the Union line, and the numerous lines that we find marked upon all the freight cars that we see passing over the railroads of our State, and these companies have got the inside rates; they have got the control of the traffic of our State. Now, in order to remedy that evil, there must be one of two courses pursued, and it is for the delegates in this Convention to decide which one they will take. The one is to declare the railroad corporations that we are dealing with common carriers, and exclusively bound to carry all the freight of the people and of shippers who desire transportation over their routes, and to make them supply all the facilities, and carry all the freight and exclude from their roads the cars of other companies and transportation arrangements of all other carriers whatever; so that we should make each railroad company the common carrier *exclusively* over its route, and exclude from it all others, and then compel them to give equal rights, as far as we can under the last section, and under a similar policy, to all the people and shippers who present goods or their persons for shipment over the road. This is one course, and it is advocated by many on account of its simplicity and straightforwardness.

The other system is to declare the railroads of this State highways, as they have been in their charters, and to say that the shippers and transporters of this State shall have the right to have their cars and goods shipped and transported over those roads in their own vehicles, and that they shall have the right to form common carrier associations for the purpose of transportation, and that their lines and carriers and vehicles shall have the right of transportation over railroads as the highways of the State. This is the method which the section before you contemplates. It is the method in keeping with the common carrier and highway system of the common law and of our institutions; and in order to prevent the advantageous and inside competition of inside lines, the section proposes to prevent all participation in these common carrier and transportation companies, and companies providing the vehicles and modes of transportation over the railroads, of any officer or manager of the railroad company over which the line operates, in order that the transportation companies and private shippers providing their vehicles and means of transportation shall be free from discrimination and inside competition.

Gentlemen, these are the two methods, and the only methods, that can reach this question; and the one proposed by the committee is the one which they deemed best, because by concentrating the whole common carrier rights of a railroad in the hands of the railroad company, you have the same difficulties in controlling shipments for the people of the State that you have in controlling the rates, which is a most difficult question, and the most troublesome question with which this Convention has to deal, and the one which will most likely avoid our restriction, whatever provision we may adopt; whereas, by dividing the difficulties up, by saying that these railroads and canals are public highways, as their charters have declared them to be, and by giving the right to all the shippers and transportation companies to use their lines, we can better deal with the question. You must remember, too, this is the old course in this State. Not many years ago the railroads of our State were covered with transportation lines, that shipped their own cars and paid for their motive power fair rates to the railroad company, and then did shipping for the people of the State. It is only within the last ten or fifteen years that these transportation companies and common carrier vehicle companies have been driven off the railroads by the discriminations and favoritism of the railroad companies that control the motive power and the rails.

This is an important question, and it is one that we must all look upon and act upon, because it is becoming the great question of the day. Our highways, our roads, have changed into worthless things for the mere local transportation of our carriages from house to house, to visit our neighbors and do the work of our farms. The great highways of nations are the railroads, and the people demand that the public corporations in control of these railroads shall be held to a strict accountability for their trusts, and shall exercise those trusts for the best interests of all; and they demand loudly that these provisions restricting them shall be put in the fundamental law of the State.

The question is one of difficulty. No one, who has paid any attention to this subject, as we all ought to have given attention to it, can help feeling, after he has studied and examined it, that it rises like

a mountain before him, and yet we must provide some remedy. We must take this question and deal with it promptly, or there will be another mode of dealing with it. We must give the people the remedy; they demand it; and in this regard I wish simply to say one word more, and that is, that in dealing with this question let us abandon this constant distinction and talk about corporations and anti-corporations; about the people and about corporations. There are no corporations as distinct from the people. The corporations of this State are simply associations of individual citizens. We talk about corporations as if they were something sacred, some machinery that the people should keep their hands off.

A corporation is simply you and me and the other stockholders, who are individual citizens. Their rights are the same as the rights of other citizens. The part of statesmen, such as the delegates here assembled, is to act for the people, and for the best interests of all the individuals of this State, without regard to artificial distinctions; and the corporations, their interests and their welfare, are just as much a part of the interest and welfare of this State as those of the individual, and they ought to be as sacred.

[Here the hammer fell.]

Mr. J. W. F. WHITE. I did not expect, Mr. Chairman, after saying what I did yesterday, that I should again be called upon to say another word during the time this railroad report should be before the committee of the whole; but the remarks of my colleague, who has just taken his seat, (Mr. T. H. B. Patterson,) make it proper, if not necessary, for me to say at least a word or two.

In the first place, in what I said yesterday, I did not mean to cast any reflection whatever upon the Committee on Railroads and Canals. I said I regretted that this subject came up before the Convention prior to the report of the Committee on Private Corporations. I say so still. I think it has been unfortunate that we have proceeded without any system whatever in trying to reform or amend the Constitution. We have taken up the reports of committees at random. We have taken up sometimes a part of a subject that ought to have been postponed until others had been disposed of. I think the logical way of proceeding would have been, first, to have fixed upon the order and titles of our articles, and then have proceeded regularly and logically to frame our Constitution, or to modify the old one. The Convention of 1837 did not undertake to change the articles of the Constitution, or to add any new articles to it. All their committees were based upon the articles of the then existing Constitution, and they reported on those articles. They were then taken up regularly and consecutively, every subject by itself. I believe that if we had done so here, we should have made more progress, and have been more successful in our work.

We have now, by this report, simply a portion of the subject of corporations before us; and while I refer to that, I simply allude to it as being unfortunate, because if we had the general subject before us, we could have adopted, in the first place, all those provisions which were applicable to corporations generally, and those being disposed of, we could then act on those which exclusively relate to railroads. I protest, and in this I mean no disrespect to my colleague from Allegheny, (Mr. T. H. B. Patterson,) or to the Committee on Corporations, against this irregular mode of proceeding. I have had no amendments in my pocket, as was intimated by my colleague, that I intended to spring upon the Convention. I believe I never did, in this Convention, propose any amendments whatever to the Constitution. I offered no "suggestions" to be published in the papers at home for buncombe or anything of the kind. I did, in those committees of which I was a member, submit certain propositions which I thought to be proper, and some of them have found their way into our file of "suggestions," and the gentleman from Allegheny (Mr. T. H. B Patterson) has referred to one of them. I thank him for so doing. It will enable me to express my views more clearly on this subject than perhaps I could do otherwise, because I confess I am not so skilled in the use of language, or so wise, that amidst the confusion and debates of this body, I can sit down and prepare a section for the Constitution. I think the language of a section of the Constitution ought to be carefully prepared. It requires, at least in my judgment, some care to prepare a section for the fundamental law of our State; and the section referred to by my colleague, was the best that I could do in my calm and deliberate moments, not in the confusion of the Convention.

Yesterday I said I was opposed to the unreasonable restrictions of this report,

to these *statutory* provisions, which might work more harm than the evils they were intended to remedy. I must say, with all respect to my colleague, who seems to exercise a kind of paternal guardianship over this report, that I cannot agree with the Committee on Railroads and Canals, and I cannot agree with him as to the wisdom or propriety of nine-tenths of this report. If the gentleman cannot distinguish between a constitutional principle and a statutory provision, the fault is not mine. If he cannot distinguish between a Constitutional Convention and a legislative body, the fault is not mine. If he cannot comprehend a principle clearly and distinctly announced, apart from some long, detailed and dove-tailed section, it is not my fault. Yesterday, after I had concluded my remarks, my colleague (Mr. T. H. B. Patterson) called me to account, and seemed to think I was a traitor to my section of the State; that Pittsburg would know I had uttered sentiments here not in accordance with the views and interests of its citizens. Sir, I stand to-day just where I did yesterday. I believe that this senseless raid against corporations is one of the worst features of our Convention, and I say again, as I said yesterday, that these railroad corporations have been and are inestimable blessings to the State of Pennsylvania. We cannot do without them, and ought not impose any unnecessary burdens or restrictions upon them. While there are some evils that should be corrected, and will be corrected, I firmly believe that if the Convention would adopt this report as it came from the committee, it would, of itself, defeat the Constitution. Not only that, but in less than five years there would have to be a new Convention called to save us from the evils of such legislation as is here proposed.

One of my colleagues (Mr. S. A. Purviance) also remarked to me, rather playfully, yesterday that I was a kind of an Ishmaelite. I confess that, to a certain extent, I have been such here. I believe every time I have spoken in Convention, or in committee of the whole, it has been in opposition to the new-fangled notions that are attempted to be thrust into the fundamental law of our State. I have been more inclined to stand by what has been the fundamental law of Pennsylvania from the first. After a careful study of the Constitutions of the thirty-six States of this Union, I came to the deliberate conclusion that we have now one of the best, and to-day I would be reluctant to exchange our present Constitution for that of any other State in the Union. There are in our organic law some things that may be corrected, but I differ widely with those gentlemen who say that this Convention was called to carry out the radical changes that from time to time have been proposed. There were a few things the people wished corrected. One thing they desired was the imposition of some limitations upon the legislative body, or restrictions as to the mode of passing acts, and probably some limitations on the powers of corporations. The main thing was to cut up by the roots special legislation. They wanted also some reform in our elections, and a modification or strengthening of our judicial system. In some other respects, in minor matters, the Constitution could be changed and improved. But, sir, what have we been doing? We commenced by tearing up the very foundation of our political organization, and are proceeding to construct almost a new government. If we go on in this way there will not be left one plank of the old Constitution, and scarcely a feature of our State government. In addition to that we shall have our Constitution filled full of special legislation. Why, sir, if the other committees follow the example of the Committee on Railroads, and report as many sections, and we adopt them, our Constitution will be longer than the five books of Moses, and it will fall inevitably by its own weight. I have protested against this thing of special legislation in the Constitution; and what under the heavens have we in this report but legislation?

I thank my colleague for referring to the section offered by me, and I ask the indulgence of the members of the committee while I read it again, for on it I stand.

"All railroads and public highways in the State shall be equally free to all the citizens of the State. No discrimination or special privileges shall be allowed to any person or class of persons that may not, under like circumstances, be enjoyed by all. And no discriminations in favor of through freight or through passengers shall be made, to the injury of citizens of the State."

There, in my judgment, Mr. Chairman, is a section containing principles broad and clearly defined, and I firmly believe that that section will be more in place in

your Constitution than nine-tenths of these sections, and accomplish more good.

I am not inconsistent. I stand there to-day; and that is why I protest against these long legislative provisions in our Constitution, and why I intend to vote against all of these sections. I want, in place of them, some clear and well defined principles which will cover all cases and be good for all time.

Mr. HOWARD. Will the gentleman from Allegheny allow me to ask him a question?

Mr. J. W. F. WHITE. Yes, sir; though I hope the Chair will not count the interruption in my time.

The CHAIRMAN. The Chair cannot help doing it.

Mr. HOWARD. Yesterday, while considering the eighth section, which provides that no discrimination shall be made against the people of this State, I understood the gentleman to say that he was in favor of permitting railroad companies to make discriminations in regard to through freights, and was opposed to any section that prohibited all discriminations. Did not the gentleman say that?

Mr. J. W. F. WHITE. I said, substantially, that, and I repeat it again to-day. I objected to saying that there must be the same fare for travelers per mile, and the same charge per ton for freight, no matter what kind it was, and no matter how long or how short the distance. Yet that was the report of this committee of which the gentleman was a member, a report that could not receive, I venture to say, a thousand votes in Allegheny county. It would drive thousands of our citizens from the rural districts, where they live now on the railroads, back to the city, or compel them to quit their business. That would be the case, not only at Pittsburg, but at other cities, and be felt, to a greater or less extent, all over the State. Under the idea of trying to prevent some discrimination for long distances, the gentleman would say that there should be no discriminations whatever, under any circumstances, for any kind of freight, however long or short the distance. Under the sections proposed by the committee the local trade and travel on our railroads would be greatly injured. There could be no accommodation trains, with reduced fare, and no commutation or excursion tickets.

That was the report of the committee. That I am opposed to, and shall be opposed to. I want such discriminations, Mr. Chairman. They are wise, and prudent and proper. There ought to be discriminations by railroad companies in favor of local freight. Everywhere over the world that is the rule. And there ought to be also some discriminations in favor of long distances.

What did I say in this section? I think it conveys the true idea: "No discrimination or special privileges shall be allowed to any person or class of persons that may not, under like circumstances, be enjoyed by all." That is a wise and wholesome principle. Then further: "And no discriminations in favor of through freight or through passengers shall be made, to the injury of citizens of this State." If any little discrimination in favor of western passengers and western freight does not injure our citizens, why shall not such discriminations be made? Shall we drive all the western travel and freight *around* Pennsylvania? Why not let it come through our State, benefiting our own city, the interior of our State, and Philadelphia? Is it a part of wisdom, by such a rule as is proposed here, to drive all the travel and trade of the west entirely around, either south or north, of our State?

I say that the better plan is to place in the Constitution broad, comprehensive, and well defined principles, rather than statutory enactments, and leave it for the Legislature and the courts to enforce them. I am willing to trust the Legislature and the courts. I differ very widely with some members of this Convention who think the Legislature and the courts cannot be trusted. How came this Convention, so pure and incorruptible, into existence? And how came we to possess such wisdom? Cannot the people that elected us be trusted to elect members of the Legislature, who will protect their rights and carry out their wishes? Is it becoming in us to denounce all the Legislatures of the past, and denounce all for all time to come, as dishonest and not to be trusted? But this sweeping denunciation goes further, and says that the people cannot be trusted. Why, sir, we cannot even have the elections as heretofore. The people have become so debased or incompetent that they cannot be allowed to have annual elections. The fewer elections the better—such is the theory of our modern reformers. They cannot be trusted to elect members of the Legislature who will enact proper laws, and therefore we must insert a code in the

Constitution. We, in the Constitutional Convention, must establish a code of laws for railroads and canals. Why, sir, if these views are correct, why not do as they did in the middle ages in Venice, declare ourselves and our successors a perpetual council; possessing all powers; abolish elections, and wipe out the Legislature forever?

Sir, I think we are going too far. The great danger I have felt from the beginning is that we will go too far. We are putting too much in our Constitution. We are legislating too much. We are doing far more than the people expected when they sent us here, far more than they want us to do, and I firmly believe if we go on in this way we shall do far more than they will ratify. For one, I wish to avoid all mere legislation in our Constitution. I do not wish to make it so interminally long that no man will read it, and thousands and thousands of our citizens will vote against it, simply because of its cumbrous character.

Mr. S. A. PURVIANCE. Mr. Chairman: I regret exceedingly to witness the warfare that exists between my colleagues on the right and the left. I suppose that the gentleman who has just taken his seat made an allusion to myself, when I, jocosely, said, after his speech of yesterday, that he was an Ishmaelite.

Mr. J. W. F. WHITE. If my colleague will pardon me, I understood that he made the remark playfully.

Mr. S. A. PURVIANCE. I said that, inasmuch as the gentleman had declared, as I understood him, that he was opposed to every section of this report, and intended to vote against every section thoughout the whole report. It seems to me to be useless to waste time in the kind of discussion which we have been pursuing.

Mr. J. W. F. WHITE. I think my colleague misunderstood me. I said yesterday that I had come to the conclusion to vote against every section after the fourth; that there were some things that I approved of, but I thought they would be supplied by the Committee on Private Corporations, and other things were right of themselves, which I thought improper in the Constitution.

Mr. S. A. PURVIANCE. But, sir, I cannot sit still in my seat, as a representative of the western part of this State, and allow the remarks of the gentleman to pass unnoticed in reference to the operation of railroad companies. My colleague knows the fact, because he has it from as reliable sources as I have myself, that the manufacturers of the city of Pittsburg actually send their manufactured articles eighty or ninety miles west of Pittsburg to the city of Alliance, there to be shipped from that point to Philadelphia, at lower rates of freight than they could ship the same articles from the city of Pittsburg here.

Is not that a wrong? If it is a wrong it ought to be remedied, and I call upon the distinguished delegates from the city of Philadelphia, (Mr. Cuyler and Mr. Gowen,) who are said to represent railroad interests, to aid us in correcting this wrong. I deny, however, that those gentlemen are here to represent railroad interests. I deny that they are to be considered the especial champions of railroad interests. They are here, as the gentlemen themselves will say, elected as we are, delegates to a Convention to amend the Constitution of the State, and I invoke the aid of those gentlemen as much as the aid of any other gentlemen in this Convention to correct a conceded wrong to the citizens of this State, and I know that those gentlemen will not fail in responding affirmatively to this invocation.

Now, sir, that wrong not only exists in Pittsburg, but elsewhere through our State, and it is for the purpose of rectifying that wrong that we have asked for these provisions in the Constitution of the State.

Mr. Chairman, I am not opposed to railroads. I am in favor of giving them free and liberal grants; but, sir, I think the time has arrived when it becomes us to apply a remedy to many of the evils which are now oppressing the people. You see it stated that there is a sentiment of hostility to railroad corporations all over the west; and why? Because within the railroads transportation companies are formed by the officers of the railroads, and they are the chief transporters of the produce of the west. Hence it is that they have called down upon themselves the condemnation of the entire people of the west; and that may be the case ere long with regard to Pennsylvania.

I hope and trust that in the further progress of this discussion we shall endeavor, if possible, to confine ourselves to the sections that are before the Convention. This section, stripped of the verbiage that the gentleman from Venango (Mr. Dodd) excludes by his amendment, is a section such as I think should meet the approbation of the gentlemen of this Convention, even those who may be termed railroad

men, although I deny that there are any here at all. All that part of the section which declares that railroads are common carriers, and that all citizens of this Commonwealth have a right to be transported upon these railroads by themselves and their freights, is entirely unnecessary. All that is the common law of the land; all these rights now exist; and why declare them over and over again in section after section? I admit there is some force in what my colleague says, that we are lumbering the Constitution unnecessarily with provisions that look like special legislation; but, sir, nevertheless, let us, even if it should enlarge the Constitution, put in just the language necessary to produce proper restrictions, and certainly then no one can complain.

Before I take my seat I desire to withdraw the amendment that I proposed in the fifteenth line of the section, and to offer another, striking out, in the sixteenth line, the words "called for and needed," and substituting in lieu thereof the word "required."

Mr. LEAR. Mr. Chairman: It has been said more than once by gentlemen who rose to address this committee upon the different sections of this report, and it has also been exemplified by their practice, that it is proper for any one discussing the report to define his relations to railroads and canals. I do not exactly see the necessity or propriety of that; but as it seems to have become the custom in committee of the whole to do so, it may not be improper for me to do the same. My relations with canals and railroads have not been of a particularly agreeable character. I was once, I remember, under the bottom of a boat, in the bottom of a canal lock, and I was once run from the track on a railroad, and had a very rough ride over the ties. I have lost immense sums of money by railroad companies failing to pay me dividends; but, as an extenuating fact, let me say that perhaps the reason was because I never owned a share of stock upon which dividends were payable. [Laughter.]

But, sir, I come here, not as the representative of any railroad company, not as the advocate of their peculiar rights, if they have peculiar rights. I have been the attorney of some corporations of that kind when they have occasionally had business in our county, and they have paid me for my services; but where I have been employed by a single corporation of that kind, I have been employed by a thousand individuals of the human species, and I consider my obligations to them paramount to any obligations that I owe to any soulless corporation, or any body outside and beyond the people.

When I had occasion, a week ago this morning, to make some remarks on the subject of this report of the Railroad Committee, I believe I excited some feelings of resentment towards me for the manner in which I discussed its features generally; but as I took occasion then to state it was not entirely in reference to the report of the Railroad Committee that my remarks were applicable; and to-day I endorse the sentiments and the language of the gentleman from Allegheny, (Mr. J. W. F. White,) in the remarks that he has made with regard to the manner in which we are attempting to amend the Constitution of the State.

I said a week ago that I had been looking with anxiety for some committee which had the courage to report a section or an article of the old Constitution back without an amendment. To-day I will add another word to "courage," and I will say I have looked with anxiety for a man who had the modesty to admit in this Convention that he was not wiser than all the statesmen who have ever gone before us, and as being competent to make something new and superior to that which Pennsylvania had ever seen or lived under in the past.

That feeling in this Convention has shown itself in this report most conspicuously, because, where before we had nothing, the committee have brought into this Convention a lot of materials out of which a dozen Constitutions might be made, if they were put together in an artistic and finished manner. But as produced here, it is not more like a Constitution than a pile of building materials along the street are like a finished mansion; no more like a Constitution than the unchisseled block that lies beneath Pentellicus is like one of those finished pieces of statuary that grows beneath the hand of the accomplished and skilful artist. It is a mass of crude matter.

This Committee on Railroads and Canals went to work in the performance of their duty long ago, and have brought forth this report after a long trial. They were at work upon it early in the sessions of this Convention in Philadelphia, and they were put to set upon this railroad egg thus early in our deliberations, and after an incubation of three months, and

an insufferable amount of cackling, they have brought forth this remarkable chicken, [laughter,] a *rara avis;* a bird of incongruous proportions and ill omen.

Why, Mr. Chairman, this committee have, as has been apparent from the views expressed by many members of this Convention, produced here an amount of material that can be worked up only after great pains and labor; and it was a delicate way of stating this case, as some gentleman did a few days ago, when I was not present, but I saw an account of it, or heard of it after I came back, that this committee were not competent to perform their duties when he moved that the subject be referred back to them, and that four practical railroad men should be added, in order that the committee might have the benefit of their experience and judgment in doing that which they had shown themselves not able to perform. I say that the delicacy of that manner of approaching this subject ought to be commended by the members of that committee, instead of being resented. I take the rather plainer ground, and say, emphatically and literally, that I have reluctantly arrived at the painful conclusion that these gentlemen were incompetent to the proper performance of the task that was assigned them.

Now, I say that, and I say it fearlessly, before this Convention. Why was there an objection to putting railroad men upon this committee, or men who had some practical experience in regard to railroads? When we appointed a Committee on the Legislature we put at the head of it a gentleman who was in the Legislature. When we constructed a Committee on the Judiciary we put the ablest lawyers, as we supposed, in the Convention upon that committee. When we had any duties to perform in connection with any branch of business, we sought the men, as we supposed, who were most conversant with the functions that were devolved upon them by their appointment in reference to the particular department. But when it was asked to have gentlemen put on the Railroad Committee that were acquainted with the duties which they had to perform, it was considered an insinuation against the capacity of the existing committee, and rather offensive on the part of the mover.

Mr. Chairman, I do not see that they ought to object to that manner of approaching this subject; and the very manner in which this report has been presented to this committee; the very manner in which we labored yesterday on the section which has just been passed, and the result which was produced after voting down some things that were sensible, show that the Committee on Railroads and the committee of the whole were afflicted with that same want of ability to comprehend the duties which called this Convention together.

The gentleman from Allegheny (Mr. J. W. F. White) has said that he has about made up his mind that it is safest to vote against most things, and I say that it is safe to vote against most things that are proposed in this body. We have been laboring and living under the delusive and delightful belief that we were living under a Constitution, and an organic law, favorable to the welfare of the people; favorable to the interests of the great State of Pennsylvania; and that, therefore, in only a few of the things in which the instrument was defective did we need to have amendments. Perhaps I may be asked whether I assert that there are not things in the organization or management of railroad corporations which ought to be checked and prohibited. I do say that there are, most emphatically, and I say that the very circumstances alluded to by the gentleman who last addressed this committee, from Allegheny, (Mr. S. A. Purviance,) of the necessity for the manufacturers of that city to ship their goods eighty or ninety miles west in order to get a cheaper fare to Philadelphia, is infamous upon the part of the railroad corporation which required it; but when I say that, I declare at the same time that we should approach this subject in such a way as to do the least harm and the greatest good to the public.

Wherever we have power, we have, in a corresponding degree, the rights and liberties of the people infringed upon and curtailed; and it does not matter whether that power is in a corporation, a large firm, or an individual, and it does not matter whether it is in material wealth or in intellectual strength. The man who is great by his wealth, or by his intellectual force, overshadows those who are around him, and curtails and infringes upon their freedom to a certain extent. The people who live in a city are less free than those who live in the country; the people who live in a State are less free than those who live in a Territory, and the people who live outside of organized society are freer than those who are circumscribed by the iron

rules of law, and the Modocs to-day are the freest people upon this continent.

Mr. BAER. Will the gentleman permit me to ask a question?

Mr. LEAR. Yes, sir.

Mr. BAER. Will he inform us on what committees he is?

Mr. LEAR. The gentleman might have saved himself the trouble of interrupting me in my discourse, by consulting the Convention Manual, and he would have seen there, probably, upon which committees I was. There is one report of a committee that I was on that went through this Convention, and it went through, I believe, in a single session. I have not had any very great duties assigned me to perform in this Convention; but it is, I conceive, one of my duties to look after that which is attempted to be done by others.

The gentleman from Allegheny, who addressed the committee first this morning, (Mr. T. H. B. Patterson,) on the subject of this report and this section, says that this is not a place for the display or ventilation of legal learning or vested rights, and that we should not talk about the rights of corporations or those vested rights that are supposed to exist in those organizations which have been created heretofore under the laws that exist. Why not talk about vested rights? Is it, as he said, simply a question of expediency? While I am in favor of preserving vested rights, I am also in favor of restraining corporations within a proper limit. I am in favor of doing what the gentleman from Philadelphia proposed yesterday, to provide against all unjust discrimination; but the Committee on Corporations were not in favor of that, and they were not satisfied with it, and they wanted something more.

Now, here is the gentleman from Allegheny, (Mr. T. H. B. Patterson,) who says that the common law is re-declared to be sure in some of these provisions, but that the common law is not enough, because it is known that if a manufacturer or shipper goes into a court for the purpose of enforcing his rights as a shipper, he will meet with such persecution from the railroad company that he undertakes to bring to justice, that he will be deprived of his rights as a shipper upon that road. Why, Mr. Chairman, I ask you, because you know a great many things, and I ask members of this Convention, who probably know something besides the gentleman from Allegheny, how are we to enforce the provision of this Constitution? Is it to be wound up like a clock? Is it to be automatic in its performance? And when provisions are put in the Constitution by this Committee on Railroads and by the Convention, the people finally adopting them, will it execute itself? Will it be like the great solar system that was sent upon its pathway of ages from all eternity, and has kept on its course with unabated speed and regularity to this time? Is that the way that the Committee on Railroads, in their omniscience and omnipotence, propose to regulate the great corporations and the little corporations of Pennsylvania; by having something, I suppose, like an automatic instrument, that shall operate by its simply being wound up by the vital and superior power that exists, inherently, in this Constitutional Convention?

No. They will still have to go into the courts. But it seems to be a favorite idea, not uttered in direct words, affirmatively, by any of the gentlemen on this floor, but it seems to be shadowed by the manner in which they treat the subject, that whenever a thing is put into the Constitution, that is enough; it has declared its purpose, and there is no necessity of going further; that it has some superior power to a statute of the Legislature, or it has some other superior power by which it will communicate its preserving and its amending qualities to the laws of this State, that is not in act of Assembly. Why, sir, I say that the provisions of this section, and the provisions of the sections that we have passed upon this subject, are objectionable for the very reason that they will take more judicial power than the present laws to interpret them. They are of that incongruous character that no legislative provisions can be successfully engrafted upon them. They are of that complicated and obscure quality, that it will require all the judicial wisdom of the State of Pennsylvania to fathom their mysterious depths. The judges, when they sit upon the bench, will have to resort to that weakest of all sorts of weak logic, deducing from deductions, drawing conclusions based upon inferences which are themselves inferences from inferences; because, when you come to discuss and examine some of the provisions, and especially the provisions in the section which we adopted last evening before we adjourned, that charges for freight and fares for passengers shall, for equal distances in the same direction, be

the same, which is putting in the Constitution of Pennsylvania, so far as the committee of the whole has power to do it, a clause that the charges for freights and fares for equal distances shall be the same. How the same? Because that is all which is distinctly stated or contra-distinguished in that particular clause. Shall it be upon freights by the piece, or shall it be upon persons by the ton? Freight and fare for equal distances, it says, shall be the same, and that is left for the courts of Pennsylvania to construe and get the people properly to understand.

What is meant when this Constitution of 1873 provides in a section that charges for fares and freights for equal distances shall be the same? Shall we be counted the same as the cattle that are upon a freight car? Shall we be taken *per capita*, like the sheep, and cows, and horses, and swine, that are carried from one part of the country to another? Or shall we be weighed along with pig-iron, and the other bulky and more ponderous materials that are carried along the line?

The CHAIRMAN. The gentleman's time has expired.

Mr. H. W. PALMER obtained the floor.

Mr. CURTIN. I desire to ask the gentleman from Bucks a question. I always listen to him with great pleasure and profit, and put a proper estimate on his opinions. I desire to know whether he is for or against the section under consideration? [Laughter.]

Mr. LEAR. That is a very pertinent question, which, if I had not been circumscribed by the rule that has been established by this Convention, which allows a man that has anything to say about time enough to introduce his preface, and then he is cut off, I should have answered.

I am opposed to this section. I am in favor of a few declarations of principles contained in some of these sections, and I am opposed to this and shall vote against it. I think the question a very pertinent one, because, when a man has made a speech for twenty minutes—I do not know whether that is the present period of gestation for a speech here or not—when he has spoken for that length of time, it ought to be somewhere indicated about how he is going to vote on a question; but the committee of the whole gives a latitude which I embraced for the purpose of stating my views generally on the subject of this report, and upon the general course that is pursued in this Convention with regard to amending the Constitution. I have not nearly finished my remarks, but I do not intend to encroach upon the Convention, nor ask that my time be extended.

Mr. H. W. PALMER. Mr. Chairman: The inquiry of the gentleman from Centre (Mr. Curtin) forestalls what I was about to suggest. I rose to suggest that, perhaps, some gentleman who knew something about this subject would make a speech on the article before the Convention this morning. That was all I rose to say. We have had nothing of that kind yet.

Mr. HOWARD. Mr. Chairman: So that there may be no possibility of a mistake with reference to my position, I will say that I am in favor of this section. Perhaps it does not embody all the railroad wisdom in the world. I have great confidence in the committee, and in the intelligence of the very intelligent delegates of the Convention, and they may possibly improve the section. I do not say this sarcastically. I mean it. There are very intelligent gentlemen on this floor with whom I have now been associated so long that I have formed for them a warm and strong attachment—for them personally, and for their intelligence generally. And I have come to the conclusion that I do not possess all the wisdom in the world, nor all the wisdom of this Convention. But I am very glad that we have found in the member from Bucks (Mr. Lear) a gentleman who has wisdom and who has knowledge, and who knows that he has the wisdom and has the knowledge, and who knows that other men have not the amount of that article necessary to frame a Constitution for this Commonwealth. He did not exactly call these other gentlemen nincom—never mind the balance—but he knows they are incompetent; of course he knows it or he would not have said it. He is a positive man, and he knows all about it.

For one member of the Committee on Railroads and Canals, I do not care how much wisdom, by any mode or manner you choose to devise, you inject into that committee, whether it comes through the speech of the gentleman from Bucks, who spoke his twenty minutes, and we never found out until he was done which side of the question he was on, and then only through the question of the gentleman from Centre, (Mr. Curtin,)—we only know that he is the schoolmaster of the Convention, and that he had gone

straight forward, squarely denouncing everything in general, and the Railroad Committee in particular, that had been assigned them—or whether it comes in any other way. I do not mean to say, and I am not willing to say, that they are competent for the discharge of their duties. The handling of this question certainly was a very difficult and a very important matter, and any committee could have been excused if they failed to fully grasp its broad scope. But we have had the opinion of some gentlemen, nearly as intelligent as the member from Bucks, that the work of the Committee on Railroads and Canals had been remarkably well done, considering the importance of the subject, considering the objects that were covered by it, considering the fact of the immense amount of property involved in this subject, and the immense interests dependent thereon. It is a fact that, although hundreds of millions of dollars are invested in the subject matter of which this report treats, yet the subject itself is hardly twenty-five years old in its history. This Committee on Railroads and Canals had very little in other Constitutions; they had very little in law to guide them in the work that they were to perform. They were compelled, in looking to corporate rights, and in looking to the rights of the public, to be guided by the practical workings of the railroad system itself; and in providing, as they have done, some eighteen or nineteen sections for the consideration of the convention, they were compelled to consider what has been the practice heretofore in regard to railway legislation. They knew the evils of the system, and were bound to consider them, and they could not escape the consideration of the question of the place in which to deposit the power that should in the future control these organizations.

I picked up, yesterday, a resolution offered by a very intelligent member of this Convention, (Mr. J. N. Purviance,) who thought he could condense the whole matter that should be contained in the railroad report into one section. I took up the section, and in the first two lines struck out twelve words, and it reads much better now than it did with those twelve words in, and expresses all that the gentleman intended to be expressed. Yet I have no doubt that this gentleman believes he could have done the work of the Committee on Railroads and Canals far better than the committee itself. A workman, we always say, should be judged by his chips. It is a homely saying, but expressive. Now, when a man finds fault with a particular work, if he means himself to do what is fair and right, let him come forward and show wherein it could have been better. Merely denouncing and mere declamation is not the thing in a body of this kind, and is not the proper matter to be addressed to intelligent men. When a man denounces the railroad report, let him point out the specific objection that he has to it. Let him state the particular section. Let him state the particular clause, and let him state his particular improvement that he means to suggest, and then let him ask the committee of the whole to adopt it. That is the fair way to treat the subject, in addressing an intelligent body of men, which I believe we are. If you were addressing some political crowd, gathered upon the street corners in some of the cities of this Commonwealth, perhaps this bombastes furioso kind of a speech would be the best kind to address to such an audience. But we have gathered here for the purpose of doing a special and particular work. It is expected that we will reduce our measures and propositions to writing. Then we are expected to print them, to put them down in the English language, and get them into such a shape that they can be understood by the people; and when gentlemen consider that they are in a position to denounce others for being incompetent to perform a certain work, they should demonstrate that they themselves are competent to do that work. When they undertake to point out a failure, they should come prepared to show wherein they have failed, and to show how the thing can be bettered.

The delegate from Bucks has flattered, very highly, my colleague from the county of Allegheny, (Mr. J. W. F. White,) and says that he is glad to find a gentleman here who has the modesty to announce publicly that he does not consider himself at all competent to frame an entire Constitution. Perhaps the gentleman from Bucks was not aware that my friend, the delegate from Allegheny, was the only person, perhaps, in all this body—and I say it with all respect of him, because I think he is entitled to credit for the work he has done in this Convention—who did prepare an entire Constitution and had it submitted to the members of this body. [Laughter.] Perhaps that may be the trouble with my friend and colleague

from the county of Allegheny, that his wisdom was not accepted. That may be the reason why he stands up in his place and talks about a senseless raid upon corporations. Who has made a senseless raid upon corporations? To whom does he mean to apply this? What man has risen in his place here and made a raid upon corporations? What man has said that he wished to do a thing that was unfair, or unjust, or wrong toward the corporations of the Commonwealth? No man has said it. We have differed in opinion, as have other gentlemen upon other committees. The gentleman himself (Mr. J. W. F. White) was a member of the Committee on Suffrage, Election and Representation, and presented a minority report from that committee, and a portion of his minority report was accepted by the committee of the whole.

There was a manifest difference of opinion in the report of the Committee on Suffrage, Election and Representation, but did anybody find fault with those gentlemen who constituted that committee, because of that difference? Because the committee thought a portion of the report of the majority of that committee was not done as well as it ought to have done, and they chose to accept the work, in part, of a minority, or because they chose to make amendment after amendment in the committee of the whole, who got up then and took it upon himself to denounce that committee as incompetent, and make the monstrous proposition, absurd, ridiculous, and I will say contemptible proposition, that that committee was incompetent, and that we ought to put upon it men competent, to frame provisions relating to suffrage, in order that then the Committee on Suffrage, Election and Representation might, perhaps, be so aided that its work could be accepted by this Convention?

That was the proposition made in reference to this pending report. It was proposed that our report be re-committed to us again, and four practical railroad men added to our number, in order that our work could be made acceptable to the Convention. Mr. Chairman, from the time that I first went upon the Committee on Railroads and Canals I consulted with the practical railroad men of this Commonwealth, and I never found two practical railroad men that would agree upon the same proposition. Right here, upon this floor, we have seen a specimen of it. We have seen how their opinions conflicted. One set of railroad men would be willing to turn all the officers out of any business connected with their roads, except that of discharging their duties as officers, and others would be willing to compel the corporations themselves not to engage in any business except that of common carriers. Why that question alone would divide the railroad men beyond power of reconciliation. Just state that proposition, and leave the two leading railroad companies of this State to settle it, and they will be in each other's hair in a minute. They cannot agree upon any proposition of that kind at all.

I have found that it is not altogether lovely among the railroad companies themselves. I am afraid that if we had had four practical railroad men upon the Committee on Railroads and Canals, we would never had got a report at all. As it was, the members of that committee—and I leave myself now entirely out of the question, in order that I may speak freely of my colleagues—the members of that committee, while they had not all the wisdom in the world, are honest men, are capable men and are intelligent men, and they used every diligence, and they used care and caution; they wanted to do justice, and they tried to do it to this great subject, that they might do no injustice to anybody that might be interested in the report. And I am happy to say, and I repeat again, that while this report has been denounced by my colleague, J. W. F. White, of Allegheny, while he has thought proper to denounce the report, and declare that he would vote against every section of it from and including section eight, down to the tail end of it; and while it has been denounced by the delegate from Bucks, who has gone even a step further, and declared that the members of the Committee on Railroads and Canals are incompetent to do their work, yet I am happy that the report has received the endorsement of men whom I regard of as high intelligence as the gentleman from Bucks, and certainly I have a very high opinion of him. I know he is a man of great learning and great wisdom and great intelligence, and I have no doubt if he had been constituted the committee, and this entire subject had been referred to him singly, he would have produced a report that would have been unanimously accepted by the committee of the whole, which would have been accepted by the Convention, and which would never have been even amended.

It would never have done for any man to propose to amend it. No man would have dared to have done it, because if he had offered to, the gentleman from Bucks would have told him that he was incompetent or next door to *non compos*. No man would have dared to enunciate any such declaration as that. His report could not have been improved, and no doubt the people would have endorsed it unanimously, and we would have had no trouble whatever of this kind.

I am exceedingly sorry—whether it comes from the interest evolved and developed here by the corporations, or whether it is a consequence of the peculiar matters treated in the railroad report, but I am exceedingly sorry that the report cannot be fairly discussed and fairly amended without attacking the competency of members of the Committee on Railroads and Canals, and making it a personal matter with them. How much better it would be for gentlemen to treat this committee as that committee have treated other reports. Why should the report of this one committee be singled out and all this clamor raised against it? There is a reason at the bottom of it. Unquestionably there is a reason why this Committee on Railroads and Canals is treated differently from any other committee on this floor. Is it because it treats upon railroads? Is it because this committee have tried to do justice to the people of this Commonwealth? Is it because they have stated that these discriminations that heretofore have existed shall be stricken down, and that the people shall no longer labor under these burdens? Is it because they have said that the people of the State shall not be dependent upon the Legislature that has been manipulated, year in and year out, by these corporations in their own favor and against the public? Why if we had been perfectly willing to have trusted the Legislature, we could have prepared a report in a few lines. We could have prepared a report simply stating that the Legislature shall regulate and control the whole subject, giving absolute power over it to the Legislature, and have written the whole thing in one short resolution. But we supposed it to be our imperative duty that we should go into something like legislation; and, sir, the people can afford to print eighteen sections upon the subject of railroads in their Constitution; they can afford to pay for it; and if it is necessary to legislate, if it is necessarry to pass something that looks like a statute for the purpose of reaching a particular end, why should it be objected to? Why should we object to making a section a little long, if it makes it a little plainer? No, sir! The gentleman does not state his purpose. He wants to leave the door open to all the evils we are trying to prevent. He wants this article to contain a few general principles, a few glittering generalities, and then leave open the door of that highway that is trodden from the doors of railroad corporations to the Capitol at Harrisburg, so that it can be trodden again and re-trodden in the future, just as it has been in the past; so that these corporations can have Sam Moon there, or other moons, for the purpose of shedding and reflecting their light upon the men who are to make the laws for the *whole* people of the Commonwealth. Who knows but if we left the subject remain in the hands of the Legislature, but that these corporations would, perhaps, get the Legislature to pass a bill allowing them to take that ten millions that lies in the Treasury of the Commonwealth.

I understand why this particular clamor is raised. It is because we have shut the doors against the discriminations and oppressions of corporate power, and not because we have made this report long. We have made it long from the very necessity of the case and from the experience of the past, and yet it is only eighteen sections, not so long as other reports whose subjects are of far less magnitude. The report of the Committee on the Judiciary contains some thirty-seven or thirty-eight sections, and that, too, upon a subject old and well understood, a subject well defined. Here is a new subject; a great, a mighty, a vast subject! Why, sir, I wonder that the Committee on Railroads and Canals were able to get in so small a shape the subject referred to them, and yet escape the necessity of appealing to the Legislature. It was the aim, it was the endeavor of the Committee on Railroads and Canals to make their report as short as possible, and yet to make it full enough to express its meaning, and escape, as far as possible, appealing to the Legistature.

[Here the hammer fell.]

Mr. WORRELL. Mr. Chairman: I ask unanimous consent for the gentleman from Allegheny to proceed.

Mr. H. W. PALMER. I object.

Mr. GOWEN. Mr. Chairman: I desire to say a few words upon this subject. I was very glad to hear the remarks of the

gentleman from Allegheny (Mr. J. W. F. White) this morning, for I really believe that in overturning the fundamental law of Pennsylvania we are attracting a great deal of attention to the solidity of the fabric that we are attempting to undermine. I believe a great many other people in this Convention and in the State of Pennsylvania, other than my friend Mr. White, will find out, when they examine it, that the present Constitution of the State of Pennsylvania is about as perfect as the Constitution of any State in the American Union. I believe there are several things required which it would be better for us to put in the shape of amendments to the present Constitution than to overturn the whole fundamental law, which has always that reverence which is due to age and to antiquity.

I believe if there were four committees appointed in this Convention to report four amendments to the present Constitution, one of them to secure purity of elections, which is the most important reform of all, another to increase the judicial force of this Commonwealth, a third to prevent the evils of special legislation, and a fourth to restrict the unjust discriminations of corporations, those four amendments to the present Constitution would accomplish all that the people want, and would be far more likely to be adopted than an entire change in the fundamental law, by which a great many more imaginary evils are to be cured. But while I believe that, I acknowledge that our rules do not permit it, and we have to go through with these articles as they are presented.

If it were possible that anybody connected with a railroad company could give bond in the sum of $10,000,000, with approved security to the satisfaction of every gentleman in this House, even my friend from Lancaster, (Mr. D. W. Patterson,) that he would not pick the pocket of any delegate while he was here, and that the fact of his being a corporation man did not necessarily imply that he was a thief. I believe if such a bond could be given, and the party giving it should be asked to write something upon the subject of railroads, his previous knowledge would enable him to put something in shape that would cure the real evil of which complaint is made.

I desire to criticise the present section in three particulars. Two of those will be cured by the adoption of the amendment of the gentleman from Venango, (Mr. Dodd;) the third will not. You will observe, sir, and the members of the committee will observe, that the words used in the third line are, "to transport persons and property," that is, that a railroad is not only to be free, so that the product of everybody can be transported by the company, but the form of the verb used is, "to transport," and, therefore, the party owning the product must be the transporter; in other words, that every person is to be permitted to put his own locomotives upon a railroad. A great many of the old charters in Pennsylvania require that the roads shall be open to the locomotives of any person; but there is this protection to the traveling community, that necessary rules and regulations by the company must be enforced, and for any man that would attempt to put his own locomotive upon a railroad, one of these reasonable rules and regulations would be, that that locomotive must first be submitted to the inspection of a skilled mechanic, so that, in the race for wealth, the individual transporter shall never blow up the community by his old rat traps, as he runs along the railroad. The Constitution of Pennsylvanis, as it will be if this section is amended, seems to consider that the property of the transporter is of more value than his life, and that every man is entitled to put a locomotive upon the road.

Another section speaks of "corporations composed in whole or in part of officers," &c. I want to say here that I determined to write nothing upon the subject of railroads, unless I was asked by somebody connected with the Railroad Committee, and having had that invitation sent to me by my friend, (Mr. Howard,) I have since then been industriously engaged in trying to put my thoughts on paper. I find it is a very much more difficult subject than I had imagined, and I have stumbled over a difficulty upon this very subject of "officers," which I admit to be one of the greatest evils intended to be cured. You cannot say that no officer of a company shall be engaged in business, unless you limit it to the officers that are the managers, and for this reason: Take the wild section of Pennsylvania, and you have a great number of lumbermen, people who have large tracts of land; they want a railroad; they club together and they build it themselves. Necessarily they are the officers; they are the stockholders; it is not intended that that should be prevented. Again, in the thinly settled districts of the State, where

the development of the State is accelerated by having as many stopping places and stations to accommodate the people as possible, a railroad company cannot open a station wherever it is asked for, because the expense of the station agent, if he is to engage in no other business, may be a thousand or fifteen hundred dollars a year, and there may be only ten or twelve people to travel to and from that station, and the company may not receive half that money as the aggregate amount of fares collected. The people there want the train to stop. The railroad company say: "We cannot open a station, and put a ticket agent there; it will cost us five or six hundred dollars to pay an agent, and you gentlemen altogether will not pay us that much money." The practice has been to go to some storekeeper, or some man having business along the line of the road, a lumber dealer, or a coal yard man, and let him become the agent for selling tickets at a commission. Probably he gets only twenty or thirty dollars a year, and he could not live without engaging in his other business.

Therefore, if you use the word "officers," it must be in some manner so restricted as to confine it to the officers that have something to do with the general management of the road, and officers whose consent would be necessary, in order to make anything like a corrupt contract. And let me tell the committee here that it is the law of England, and the law of Pennsylvania, to-day, that any contract made by any officer or director of a railroad company with himself or in which he is interested, is absolutely and utterly void, and any court of equity, upon the bill of a private stockholder, would annul and vacate such a contract. But if the amendment of the gentleman from Venango is adopted, striking out the first part of this section, the two objections which I have called the attention of the committee to will be done away with.

A word now, as to the other point, and that is as to the distribution of cars. It will be observed that the language in the sixteenth line is, "motive power shall be called for and needed by them." If we are going to put in the fundamental law of Pennsylvania a description of the manner whereby motive power and cars shall be distributed, I submit that if we adopt this section it simply will be a constitutional method, whereby, in defiance of public right, in defiance of courts, and in defiance of honesty, the favorites of a railroad company may call, constitutionally, for all the cars they want, and nobody else get any. They are to be distributed as called for and as they may be on hand. Who would know what are on hand, except the favorites of the company? And they would call for them all, and until they were supplied nobody else could get any.

The subject of the distribution of cars is one of the most important, because the matter of tolls is not so important at all. If the tolls are perfectly right, and the cars are withheld or unjustly distributed, the evil to the suffering producer is just the same. The company with which I have—I think the word is "misfortune" [laughter]—to be connected, distributes daily, I suppose, in the busy season, about five thousand cars. They are distributed, probably, to two hundred people. At the head of the main road there is a general officer, who is the car distributor. Every colliery establishment has its capacity rated by an inflexible public rule, which is equally applied to all, and of which each shipper is cognizant, so that every shipper can know how his neighbor's colliery is rated. It is just as easy to rate the capacity of a colliery as it is to measure the length of a stick of timber, and no injustice can be committed in that respect that would fail to be detected. Every colliery is rated, (and this rating every shipper has the right to call for every week if he increases his capacity;) every colliery is down on a sheet of paper, with the name of the operator, and the capacity of the colliery. The last train of cars that leaves every colliery carries a written order to the general car distributor for the number of cars required the next day. Those are all in by ten or eleven o'clock at night. They are added up, and we will assume that there are five thousand cars called for. By eleven o'clock at night the car distributor knows by telegraph the exact number of empty cars that will be on hand in the region the next day for distribution. If there are only four thousand, and the calls are five thousand, every man gets eighty per cent. of his call; and this sheet is an open sheet, that every operator can look at, and does look at if he has any idea that injustice is being done him.

It will not do, therefore, to distribute cars according as they may be called for, because wherever cars are scarce, and a man knows they are to be distributed according to his call, he will call for three

times as many as he can load, in the hope that his *pro rata* distribution will give him as many as he can load; whereas, an honest man, only calling for as many as he wants, may get but one-third as much. If the distribution is to be made, it must be made by a *pro rata* upon the actual capacity to load the cars, and not because the man calls for them and says he needs them. An honest man will call simply for what he wants. Where cars are scarce, a dishonest man will call for three times as many, under the hope that his share will give him as many as he wants. And any system, whether it is statute or constitutional law, whereby a railroad company is compelled to distribute cars as they may be called for, will enable it in the one case, if it chooses, to let its favorites call for all, and in the other case, if the railroad remains perfectly honest, will enable the dishonest shipper, by calling for more than he wants, to get an advantage over the honest one, who actually represents the true capacity of his operations.

Again, the amendment of the gentleman from Allegheny, as these cars may be on hand, will not cure the evil, because the cars are not on hand at the moment the distribution is made. The business of the day must be prepared for the night before. In an arrangement with all the ramifications of a large railroad company, you cannot wait until the cars come up and are on hand before you attempt to distribute them; but the number to be distributed to each must be determined while the cars are on the way, so that when they come up they can be taken off to their destination. The company with which I have something to do frequently distributes daily cars, which, if placed in a line, would extend thirteen miles. We have no place to hold thirteen miles of cars. We cannot wait until they come up and are all on hand, and then commence to distribute them. We distribute them because we know that before midnight they will be on their way coming up, and before the next day is over they will have arrived, and the people will get them, and the next night they will come down the road.

Therefore, the first part of this section is open to the objection that it would permit individuals to put their own locomotives on the railroad, without any proper inspection or restriction as to the quality of those locomotives. The last objection, and the greatest, is that it provides an inflexible rule of distribution, based to some extent, or almost to the entire extent, upon the call for cars.

Mr. SHARPE. Will the gentleman pardon me for an interruption? His argument appears to overlook the words "called for and needed," which latter words seem to limit the call. The necessity for the cars limits the call.

Mr. GOWEN. Who is to determine whether they are needed? I thank the gentleman, for I intended to call attention to that "needed." When? This question of the distribution of cars is of more importance in colliery and mining operations than in any others, because in these operations the product must be loaded by the shipper, into the car, himself, and there is no intermediate station or depot where the product can be stored until the company has the cars.

Now, a man shipping, every day, one hundred cars a day, is entitled to his one hundred cars regularly. He may want them every day. Some man may come in on one day, and by reason of some accumulation he may want a thousand cars, more than his proportion on that day, not due to him on that day, although he may need them on that day, and not properly due to him, because he has been neglectful; and if you give them to him all on that day, you punish the regular shipper and protect the man who is an irregular one. No colliery establishment can succeed unless it has its cars furnished with regularity and promptness; and the railroad company furnishing the cars should be permitted to charge some premium for this promptness; and the penalty imposed by the railroad company that I have spoken of, in case a man calls for more cars than he wants, under the belief that he is not going to get a large enough proportion, is that when he gets more than he wants and does not load them, that sum which stands over at night is taken from him the next day. Now, a man may need cars to day, and yet may not be a regular shipper, and you cannot suddenly increase his proportion without taking cars away from those regular shippers whose regularity entitles them to them, and who could not make money but for that regularity.

The CHAIRMAN. The gentleman's time has expired.

Mr. MANTOR. I move that the gentleman's time be extended.

Mr. GOWEN. I have said about all I intended to say.

Mr. COCHRAN. I am very glad, Mr. Chairman, that the gentleman from Philadelphia has brought this matter to its practical bearing. We have been running very wild this morning in broad denunciation and inculpation of the Committee on Railroads and Canals and its work. For my own part, sir, I am not affected by reflections of that nature. I believe that the gentleman from Bucks, (Mr. Lear,) who indulged in them most largely, really did his cause, if he had one, which seemed to be somewhat doubtful, more harm than benefit by the course which he pursued. I therefore shall not trouble this committee with replying to such reflections. The time of the committee is too important to be taken up with responding to matters of that character. I suppose that I might inveigh probably as long and as loudly as he did, but I do not think it is my duty to do so, and therefore I pass it all by.

Mr. Chairman, this section has undergone a thorough criticism by the gentleman from Philadelphia (Mr. Gowen.) He is competent to criticise it. He understands the subject. But after listening to his remarks with attention, I cannot agree with them, and I cannot agree with his intrepretation of the section itself. This section sets out by declaring in terms, in the first place, what the statutes and the chapters of these corporations declare, that they are public highways. I presume there is not a railroad charter in the State that does not contain this provision, and I know that our general railroad law expressly declares that to be the case.

Mr. CUYLER. If the gentleman will pardon me at that point, the general railroad law qualifies that declaration in a very important particular. While it says that the road shall be a public highway, it also says that the motive power shall be furnished by, and controlled altogether by, the corporation. This omits that.

Mr. COCHRAN. I wish the gentleman from Philadelphia to understand me. I agree entirely that the railroad companies should control their own motive power. I have no disposition to take the control of the motive power from the road, nor to allow anybody to put his motive power on that road or run it over their rails. That is not my intention; nor was it the intention of the committee. If gentlemen consider that to be the intention of the section, and that the expression is imperfect, I hope they will correct both, but not impute to the committee an intention which they did not entertain.

The idea was this, that these were public highways, and that the people should have the right to transport persons and property on these roads. It was not intended that they should have the right to take the motive power and the machinery out of the control of the railroad company. That would be exceedingly injurious, exceedingly harmful. Nothing of that kind was contemplated. But here was the difficulty which the committee encountered, and which they desired to remedy, and that difficulty was one which the gentleman from Philadelphia who has just spoken, (Mr. Gowen,) now makes trouble about—the difficulty which persons who have no pecuniary interest in, and no official or other control over, these railroads met when they were brought into competition with persons who had that official control and that pecuniary interest in the roads, the discriminations that were made against them, and the disadvantages which they were compelled to encounter. That is the idea of the section.

The gentleman from Philadelphia has discussed this question with perfect candor, but I submit to him that he has given too broad an application to the word "officers." Is a mere ticket agent to be considered an officer in a corporation of this kind? Is he not a simple agent, employee, or something of that kind? I contend that he is not an officer. If he is not an officer, then the heft of the objection of the gentleman from Philadelphia to this particular part of the section is destroyed, and the section stands prohibiting this competition between the officers proper of the railroad and the individual who is subject to be put at a disadvantage by the operations of those officers.

Now, sir, that is the objection to the first clause of this section. I have tried to meet it, and to meet it fairly, and if I have not met it fairly I suppose it is because, as the gentleman from Bucks (Mr. Lear) politely asserted, this Railroad Committee is utterly unfit to discharge its duty. That was not merely a reflection on the members of the Railroad Committee, but it was a reflection upon a majority of this committee of the whole, because the committee of the whole, the gentleman from Bucks notwithstanding, has adopted a large portion of the report of the Railroad Committee. He need not think when he is firing his shots at the

Committee on Railroads that he is not hitting other, and, as I suppose, he may consider better, men than the Committee on Railroads. Why, sir, I really do not know exactly what season of the year that comes, but I really believe this must be the time when the bucks are in the rutting season, from the tenor of the speech which that gentleman made this morning. [Laughter.]

Mr. Chairman, allow me to say, with regard to the criticism of the gentleman from Philadelphia on the last portion of the section, that I think it is really not applicable, from the fact that he has not taken into view these words, "shall supply the same in equal ratable proportions." What does that mean? Does it mean that any man can go to a railroad company and say, "I want these cars, and you must supply me with all I want?" No, sir. Of course, the cars must be called for, or else they will not be supplied. Then they must be "needed," and that is a question on which the railroad company has as good a right to speak as the individual. The mere declaration of the individual that he needs those cars does not compel the railroad company to furnish them. If the railroad company knows he does not need them, they are not to be furnished.

But further than that, they are to be supplied in "equal ratable proportions." That was intended to meet the very point that was suggested by the gentleman from Allegheny, to which the gentleman from Philadelphia objects. How was that to be done? "Equal ratable proportions" means that if there is not sufficient on the ground to supply the whole demand, then there shall be an equal ratable adjustment and supply furnished; and if there is enough to supply the whole demand, then the supply shall be equal according to the demand and the respective needs of those who demand them.

Now, Mr. Chairman, I do not want to take up so much of the time of this committee, but I have, unfortunately, been compelled to do it from day to day, in order to explain the views of the committee.

Mr. GOWEN. Will the gentleman allow me to suggest a difficulty to him?

Mr. COCHRAN. Certainly.

Mr. GOWEN. I am going to take a case in the coal regions. The gentleman will admit that the man who has a colliery, and has five hundred thousand dollars invested in it, is one who ought to be protected. The Reading railroad company distributes its cars to every colliery evenly. Whenever coal gets very high, you get a lot of people digging in dirt-banks, and screening out coal, who have not a penny invested. They may want cars; they may need cars. The company has always said lately, "we will furnish no cars for that purpose; if they want cars they must get them for themselves." Every car furnished to them is taking a car from a man who is in a more legitimate business, and whose capital suffers for the want of being furnished with cars.

Mr. COCHRAN. I do not understand the statement of the gentleman when he says that is not a legitimate business. Are not poor men to be protected, at least ratably, with rich men? Is not the man who has a small colliery to have some consideration as well as the man who has a large one, with a capital of four hundred thousand dollars or five hundred thousand dollars?

Mr. GOWEN. The gentleman does not understand me at all. It is not a question of rates; it is not a question of money; it is not a question of small colliery or big colliery; it is a question of colliery of any kind in one case, and no colliery at all in the other.

Mr. COCHRAN. Well, sir, if those parties get out from the *debris* of the collieries that which is coal, fit for transportation, is it to be said that because they get it they shall have no cars to transport it? Are they not producing from the *debris* of the collieries just as well as the man who, in the colliery, picks out the coal from the imbedded rock? Where is the difference in point of productive value, except in quantity? There may be some in quality; but still the article is useful; it is a merchantable article; it is a saving of that which would otherwise be utterly lost; and I think that men so employed should have, according to their needs, some opportunity to carry the fruits of their labor to market.

Mr. DODD. If the gentleman from York will permit me, I wish to suggest a difficulty to my mind, for which, perhaps, the gentleman will suggest a remedy. We have labored in the oil regions under great difficulties on account of these discriminations. When there was a corner in oil, certain Pittsburg rings got all the cars, at least that has been asserted, and I believe correctly. Now, suppose this section adopted that cars are to be furnished as called for and needed, and these

rings, colluding with the railroad company, call for double or treble the amount of cars that they really need; what is to prevent the railroad company still furnishing them to them, to the loss of others?

Mr. COCHRAN. They must furnish the cars in equal ratable proportions. There are penalties for the violation of all these sections, if gentlemen will refer to them. There is a section providing for a specific penalty. If the gentleman from Venango can make this section more perfect than it is, to meet that difficulty, I certainly shall have no objections to such an amendment. He practically knows of this thing, and I shall not object to any amendment that he shall propose that will make the section more effective. But, sir, here is the difficulty; in the way the thing stands now it is all at sea; and I think the gentleman will admit that he stands to-day entirely at the mercy of those companies, and they can carry out, to the full extent, the discrimination to which he objects; whereas, here is an attempt at least to bring this matter within the scope of some rule or regulation.

Mr. DODD. I wish to say that I am in favor of the section, and will vote to adopt this language, if none better can be suggested. I am not able to suggest any better myself, but I hope some one will.

Mr. COCHRAN. Now, Mr. Chairman, with great deference to gentlemen here, especially those who have made such tremendous raids upon the Railroad Committee, I think that remark of the gentleman from Venango is a pretty good defence of that committee. After considerable labor we have presented this report; and the gentleman, who understands the subject, and understands it well, and is competent to prepare a provision on the subject, says he cannot suggest anything better, and he will take it as it is if he cannot get anything better. We have done the best we could in all these matters; and I say here that as each of these sections is considered, if the section is treated fairly and discussed fairly, and amendments that are calculated to make it better and more beneficial are proposed, there is no man here who is more willing than I am that the thing should be matured and perfected.

The CHAIRMAN. The question is on the amendment to the amendment.

Mr. GUTHRIE. I wish to offer an amendment as a substitute for the section.

The CHAIRMAN. A further amendment is not now in order. There is an amendt ment to an amendment pending.

Mr. GUTHRIE. Then I desire to say that if the amendment to the amendment be voted down, I shall offer this as a substitute for the section:

"No officer, manager or employee of any railroad or canal shall be engaged, directly or indirectly, in the business of forwarding or transporting of freight or passengers on the lines thereof; and all regulations adopted by the companies owning, controlling or managing such railroads or canals, having the effect to discriminate against individuals or corporations in the transportation of freight or passengers, shall be void."

Mr. LILLY. I suggest to the gentleman from Allegheny, whose amendment is pending, (Mr. S. A. Purviance,) that he modify it so as to strike out all after the word "power," in the fourteenth line. I think the residue of the section has been shown to be unnecessary by the gentleman from Philadelphia, (Mr. Gowen,) and I hope the section will be amended in that way. I believe that striking out that portion will remove many of the objections that have been found with the section.

Mr. S. A. PURVIANCE. I withdraw my amendment for the present, for the purpose of enabling my colleague, (Mr. Guthrie,) who has just read his, to have it offered in this place.

The CHAIRMAN. The amendment to the amendment is withdrawn. The question is on the amendment of the gentleman from Venango (Mr. Dodd.)

Mr. GUTHRIE. I now move, as an amendment to the amendment, to strike out all after the word "section," and insert what I have read.

The CHAIRMAN. That is not an amendment to the amendment. The question must first be taken on the amendment.

Mr. COCHRAN. What is the amendment?

The CHAIRMAN. It is the amendment offered by the gentleman from Venango (Mr. Dodd.)

Mr. LAWRENCE. Let the Clerk read the section as it will stand if amended.

The CLERK read as follows:

"All regulations adopted by railroad or canal companies, having the effect of hindering or discriminating against individuals, partnerships or corporations in the transportation of property on such railroads and canals, shall be void; and no

railroad corporation, nor any lessee or manager of the works thereof, shall make any preference in their own favor or between individuals, partnerships and companies shipping and transporting thereon, in furnishing cars or motive power, but shall supply the same in equal ratable proportions to each shipper or transporter, in the order which cars and motive power shall be called for or needed by them, as shippers or transporters on said railroad."

Mr. ALRICKS. Before the vote is taken on the section, I beg leave to say a word on the subject. I admit that if our committees were differently constituted I would not object, for, like my friend from Centre, (Mr. M'Allister,) I like more work—I would willingly have been on this committee; not that I should be of any advantage to the committee, but that I might get light on the subject. Therefore it was that I was opposed to this report being referred back to the committee, because I wanted all that was said on the subject to be said in committee of the whole, that we might know the reasons why we should adopt this article, or why we should oppose it as it was reported.

I should have been very glad if the idea thrown out by the gentleman from Lycoming (Mr. Armstrong) had been adopted, and some friends of the railroad interest, if there are such in this Convention, had been placed on that committee; not that I supposed the committee was composed of such "unstable souls" that they could be beguiled—for it was an able committee—I do not believe those gentlemen would intentionally lead the Committee on Railroads or the committee of the whole into any error, although their own bias might be strongly in favor of railroad companies.

The gentleman from the city of Philadelphia, who addressed us this morning, (Mr. Gowen,) objected to putting so many provisions in our Constitution, and he said he preferred the old Constitution. Mr. Chairman, I believe that I rode after the first locomotive that ever passed over what is now the Pennsylvania railroad, certainly behind the second that passed over; and it was about the time that the Convention which adopted our Constitution was in session. They knew nothing in 1838 about the dangers of railroad companies. The Convention that adopted our present Constitution had not the light before them that we have before us, and therefore they could not incorporate in the Constitution those restrictions which it is necessary for us to place upon the companies, to do justice to individuals.

Mr. Chairman, in the course of my profession a paper has been presented to me, purporting to be an article of agreement, in print, between a railroad company and a transporter. I understand that this section is intended to protect transporters against improper influences on the part of railroad companies. Now, the purport of that paper was this: The party was asked to enter into a contract that he would not hold the railroad company responsible for any damages done to the goods it was carrying while in the course of transportation; that he would not hold the company responsible for any delay that might be occasioned in forwarding those goods; in other words, that he would not hold the company responsible for the act of the employees of the company, &c. That paper, or one like it, is in the possession of gentlemen who are connected with railroad companies; and as we all ask for light on the subject, I hope that it will be produced before this Convention, because, as I read the paper then, it occurred to me that it was utterly impossible for any man, who was not within a certain influence and ring, to compete as a common carrier. It appeared to me that every person who signed such an agreement as that would tie his hands and agree to be driven out of business or become bankrupt. I ask only for light and information; and the gentlemen who have access to the contracts of the railroad companies, I hope, will bring it in that it may be read from the Clerk's desk, and we may know all that we are doing in the premises, because I wish to do justice to railroads, and at the same time I wish to protect the natural citizen.

There was an insinuation made the other day by my friend from Bucks—a soft impeachment, a mild insinuation—that Slaymaker's bull (who we all heard was opposed to locomotives) was typical of the members of this Convention who are in favor of putting constitutional restrictions on railroad companies. I do not like anything like coarseness, yet I must say I am satisfied, after what we heard this morning about the *rara avis*, we have at least one sound egg in this Convention.

Mr. S. A. PURVIANCE. I move to strike out all after the word "power," in the fourteenth line, to the end of the section. That leaves the prohibition to discrimi-

nate in furnishing cars standing, generally, without the specifications which follow.

The CHAIRMAN. The gentleman from Allegheny moves an amendment to the amendment, to strike out all after the word "power," in the fourteenth line.

Mr. BUCKALEW. I wish to make a suggestion in addition to that already made by the mover of this amendment, and that is that the Legislature, upon the complaint of shippers in any part of the Commonwealth, engaged in any branch of business, will have complete power, by law, to make regulations from time to time, and from time to time to change them, by which the penalties which are denounced in the previous portion of the section shall be enforced. The fault—if there be any fault in this report—is that the committee have attempted to apply the principle in a particular way. The section contains a denunciation of any favoritism in the furnishing of cars and other facilities by railroad companies. That should be put in the Constitution, but the committee have gone into matter of detail, in saying that these facilities shall be furnished according to a certain fixed rule. That is the "call" rule, when called for by the persons who desire these facilities from time to time. Now, sir, let us omit that, and leave this subject so that it can be regulated by law; that if this rule of supplying facilities, according to call, is not sufficient, the Legislature may adopt another, or may adopt several other rules; but if you put it into the Constitution that these facilities shall be furnished according to this call rule, you shut up the Legislature from all power over the subject, at all events from all power hereafter to change that rule, which will be inflexible. I think, therefore, that the amendment just proposed by the gentleman from Allegheny is a very proper and legitimate one; that we ought to leave this section, as we ought ordinarily to leave sections which we consider a declaration of a general principle, a denunciation of discrimination by these corporations against any person doing business upon their road, and specifically saying that, in the particulars of motive power and cars, there shall be no such discrimination, so that in any case of injustice a party aggrieved may call the corporation to account, and get the judgment of a court conveniently located; if you please, a court of the county or city in which the question arises, by a bill in equity, summary and immediate relief, and that that relief shall be co-extensive with the violation of this general principle of indiscriminating facilities to all, equally and uniformly. It seems to me, then, that this section will be greatly improved by leaving out the concluding clause, which attempts to define the single manner in which this principle shall be enforced.

The CHAIRMAN. The question is on the amendment to the amendment.

Mr. BIDDLE. I should like to have it read.

The CLERK. The amendment to the amendment is to strike out the words:

"But shall supply the same in equal ratable proportions to each shipper or transporter in the order in which cars and motive power shall be called for and needed by them as shippers or transporters on said railroad."

The amendment to the amendment was agreed to.

The CHAIRMAN. The question now is on the amendment as amended.

Mr. GUTHRIE. I now offer my amendment as a substitute.

The CHAIRMAN. The gentleman from Allegheny offers an amendment, which is not an amendment to the amendment. The other was not strictly, but the point was not suggested. The question is on the amendment offered by the gentleman from Venango (Mr. Dodd.)

Mr. COCHRAN. I understand the only difference between the amendment of the gentleman from Venango and the amendment of the gentleman from Allegheny is, that the gentleman from Allegheny moves to strike out more, and I do not see why that is not an amendment to the amendment. The gentleman from Venango moves to strike out a certain distinct part of this section, and the gentleman from Allegheny moves to strike out the whole section remaining, and to insert other matter. Is not that an amendment to the amendment?

The CHAIRMAN. The gentleman from Allegheny moves a substitute for the section.

Mr. GUTHRIE. You may call it a substitute if you please. I propose to offer it as an amendment, to strike out all after the "section" and insert.

The CHAIRMAN. It is not an amendment to the amendment, but rather a new section, and the question is on the amendment of the gentleman from Venango (Mr. Dodd.)

Mr. HARRY WHITE. I offer an amendment to the amendment offered by the gentleman from Venango.

The CHAIRMAN. The gentleman from Indiana proposes to amend the amendment, by striking out a part of it and inserting the proposition of the gentleman from Allegheny. The Clerk will read the amendment.

The CLERK. It is proposed to amend the first part of the amendment proposed to be stricken out by the gentleman from Venango, and to make it read:

"All railroads and canals are hereby declared to be public highways; and all regulations adopted by them, in any way delaying or discriminating against individuals, partnerships, or corporations, in the transportation of property thereon, shall be void; and none of such corporations, nor any lessee or manager of the works thereon, shall make any preference in their own favor or between individuals, partnerships and companies shipping or transporting thereon, in supplying cars or motive power."

The CHAIRMAN. The question is on the amendment to the amendment.

Mr. HARRY WHITE. Just a word of explanation. I sympathize entirely with the spirit of the section under consideration; but it appears to me, with all deference to the Committee on Railroads and Canals, a little confused in its present shape. The gentleman from Venango offers an amendment, striking out all after the word "section" to the word "of," in the sixth line, and then the words, "except as above excepted," in the ninth line. This, you observe, would leave the section read:

"All regulations adopted by railroad or canal companies having the effect of hindering and discriminating against individuals, partnerships or corporations, in the transportation of property on such railroads or canals, shall be void," &c.

I sympathize with that, and the amendment I have offered has adopted that feature of the section, as indicated by the delegate from Venango. But the delegate from Venango, in his amendment, went further than he intended, I apprehend, and further than the temper of this Convention will sustain him in. He struck out the expression, "all railroads and canals are declared public highways." The expression in the amendment just offered re-inserts that provision, and makes the rest of the section homogeneous.

Furthermore, the expression "having the effect of hindering or discriminating against individuals," it seems, is a somewhat awkward expression, and liable to misconstruction. In the amendment I have offered, I have stricken out the word "hindering," and substituted the word "delaying." I apprehend that is the better word, and in that connection more easily interpreted.

I would call the attention of the committee to the fact that my amendment, which is really the amendment of the delegate from Venango, with the addition of the declaration that all railroads and canals shall be public highways, goes as far in this connection as will be required, or as is the desire of the Convention. We are aiming at but one evil. Gentlemen familiar with the business of transportation declare that the business of the Commonwealth, on our railroads, is practically delayed, from the fact that there are wheels within wheels, lines within lines, Union lines, Star lines and Empire lines, in which the officials of the different railroad companies are engaged, and the freight transported by those lines has a preference over the freight shipped in the cars used by the local shipper.

The object of this section and the desire of this committee is to aim at that evil, which is fatal to the industries and the enterprise of the Commonwealth. We all sympathize in that, and it occurs to me that the easiest and simplest way this is done, the better. We have not yet the declaration that all railroads and canals are highways. I think the temper of this Convention and the tendency of the times require a declaration of the kind before us in the organic law of the State. That being settled, it is proper, then, that these highways shall be so regulated and managed that no unjust discrimination and no unjust preference shall be given to individuals or shippers in any particular interest. We have provided in a previous section that there shall be no discrimination allowed in the imposition of tolls and freight. That question is now settled. We want now to meet the practical question, that there shall be no discrimination or undue preference allowed in the furnishing of cars. Time is the essence in this matter. Shippers understand that the postponement of a day prejudices their business. We want to give them such relief as will be immediate. I apprehend that a simple declaration, in a

plain way, in our Constitution and in this section, will accomplish all that is desired.

Mr. MACVEAGH. Do I understand that the gentleman's amendment covers the principle engrafted in the first few lines of the ninth section, as reported by the committee, preventing transportation companies being formed in the interest of the officers of a railroad corporation?

Mr. HARRY WHITE. I so understand.

Mr. MACVEAGH. Why not, then, take the language of the section?

Mr. HARRY WHITE. It occurs to me that it is unnecessary to have it here, for we have it in a previous section.

Mr. MACVEAGH. Where?

Mr. HARRY WHITE. If the gentleman will turn to a previous section he will discover; in section seven:

"No incorporated company doing the business of a common carrier, or the officers or managers thereof, shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for other persons or corporations or for transportation," &c.

Mr. MACVEAGH. The word "or" has been stricken out. The Convention committed itself to the policy, against my motion, of interdicting the officers, managers and directors of railroad companies from engaging in mining or manufacturing business in connection with the lines of railroad of which they were officers. Now, I suppose the committee, unless it has seen the wisdom of the amendment I proffered, will adhere to that view; and if it purposes to adhere to it, it is simply in order to secure an intelligent vote on the amendment. I suppose it will retain the first lines of this section and not strike them out, to prevent them from being transporters.

Mr. HARRY WHITE. Well, Mr. Chairman, a more careful reading of the seventh section still conveys to my mind the idea which the delegate from Dauphin has indicated. The provisions are against any officer or manager of any of the railroad companies engaging in any other business than that of the management of the main line of road of which they are the officers. It occurs to me that if it was the design of the section under consideration to prevent that difficulty, the remedy which we are legislating for in this instance, in the ninth section, is to prevent discriminations against shippers in the furnishing and supplying of the necessary cars for the business of transportation. If there is any doubt resting in the Constitution as to the provision against individual officers or managers engaging in these inside lines, which transport property on the main track, make a simple declaration, by amendment to a different section, making it clearly impossible to do that; make it penal, if you please; make it a misdemeanor for any officer of any of the main lines of our railroads here declared highways to be engaged in any other business, or to be directly or indirectly interested in any line of transportation, except that of which they are directly the officials. Make a simple special declaration, that will be easily understood.

The gentleman who sits on my left, (Mr. Struthers,) who is familiar with the subject of transportation, submitted to me an amendment which he had prepared on this subject, and indicated his intention to offer it. I suggest to the committee that the purpose of this section, and the only purpose of this section, is to prevent discriminations against shippers, to prevent discriminations in favor of this class of transporters and that class of transporters, and place them all on an equal basis, so that producers of the Commonwealth will know that they have a right to have their commodities transported on the same terms their neighbors have. This is a great evil. Only yesterday I met a gentleman in the course of my intercourse in business circles who told me that he was exceedingly weary. "Wearied at what?" was the natural inquiry. He said: "I have been making out a schedule of tolls and freights." He was the officer of a coal company in a particular part of this Commonwealth. He had no connection with any railroad company whatever. Why was he interested in making out the toll-sheet? It so happened that some of the officers of the railroad on which he had to transport his coal were stockholders in the coal company of which he was a member, and of which he practically had the direction. Other coal companies existed in the same neighborhood. They were languishing while this one was prospering. I listened to the delegate from Lycoming, (Mr. Armstrong,) the other day, with some degree of impatience, when he was inveighing against the unwisdom, so to speak, of this provision in the seventh section, prohibiting the officers of a railroad company from engaging in the business of manufacturing and transporting while acting as such officers. He instanced a case where he had suffered, and a great

interest with which he was connected had suffered, until some railroad officials came into the neighborhood and breathed the spirit of life into it.

I can readily understand why that was so. They had facilities which the honorable delegate from Lycoming, in his integrity, had not the opportunity to enjoy; they had means of getting drawbacks; they had advantages in the rates of toll which he had it not in his power to control.

Now, we are aiming at a great evil. We wish to prevent unfair discriminations in supplying means of transportation. Coal companies or mining companies operate in a particular locality. A particular official calls on the railroad officials for the furnishing of cars, and if the railroad officials are interested, preference will be given to the special company, while another company asks in vain. It cannot sell its commodities, because promptness in delivery is of the essence of the merits of a contract for delivering. Pass the amendment just offered—we will have supplied a measure of relief.

Mr. CORSON. Will the delegate pardon an interruption? I move that the committee rise. ["No." "No."] We are within two minutes of the time.

Mr. HARRY WHITE. I shall be done in a moment. For these reasons I am in favor of the spirit of the section. I want to make it as brief as possible.

Mr. CORSON. Mr. Chairman: I move that the committee of the whole now rise, report progress, and ask leave to sit again.

The motion was agreed to. The committee rose, and the President having resumed the chair, the Chairman (Mr. Broomall) reported that the committee of the whole had had under consideration the article reported by the Committee on Railroads and Canals, and had instructed him to report progress and ask leave to sit again.

Leave was granted the committee of the whole to sit again this afternoon.

RESIGNATION OF MR. BARTHOLOMEW.

Mr. ARMSTRONG. I rise, Mr. Chairman, to a question of privilege, which will detain the Convention but a very few moments. I have received, this morning, from Mr. Bartholomew, the following dispatch:

"Please withdraw my resignation for the present."

I deem it proper, on behalf of Mr. Bartholomew, to state that he has been induced to withdraw his resignation at the suggestion of numerous of his friends, who thought it was not advisable that he should resign at this time. I beg leave to submit his telegram, and ask that the resignation be for the present withdrawn.

The PRESIDENT. It is moved and seconded that Mr. Bartholomew have leave to withdraw his resignation.

The motion was agreed to *nem. con.*

Mr. DARLINGTON. I move that we take a recess until three o'clock.

The motion was agreed to, and (at one o'clock P. M.) the Convention took a recess until three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

RAILROADS AND CANALS.

Mr. STANTON. I move that the Convention resolve itself into committee of the whole for the further consideration of the article reported by the Committee on Railroads and Canals.

The motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Broomall in the chair.

The CHAIRMAN. The question is on the amendment to the amendment, offered by the gentleman from Indiana (Mr. Harry White.)

Mr. D. W. PATTERSON. Let it be read.

The CLERK read as follows:

"All railroads and canals are hereby declared to be public highways, and all regulations adopted by them, in any way delaying or discriminating against individuals, partnerships, or corporations, in the transportation of property thereon, shall be void; and none of such corporations, nor any lessee or manager of the works thereof, shall make any preference in their own favor or between individuals, partnerships and companies shipping or transporting thereon, in supplying cars or motive power."

On the question of agreeing to the amendment, a division was called for, which resulted fifteen in the affirmative. This being less than a majority of a quorum, the amendment was rejected.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Venango (Mr. Dodd.)

Mr. HARRY WHITE. Mr. Chairman: I understood the gentleman from Allegheny (Mr. Guthrie) to offer an amendment to the amendment.

The CHAIRMAN. That amendment is not yet in order.

Mr. GUTHRIE. I offered an amendment, but it was decided not in order at the time when it was presented.

The CHAIRMAN. The question is on the amendment of the gentleman from Venango.

Mr. TURRELL. Let the section be read as proposed to be amended.

The CLERK read as follows:

"All regulations adopted by railroad or canal companies, having the effect of hindering or discriminating against individuals, partnerships, or corporations, in the transportation of property on such railroads and canals, shall be void; and no railroad corporation, nor any lessee or manager of the works thereof, shall make any preference in their own favor, or between individuals, partnerships and companies shipping and transporting thereon, in furnishing cars or motive power."

Mr. COCHRAN. Mr. Chairman: I hope the amendment will not be adopted. It strikes out the first part of this section, which is all that is prohibitory on officers being engaged in the business of transportation on roads which are under their control or management. If this amendment is voted down, then the question would be raised on the amendment offered by the gentleman from Allegheny, (Mr. Guthrie,) and the very question would come up between that of the gentleman from Venango and the section itself. I hope that the amendment will not prevail.

Mr. J. M. WETHERILL. I move to amend, by inserting after the word "lessee," the word "officer."

Mr. HARRY WHITE. That is a verbal amendment.

The CHAIRMAN. It is not an amendment to the amendment, and not now in order. The question recurs on the amendment of the gentleman from Venango.

On the question of agreeing to the amendment, a division was called for, which resulted twenty-three in the affirmative. This being less than a majority of a quorum, the amendment was rejected.

Mr. HUNSICKER. Mr. Chairman: I offer the following amendment——

The CHAIRMAN. The gentleman from Allegheny (Mr. Guthrie) is entitled to the floor, upon the amendment which he offered this morning, but which could not be received till the then pending amendment was disposed of.

Mr. GUTHRIE. I move to strike out all after the word "section," and insert:

"No officer, manager or employee of any railroad or canal shall be engaged, directly or indirectly, in the business of forwarding or transporting of freight or passengers on the lines thereof; and all regulations adopted by the companies owning, controlling or managing such railroads or canals, having the effect to discriminate against individuals or corporations in the transportation of freight or passengers, shall be void."

Mr. COCHRAN. Mr. Chairman: I only wish to say in regard to this, that in the very great division of sentiment which always seems to spring upon these propositions, I prefer, if this section is changed, that the amendment of the gentleman from Allegheny (Mr. Guthrie) should be adopted. Gentlemen have been kind enough to show me several propositions for amendment. I have not had an opportunity of fully considering the whole tenor and effect of those amendments; but, so far as I am capable of forming a judgment under the circumstances, and as I understand the propositions of the amendment of the gentleman from Allegheny, I prefer it to anything else except the section itself. I prefer the section; I think it is better; but if the committee, in the restlessness which always arises on these questions, think there must be something done that the Committee on Railroads have not done, then let that be done which the gentleman from Allegheny has suggested.

Mr. HAZZARD. Mr. Chairman: I do not know what might be the import of the word "indirectly," in the provision that no officer, directly or indirectly, shall be engaged in transportation. Would not this imply that no ticket agent or any other officer on the road shall have anything, indirectly, to do with transportation, and, if so, how is the work to be done? It may be that I did not understand the reading of that amendment, but if that be so, it will require considerable construction by the courts, I should think.

Mr. MACVEAGH. Mr. Chairman: I trust that if the sense of the amendment offered is the same as the section, other things being equal, we should always adhere to a section drawn by a committee, unless some clear advantage is shown to result from changing the phraseology. I think it will tend very much to facilitate our work here if we do that; if, in other words, we do not adopt amendments intended to embody precisely the ideas of the sections drawn by individual mem-

bers, in preference to sections embodying these ideas drafted by an authorized standing committee of this body.

Mr. GUTHRIE. I do not think the amendment expresses exactly the same sentiment expressed by the committee. For instance, it leaves out all that part of the section which relates to the distribution of cars, and I think it brings the question more directly, in regard to the officers being connected with the transportation business, than the other does. I think it more clearly defines what they shall not have power to do.

Mr. ANDREW REED. I should like to ask a question. Was not that part stricken out in reference to the distribution of cars?

[Several delegates. "Yes."]

Mr. GUTHRIE. My amendment was drawn up before that amendment was made, and that was one of my reasons for drawing up the amendment, but I think it expresses in fewer words what is absolutely necessary.

The CHAIRMAN. The question is on the amendment of the gentleman from Allegheny (Mr. Guthrie.)

Mr. BUCKALEW. I desire to call attention to the fact that this amendment differs very much from the section in excluding all employees of any corporation, whether laborers or persons employed in any other capacity. The section is directed to the officers and managers, those who have control of the corporation. It seems to me this amendment, therefore, is much too comprehensive. The section is better than the amendment in that respect. The amendment also omits all that part of the section which lays down the principle that cars and motive power shall be furnished to all persons alike. The amendment of the gentleman from Allegheny, to my right, (Mr. S. A. Purviance,) was not to strike out that part of the section, which is a very material part of it, but was merely to strike out the concluding words, which required the extension of the use of the cars and motive power facilities to be upon call by those desiring it. That was omitted for reasons stated at the time.

Again, this amendment of the gentleman from Allegheny omits the commencement of this section, to which I suppose no one has any objection, the general declaration that the works of companies of this character are public highways, and that there is an equal right vested in all the people of the State to their common, equal, reasonable enjoyment. My impression was that we had already voted, that in in some previous section. It was contained in a number of propositions upon which the committee voted, but on inquiring at the Clerk's desk, I find that there is nothing of that sort yet in this article. Therefore it would be quite proper to retain it.

By reason of these omissions in the pending amendment, and because it includes, as I think, improperly, any persons employed in any way by a railroad company, I am induced to give my assent, as between the original section reported by the committee and the amendment to the section.

Mr. MACCONNELL. Mr. Chairman: I rose at the same time with the gentleman from Columbia, and he has said pretty much what I designed to say. I will merely add that there is in the original section a provision that authorizes all persons to put on the road motive power and cars. It gives to all persons the right to transport, saying, "and all individuals, partnerships and corporations shall have equal rights to transport passengers and property." That I understand to mean, that all persons shall have a right to put on motive power and cars. I think that would be a ruinous provision.

Mr. BUCKALEW. I rise to explain that I understood the chairman of the committee to have changed that.

Mr. MACCONNELL. If that is changed I have nothing to say.

Mr. COCHRAN. I am perfectly willing that that shall be changed if it does not express the idea, so that it shall express it when the section comes to be finally acted on.

Mr. MACCONNELL. Then I would suggest that the word "transport" should be stricken out in the third line, and "have transported" inserted, so as to read, "and all individuals, partnerships, and corporations, shall have equal rights to have transported," &c.

Mr. COCHRAN. I shall not object to that.

The CHAIRMAN. That is not in order now. The question is upon the amendment of the gentleman from Allegheny.

The amendment to the amendment was rejected, there being, on a division, ayes fourteen, less than a majority of a quorum.

Mr. HUNSICKER. I offer an amendment as a substitute for the section.

The CLERK read the amendment of Mr. Hunsicker, as follows:

"All railroads and canals are declared public highways. No railroad or canal company shall transport freight over said highways for any individual, firm or corporation, on more favorable terms, either in charges or in furnishing cars or motive power, than are charged or furnished by said railroad or canal company to any other person, firm or company doing business directly with said company."

Mr. HUNSICKER. I desire to say but a single word in explanation of that substitute. The object we are all trying to reach is to prevent the formation of inside rings which take the cream out of the business. The phraseology of this amendment, in my opinion, reaches the evil directly. It does not prevent, it is true, the formation of inside transportation companies, but it prevents the railroad and canal companies themselves from carrying the freight of those transportation companies on more favorable terms than that of others, and prevents the railroad and canal companies from extending them any more facilities, either in cars or motive power. It requires the railroad or canal company to carry freights upon precisely the same terms; that is to say, that the terms shall be the same with respect to all who use the road for the purposes of transportation. The amendment is free from the objection that it prohibits a person living along the line of the road, and who may be engaged in business, from being a director of the road, but it prohibits the road itself from giving him any preference. As has been remarked by a great reformer, it has cost me a great deal of anxiety to produce it; and if the committee will carefully consider the amendment, it seems to me it will meet every phase of the present question.

The CHAIRMAN. The question is on the amendment of the gentleman from Montgomery.

Mr. DARLINGTON. I ask for a division of the question, so that the vote may be first taken on the first paragraph.

The CHAIRMAN. A division of the amendment is called for. The question is on the first paragraph, which will be read.

The CLERK read as follows:

"All railroads and canals are declared public highways."

Mr. COCHRAN. That same language is in the present section.

The amendment was rejected, there being, on a division, ayes, twenty-five, less than a majority of a quorum.

The CHAIRMAN. The question now is on the second division of the amendment.

Mr. HUNSICKER. Now, Mr. Chairman, with due deference to the Chair, you will perceive the absurdity of that division, because the whole of the residue of the section is now destroyed, for the reason that its language is, that no railroad or canal company shall transport freight over "said highways," &c. A division of the amendment was therefore impossible. It destroys and emasculates the whole amendment.

The CHAIRMAN. That is the fault of the committee, not of the chairman.

Mr. HUNSICKER. I do not say it is the fault of the Chair. It may be parliamentary, but it does not produce sense.

Mr. DARLINGTON. I consider the vote just taken a very important vote, one of the most important that has been taken. It is now the clear and well-settled principle of this committee that railroads and canals are not public highways, for we have so voted. [Laughter.]

The CHAIRMAN. The question is on the second division of the amendment of the gentleman from Montgomery.

Mr. HUNSICKER. If the vote is to be taken on the section in that way, I withdraw it.

The CHAIRMAN. It is too late to withdraw it. A part of it has been acted upon.

Mr. HUNSICKER. Then I rise to a point of order, whether there is anything now before the committee.

The CHAIRMAN. The second division of the amendment is before the committee.

Mr. HUNSICKER. I should like to have it read as it now stands.

The CLERK read as follows:

"No railroad or canal company shall transport freight over said highways for any individual, firm or corporation, on more favorable terms, either in charges or in furnishing cars or motive power, than are charged or furnished by said railroad or canal company to any other person, firm or company doing business directly with said company."

The amendment was rejected.

The CHAIRMAN. The question now is on the section.

Mr. MACCONNELL. Now I move to amend the section, in the third line, by striking out the word "transport," and inserting the word "have," and by insert-

ing the word "transported" after the word "property;" so as to read: "All individuals, partnerships and corporations shall have equal right to have persons and property transported thereon."

The amendment was agreed to, there being, on a division: Ayes, forty-three; noes, seven.

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

Mr. WORRELL. I ask leave to have the section read as amended.

The CLERK read as follows:

"All railroads and canals are declared public highways; and all individuals, partnerships and corporations shall have equal right to have persons and property transported thereon, except officers and partnerships, composed in whole or in part of officers of each respective railroad or canal, who are hereby prohibited from engaging in the business of forwarding or transporting on the lines thereof; and all regulations adopted by the companies owning, controlling or managing such railroads or canals, having the effect of hindering or discriminating against individuals, partnerships or corporations, except as above excepted, in the transportation of property on such railroads and canals, shall be void; and no railroad corporation, nor any lessee or manager of the works thereof, shall make any preference in their own favor or between individuals, partnerships and companies shipping and transporting thereon, in furnishing cars or motive power."

Mr. BUCKALEW. I wish to make a verbal correction, in the ninth line, to strike out the word "excepted," so as to read, "except as above."

Mr. COCHRAN. I think it is better as it is, "except as above excepted." It is a legal phrase, perfectly well understood.

Mr. BUCKALEW. If the chairman of the committee wishes that word in, I do not press the suggestion.

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

The section as amended was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 10. Any combination, understanding or agreement by and between any railroad companies, or by and between any railroad and coal or other companies, relative to increasing their rates of transportation of freight or passengers, or the prices of mined or manufactured products, shall work a forfeiture of their charters; and the Legislature shall provide by law for the proper enforcement of this section.

Mr. LILLY. I hope the chairman of the Committee on Railroads and Canals will explain this section. I should like to know something about it.

Mr. KAINE. I move to amend the section, by striking out all after the word "charters," in the fifth line, to the end of the section. The words which I propose to strike out are, "and the Legislature shall provide by law for the proper enforcement of this section." The section will then read:

"Any combination, understanding or agreement, by and between any railroad companies, or by and between any railroad and coal or other companies, relative to increasing their rates of transportation of freight and passengers, or the prices of mined or manufactured products, shall work a forfeiture of their charters."

The CHAIRMAN. The question is on the amendment of the gentleman from Fayette, to strike out all after the word "charters," in the fifth line.

Mr. COCHRAN. I want to say here, Mr. Chairman, that this is the only section in this report, according to my recollection, which provides in itself for its enforcement. There is a general section following after this, providing for penalties for the infraction of the sections which have been already passed, so far as they involve penalties. But this section, suggested by one of the most intelligent gentleman of this Convention, and I believe incorporated in this report, very nearly in his language, after it had been carefully considered by the Committee on Railroads, is of such a structure that we preferred to leave it out in this form.

If the gentleman from Fayette strikes this out, for this involves no special legislation, the section will be without a sanction. There is nothing special about the legislation required here. It requires general legislation to carry out this section. I believe the gentleman from Fayette objected to a previous section because it required special legislation in each particular case, and he succeeded in having it stricken out on account of the opposition, as I presume, of the members of this body to putting it in the power of the Legislature to bring about special legislation. This, however, is a section which is to be enforced by general legislation on the whole subject matter of the section itself; and the committee felt that it was

best to leave it there. After considering the subject with some degree of maturity, we thought it best to leave it there; we thought that under the circumstances of this section and its peculiar relations, it was advisable to leave the providing of penalties for offending against this section in the hands of the Legislature.

I confess, Mr. Chairman, that I feel always, on these questions, surrounded, almost crowded, with difficulties; because the subject is, by the admission of every gentleman who is willing to treat it candidly, not only a new one, but it is a very difficult one. In this particular case, as I said before, the committee felt (and they considered it deliberately and without prejudice or passion) that they had better leave the penalty for the violation of this section to be provided by the Legislature. Several gentlemen here have said that we cannot ignore the Legislature of this State. I do not propose to ignore it.

Mr. CUYLER. Allow me to inquire, how can it be said that the provision of the penalty is left to the Legislature when the penalty is prescribed and put in here expressly?

Mr. COCHRAN. "The Legislature shall provide by law for the proper enforcement of this section," is the language; that is to say, the penalty is forfeiture, but the manner of enforcing it is left to the Legislature. The gentleman from Philadelphia is right as to the penalty of forfeiture being declared here, and I am very glad he has corrected me. I was in error as to that; but the machinery for enforcing the penalty was what the committee did not wish to interfere with. We leave that to the Legislature to provide.

Mr. DARLINGTON. Mr. Chairman: I have not taken any part, so far, in the discussion of any of the questions under this report [laughter.] But I do not wish the committee to understand that I am entirely indifferent to what becomes of this article; nor do I propose to make any special confession here of the position I occupy. It is not necessary that I should do so. We are all here equals, entitled to say what we think right, keeping within the true limits of debate, and to discuss what we see fit to discuss. I have left the discussion of these questions, so far, to those who I had a right to suppose, and justly, were better acquainted with the general subject than I am; and the committee will, therefore, pardon me now for a few remarks which I propose to offer in reference to this section.

It proposes to prohibit any agreement between two or more railroad companies to enhance their prices for freight or passengers. If, in their experiments, in their efforts to do good to the public, if you please, in their anxiety to gain trade, they should make a mistake and put the prices of freight and passengers lower than they can be afforded, and should afterwards attempt to raise them so as to be remunerative, this section declares that that shall work a forfeiture of their charters. Now, is that what this committee means? Is it possible that we mean to say to any incorporation, any set of men who combine their capital for the public good as well as for their own, and who experiment and find out that in the experiment they have made they are doing a losing business, that they shall not, by any agreement, enhance prices? I can well understand what the committee designed to accomplish. They wished to prevent unjust combinations against the people, and to do that is perfectly right. I shall find no fault with it. Any combinations between two or more railway companies, to enhance their prices beyond what is just and equitable, ought to be denounced; but if, in the effort to do the best for the community, to carry freights and passengers at the lowest rates possible, they should perchance discover, as, if I am not mistaken, railway companies have discovered, that their rates do not pay, may they not enhance them? The section does not precisely say they shall not, but it is, that they shall not agree to enhance them, that there shall be no understanding between the parties that they shall enhance prices.

Is that right? How is this agreement to be made out? Two railway companies, if you please, running in opposite directions, one east and west, another north and south, connecting or non-connecting, find that they are both doing a losing business, that they must either wind up, and the public be deprived of all benefit of their ways, or they must increase their prices, and they do it at the same time and to the same extent—is that to be the evidence of agreement between them? Because they do agree, because they think alike, and act alike, is that to be set down as the evidence on which they are to lose their charters? I do not believe we mean any such thing. Let the committee who have this in charge frame their proposi-

tion in such a way as to express clearly what they mean, that there shall be no unlawful and unjust combinations between railway companies for their own special advantage, apart from that which is necessary to secure a reasonable compensation to them, and I suppose they would find it to meet the views of the committee of the whole; but as it is now, I look upon it as most unfortunately contrived, and as susceptible of the difficulty which I have suggested. I rose merely for the purpose of making this suggestion.

Mr. MACVEAGH. I should be very glad, Mr. Chairman, if I could have the ear of the committee for a very few minutes, to ask their careful attention to this matter, even (if there is any distinction of views on the subject) of those members who are the most advanced in their desire to place thorough-going restrictions upon railway corporations. I would like them seriously to consider, apart from the excitement and the prejudices of this debate, if it has engendered any, whether or not any good object can possibly be attained by this section. Look at what it proposes to do, Mr. Chairman. It proposes to prevent the owners of property who owe certain duties to the public from consulting together and deciding, from time to time, what rates, with the permismison of the people, they ought to charge. That is it. You visit with a penalty of extermination the simple act of comparison of opinions as to the rates to be charged within the limits you yourselves prescribe.

Gentlemen, this legislation is against all political economy, modern and ancient. I beg you to believe that it is utterly unwise to allow the existence of any property whose owners may not meet together, peaceably and lawfully, and compare their views as to the prices at which they will allow the use of such property. The Legislature may limit the rates. Even if such a matter is now within the decision in the Dartmouth college case, and a charter heretofore granted may not be impaired in that respect, no man doubts that the people of this country are masters of its corporations, and of its territory, and of all creatures, artificial or natural, within it; and if there is a clause of the federal Constitution which stands in the way of the resumption of their sovereignty, that clause will disappear before their will. Who doubts it? Either by judicial decision or by constitutional amendment, if the people of this country think it necessary to re-take any of the powers they have granted in order to conduce to the public safety, they will make short work of whoever stands in the way of their retaking it. But that is no reason why this legislation should violate cardinal principles of political economy and of legislative economy. Your Legislature either has, or may have, unlimited control of the rates which these corporations may charge. In very many cases—I incline to the opinion, in every case—your Legislature, to-day, to-morrow, at any time, may, in the interests of the people, prescribe the maximum rates these corporations may charge.

Mr. COCHRAN. Will the gentleman from Dauphin allow me to ask him one question?

Mr. MACVEAGH. Certainly.

Mr. COCHRAN. His remarks give rise to a point of which I have very great doubt and difficulty. As I understand it, the charters of the railroad companies, and probably other transportation companies in this State, allow charges to a certain extent, say three or four cents per ton per mile. That is part of their charter, and that charter has been accepted by the stockholders; they have subscribed their stock, and the company has been organized under it. Now, does the gentleman from Dauphin hold, for I confess that I have not yet been able to hold that view, that the Legislature or any other power as it exists now, can, under the Constitution of the United States, cut down below that sum specified in their charters the amount of charges that can be made by the railroad companies.

Mr. MACVEAGH. I will answer the gentleman as fully and as frankly as I am able. I am bound to say to him that the limited study I have given to the subject leads me to suppose that an entirely disproportionate importance has been given to that clause of the Constitution of the United States, and that it never was intended to apply to the charters of corporations which are public creatures, but that it was wholly applicable, if applicable to acts of sovereignty, such as charters, at all, to those of an exclusively private character. I grant, however, that in very many States, before the vast political significance of that question was apparent, judicial tribunals have held that it was applicable precisely to such questions as the gentleman from York indicates. In a very short time all the political aspects of the question will be presented to the

court of last resort in America, and the people will know whether they do have control of the corporations or not. For in the State of Illinois a question upon this identical subject is now being prepared for decision, and if the people have not the power now, I repeat my conviction that they will speedily take it to themselves. But whether they do or not, is for them to decide. They are ultimately sovereign and master in this matter, as in all matters of political cognizance in these United States.

But that is no reason why we for one moment should transgress the proper and natural limits of legislation here. Even if gentlemen believe that, although this provision is transgressing constitutional limits, that and the legislative character of this article is to be excused upon the ground that the Legislature cannot be trusted to deal with the subject, still to such men I would say that, as members of the Legislature, it would be in my judgment simply monstrous to enact a law of this character. I do not doubt that evils can be pointed out. I do not doubt that great abuses may have grown up, but I do beg you to believe that the correction of these evils is not to be found in the legislation that we are asked to enact.

Suppose there are two great railroads tapping the coal regions of this State, in the Luzerne region and the Schuylkill region; is it not for the public interest that they consider together and compare views, and decide, within the limits of the law, for what rates they can afford to carry the coal to market.

Mr. HAY. If the gentlemen from Dauphin will permit the question, I will ask him whether he thinks that any constitutional provision can possibly prevent such an understanding?

Mr. MACVEAGH. Certainly I do not suppose it can! It is one of the gravest objections to this legislation, that it goes beyond the proper scope of legislation, and therefore it is amenable to the criticism made by Shakespeare, a great master of the art of politics, as well as of the art of poetry, that such statutes "stand in mock and not in mark." I beg gentlemen to thoughtfully and carefully consider this section. I have made these objections with great diffidence, because I know that earnest men, seeking a cardinal remedy for these evils, think they have found it in this section, but I am compelled to appeal to their sober second thought before they adopt it.

Mr. H. W. PALMER. Mr. Chairman: What has been said, heretofore, with respect to this section, has referred to railroad companies, and such understandings as they may have between themselves with reference to freight and passengers. It will be observed that the section goes a great deal further and covers more ground. It refers to coal companies and to all other corporations and companies, and it contains a provision which is wide of anything that has hitherto been contemplated by this Convention, or which has heretofore existed in the Constitution of any Commonwealth.

The Committee on Railroads and Canals in this section undertake to establish rules of trade, and to place restrictions within which trade shall move, and they put these restrictions, not only upon companies that have received their chartered rights from the Commonwealth, but upon all other companies and partnerships doing business within the State. I do not know who asked for this section. I do not know, even, who is the intelligent delegate alluded to by the chairman of the Committee on Railroads and Canals as having introduced it, and therefore, without meaning any disrespect to anybody, it seems to me as if this was somebody's hobby, ridden into this report to meet some special case of individual hardship. I will venture to say that the author of it does not live in either of the five anthracite counties of the State of Pennsylvania, for if he did he would have known that the adoption of this section and its enforcement would put the Wyoming and Lackawanna coal regions under the sheriff's hammer in ninety days.

For three years coal has been mined at an actual loss to the producer of from twenty-five to fifty cents per ton. Bankruptcy and ruin began to stare this region in the face. Why? Because, owing to the competition between rival railroads and rival coal companies, the price of coal in the New York and eastern markets was too low, and it was only at the last hour that they agreed to combine together and agree that the price of coal in New York and Boston should be put at such a figure that the producers could live. That agreement, combination or arrangement, perfectly lawful and perfectly just, has been in operation for four or five months, and, in place of the gloom and despondency that overspread those regions, buoyancy and cheerfulness have taken their place, and there is now a prospect that the own-

ers of these mineral lands will receive some remuneration for the value which is within their bosoms, when it is taken and shipped abroad, and that these great carrying and mining companies obtain some return upon their great investments, and will not be bankrupt within this year or next.

As I said, I do not know in whose interest this proposition has been made, but I am sure that it is not in the interest of the miners, the carriers nor the manufacturers of the State of Pennsylvania. I do not believe that this Convention, composed of the representatives of the people of the State, care to put into their Constitution a provision discriminating against their own people, and in favor of the people of other States. Nearly all the coal from the regions named is sent to New York and eastern markets. Very little of it finds sale in Pennsylvania, and unless an adequate price can be obtained for it, enough to pay for raising and transporting it, then we sell the bowels of our earth for nothing, or give it away to the people of other States, and ruin ourselves otherwise in mining and preparing it. That result I do not desire to see, and I do not expect the representatives of the people of Pennsylvania, here assembled, desire to see it, either. The mineral resources of the State are not only the pride of the people of the State, but they are the wealth of the State, and our duty is to foster their developments and not retard them; and it is only by combinations of some kind between producing companies and the carrying companies that a sufficient price can be obtained for our great mineral staple in the markets abroad. Heretofore these companies have been competing and fighting with each other down to the verge of bankruptcy. Now, better counsels have prevailed, and, by combinations, they have put the price of coal in the New York market at about five dollars a ton, enough to pay for raising and transporting it, the result of which is that the producing interest is prosperous and gets its pay, the carrier gets his pay, the miner and the laborer get their pay, and the manufacturer is benefited, because the price of coal is always uniform, and he knows what he has to contract for, and he can arrange his business accordingly. Even the people, who have nothing to do, directly or indirectly, with the production or the consumption of coal, are benefited by the establishment of a uniform rate.

This section would not benefit the individual proprietor of coal mines, if any individual proprietor exists. The day for individual proprietors has gone by. The business for mining coal has now become so extensive, and so expensive, that individual proprietors can no longer carry on the work. The upper veins of coal, above water level, have been mainly mined out, and now, to sink a shaft, to erect a breaker, and to put in the necessary engines and machinery for the production of coal, costs a large fortune. And when the risks incident to the business are taken into account, the strikes and the accidents, the upheavels and the down casts, the faults and the fluctuations of value, and prices that have pertained to this trade, there is no man who possesses sufficient fortune who is willing to assume the risks of mining coal, and therefore it can only be carried on by large companies with aggregated capital. The business has passed into the hands of large companies, and for the protection of these companies that contribute in so large a measure to the prosperity and wealth of the State of Pennsylvania, this section ought not to be adopted.

Mr. DODD. I offer the following substitute for the section ——

The CHAIRMAN. That is not an amendment to the amendment, and not in order at this time. There is an amendment pending, offered by the gentleman from Fayette (Mr. Kaine.)

Mr. DODD. I desire simply to make a change ——

Mr. COCHRAN. The gentleman from Venango will pardon my interruption, I am sure; but I would suggest to the gentleman from Fayette to withdraw his amendment for the present, and allow the gentleman from Venango to offer his substitute.

Mr. KAINE. Let the substitute be read.

The CLERK read as follows:

"No combination, understanding or agreement shall be entered into and made by and between railroad companies, or by and between railroad companies and other companies, or individuals, to increase their rates of transportation of freights, for the purpose of affecting the prices of mineral, manufactured or agricultural products."

Mr. KAINE. I offered the proposed amendment, as I supposed the part I moved to strike out would be of no practical purpose to the section, if the section was to be

available at all; if it was to be of any value as an amendment incorporated into the Constitution. If all we have heard in this Convention, this winter, in regard to the influence of these corporations on the Legislature of Pennsylvania be true, an act of Assembly to carry the provisions of this section into effect would never be passed while the world stands. We have a law now upon the statute book precisely such as is required to enforce a provision of this kind, and there is no necessity of putting it here, because that would confine the law to this special thing; but as the amendment of the gentleman from Venango does not embrace anything of that kind, and as it may be adopted by the committee, I withdraw my amendment.

The CHAIRMAN. The amendment of the gentleman from Fayette is withdrawn. The gentleman from Venango offers an amendment which has been read. The question is on that amendment.

Mr. DODD. I wish to say, in relation to the amendment which I have offered, that I have left out that part of the section which inflicts the penalty of forfeiture of the charter for this reason: It will be seen that section thirteenth provides a system of penalties for the violation of different sections of this article as reported. I said, yesterday, and I repeat to-day, that in relation to several sections which we have adopted here, they are simply worthless, unless we affix a penalty to them; and when we come to section thirteenth, I shall advocate the penalty of a forfeiture of charter for the violation of this section and other sections. I would prefer that it all be left until we come to that section, and then let us affix penalties to such sections as we desire.

In relation to the other alterations I have made, I do not know whether it was the object of the committee to reach the same point I have in view in my amendment. Certainly, this section, as reported by the committee, is open to the criticism made by the gentleman from Dauphin, and I cannot support it. But combinations between railroad companies to raise their freights, not for the purpose of fixing upon a fair and just *pro rata* of freight upon different products, but for speculative purposes; for the purpose of raising the price of coal, or grain, or oil, or whatever it may be, strike me as conspiracies and high crimes, and we should put an end to them in Pennsylvania, if we can.

Why, sir, the argument of the gentleman from the coal regions convinces me of the wrong of anything of that kind. If the coal mines are played out in certain parts of the State to such an extent that coal cannot be mined for less than five dollars per ton, while there is plenty of coal in other parts of the State that can be furnished for three dollars per ton, shall we put it in the power of the railroads to say that the consumer shall pay five dollars for every ton, in order that every mining region of the State may be protected? If the railroads may put an arbitrary price of five dollars per ton on coal, they may fix the price at ten or fifteen dollars. They should have no power of that kind whatever, and we should put a stop to it if possible.

Mr. TURRELL. The objections which are made to this section are similar to those that have been made to every section reported by this committee by a great majority of the gentlemen who have discussed them. They all admit that there is an existing evil which this section has been intended to reach; and gentlemen, while admitting that, simply find fault with the action of the committee. No man, save the gentleman from Venango, has presented anything to correct the deficiencies of the section. The gentleman from Chester says he can understand what the committee would be after; that there is an injustice long existing which they are after; but he simply stops there with this fault-finding, and so with other gentlemen.

That is sufficient for me to say, perhaps, on that point. Every gentleman who has spoken simply stops there. Now, I say the committee have done well in reporting this section.

Mr. MACVEAGH. I know the gentleman does not desire to mis-state me. I said I did not understand that any evil exists in a comparison of views, and in reaching a common conclusion by different carrying companies as to rates of carriage, either of person or of property, and an agreement upon rates within the limits of the law. If there is I have only to say that I am not aware of it.

Mr. TURRELL. That is a question as to whether the gentleman knows of the existence of the evil contemplated by this section, or whether there is such an one existing, contemplated in the section, which has not been brought to his notice.

We have heard from various sections of the State, not only in relation to coal, but

in relation to other matters, particularly in relation to oil. The gentleman from Venango informed us, a day or two since, of combinations of railroad companies for the express purpose of raising the price of oil. Why? Because, I suppose from previous circumstances, that production had been stimulated beyond what was legitimate, and therefore the principles of the old law of demand and supply had been violated by the over-production and consequent reduction of the price, and therefore to overcome that, in the interest of these companies, they made those combinations.

The same thing, it seems to me, is shown in relation to coal, in the speech of the gentleman from Luzerne (Mr. Palmer.) I think, if you are to judge from the reports in the public prints, from time to time, that the principle reason why this reduction in the price of coal, referred to by the gentleman from Luzerne, took place, arose from the fact that during the war the production had been stimulated by the high prices, and when that was over and the demand fell off, there was over-production. I have so seen it stated in the papers devoted to this subject, and that there was a consultation, or an understanding amongst these very companies that must produce less or agree among themselves to charge more or they would not get remunerative prices. The result was, competition was destroyed and the consumer victimized.

Now, what is the result of all this? The gentleman from Luzerne says everybody is benefited by the increase of prices. The coal companies are benefited undoubtedly. He says the manufacturers are benefited. I cannot see how; but I can see that if the price of a product is enhanced to the manufacturer, the product which that manufacturer makes is necessarily enhanced to the consumer, and all this comes back at last upon the people who pay for these products. That is the way it strikes me.

Mr. H. W. PALMER. The manufacturers are in New York and Massachusetts.

Mr. TURRELL. The gentleman from Luzerne refers to New York and Massachusetts. That may be in his opinion, but New York and Massachusetts manufacture very extensively for the rest of the United States, and they must have a price for their products somewhat in proportion to the expense that they incur in making those manufactures, and if they sell the products to the rest of us the increased cost comes back upon us; we have to pay it all. The result is that the reason which he gives operates simply to the benefit of the mining regions in which he lives, to the injury of the general public. I know we have to pay larger prices for coal than we did some time ago, and I am satisfied that it has been in consequence of the combinations of these companies to raise the price.

Now, sir, it seems to me that something like that here proposed should be adopted. I have no objection, so far as I am concerned, and would prefer, perhaps, that the amendment which has been offered by the gentleman from Venango should be adopted in preference to the section, because it obviates some of the objections which have been made to the section as reported, and which are, perhaps, more serious in their nature than would at first be apprehended; but I cannot see why, when there is an admitted evil here, we, as a Convention, should not do something, by the declaration of a general principle, to correct that evil if possible.

Mr. H. W. PALMER. Will the gentleman allow himself to be interrogated?

Mr. TURRELL. Yes, sir.

Mr. H. W. PALMER. I desire to ask the gentleman whether he thinks it is any crime or sin for four or five coal operators, or ten or twenty coal operators, in the anthracite counties of the State of Pennsylvania to say that they will limit production, that they will not produce more than so many tons a year, because to produce any more than that would result in loss? Is it any crime to do that?

Mr. TURRELL. No, sir; they have a right to do it.

Mr. H. W. PALMER. Now, could they do it under this section?

Mr. CORSON. Mr. Chairman: I will announce, at the commencement of my remarks, that I am in favor of the report of the Committee on Railroads, so that no gentleman will have any occasion to ask me, when I get through, upon which side I have addressed the committee of the whole. I desire to say right here that I believe in the report of this committee, because I believe that all "strikes" are unlawful, and ought to be struck down and forever hereafter prohibited; and if it is unlawful for the poor laboring people of this country to combine together to raise their wages, it is unlawful and unholy in these great corporations to combine together to raise their prices of freight.

The objection to the amendment proposed by the gentleman from Venango is this: That you would always have to prove that the combination was for the purpose of affecting the prices of mined, manufactured or agricultural products; and that would involve a very serious difficulty, whilst, if we take the report of the committee, and if we intend to adopt anything on this subject, it is perfectly clear as it came from the committee, but I do maintain that if we adopted the suggestion made by the gentleman from Fayette, to strike out the last paragraph, then we should have no tribunal by which we could ascertain when the charter should be forfeited. Gentlemen on the other side may throw up their hands, but I shall not cringe to corporations.

Mr. KAINE. Will the gentleman allow me to say a word?

Mr. CORSON. Yes, sir.

Mr. KAINE. I said in my short statement that I had made the proposition to strike out that part of it, because we had an act of Assembly now on the statute book upon that very subject.

Mr. CORSON. What has that got to do with the Constitution? The fact that we have acts of Assembly is no reason why we should not make a Constitution. That has nothing to do with this case, and the fact that this is already in the Constitution would be no argument either; for we want unalterable fundamental law on this question, which the Legislature cannot change.

I agree with gentlemen who have preceded me, that there are many clauses in the old Constitution that we might adopt intact; but I do maintain that there are many which have been presented to us by this committee which we ought to adopt, but which, for some reason or other, the members of this Convention seem afraid to touch. It is no new principle, as asserted by the gentleman from Dauphin, (Mr. MacVeagh,) to prevent unlawful combinations for the purpose of raising prices; but, on the contrary, it is as old as the common law, and is familiar to every student of Blackstone. The only question is: Shall we have the courage to apply the principle to powerful railroad monopolies? I certainly am in favor of it.

Mr. J. M. WETHERILL. Mr. Chairman: I desire to say a few words in endorsement of the address which has been so ably delivered by the gentleman from Luzerne (Mr. H. W. Palmer) upon this subject, which is one of very great importance to the county that I have the honor, in part, to represent. It seems to me that the section as reported from the committee is an overthrow of all the business principles which have prevailed since the penetration, at least, of one of the great public works into the Schuylkill region. So far as I now recollect, which is a period of twenty-five years, the rates of toll and transportation have very frequently been arranged by consultation. In the earlier days of the history of that region it was by consultation with the individual operators that a rate of tolls was fixed which was equally to their advantage and that of the company transporting the coal. It seems to me that this section would overthrow that well-established principle in the management of that business.

It has been remarked by the gentleman from Montgomery that a section of this kind should be introduced in the Constitution because the combinations of workmen and miners, for the purpose of obtaining a fair rate of wages, are prohibited by law. I am not aware that any such law exists; at all events I well know that for the last five or six years, in the county of Schuylkill, and I believe in the county of Luzerne, these combinations of miners have assembled, and they have assembled peaceably together, and discussed the rate of wages; and they have been found entirely beneficial to themselves and beneficial to the trade in general. It is true, as is well known to this Convention, that some two or three years ago, in obtaining, as they thought, a proper compensation for their services, it was necessary for them to suspend, for a short time, their labor, and if such a section as this had been then existing in the Constitution of the State of Pennsylvania, it is doubtful whether that difficulty would have been settled without either a resort (perhaps) to harsh measures on the part of the authorities, or by a disregard of the law on the part of those who were contending for their rights.

Mr. CORSON. Will the gentleman allow me to correct him?

Mr. J. M. WETHERILL. Yes, sir.

Mr. CORSON. I said that all strikes among the rich, as well as among the poor, ought to be prohibited by the Constitution.

Mr. J. M. WETHERILL. I do not think the gentleman's remark interferes with my argument at present. I wish merely to say that, by a combination of the coal

operators, of the coal companies, and of the railroad companies, and a consultation with the miners who were then upon a strike, this difficulty of the exorbitant price of wages was happily settled, and the coal trade of the region has been in a comparatively prosperous condition ever since, and the price of coal has not been enhanced to the consumer by that proceeding in any measure whatever, so far as I am informed.

Therefore, I say in regard to these combinations of railroads or coal companies, so far as they have come under my observation, they have been beneficial, have been productive of advantage to the producer of coal, to the coal company, and to the railroad company, and to the operatives and miners themselves, and to the consumer also, because they have provided a regular supply of that fuel, and they have prevented strikes and disorders, which, previous to such combinations, were of frequent occurrence in that county; and I think it would be a calamity, at least to that portion of the State which I represent, to introduce such an article in the Constitution, prohibiting a fair and a free and a full conversation and consultation with regard to what is to the advantage of the carrying companies, of the operatives, and of the miners and laborers who are the producers of coal in this State.

Now, in reply to a remark of the gentleman from Venango, (Mr. Dodd,) that this combination was liable to put up the price of coal, and that that should not be allowed, because coal could be produced in other regions of the State of Pennsylvania, let me tell him, if he does not know it—probably he does—that nowhere else in the State of Pennsylvania, or in the world, is there such another article as anthracite coal. It is a fuel that must be had, that must be procured; and any proposition, either in the Constitution or in the law, that would diminish the production of that fuel would be a national calamity.

The CHAIRMAN. The question is on the amendment of the gentleman from Venango.

Mr. J. PRICE WETHERILL. One word, Mr. Chairman. I hope we shall understand this section in all its bearings before we vote upon it; because, as I read it, it seems to me the Committee on Railroads have been trenching upon the duties of other committees. Do the Committee on Railroads mean to say by this section that any agreement between companies to raise the price of manufactured products shall be in violation of law, and shall work a forfeiture of their charters? Do they mean to say that, with regard to all the manufacturing interests of this State, in all their varied forms, all the trade organizations that have been established and that to-day exist, regulating and governing the movements of every distinct and separate trade, no chartered companies shall unite or agree between themselves, or with individuals, to regulate the value of their products? Do they mean to say that if I, as a woolen manufacturer, acting under the charter of the State, dare not meet my fellow-woollen manufacterers, because there has been either an increase or a diminution in the supply of wool, to regulate the value of my product with them? Do they mean to say that if there is a large supply of cotton, the companies and individuals engaged in the business of cotton manufacturing shall not meet and lower the price to meet that large supply, or that when the price is lowered, it shall never be raised? Why, sir, such a proposition goes to root up the foundation of all the principles that have been established in trade for years, and will most thoroughly overturn all the trade organizations that have existed not only in this State, but in the country.

Mr. DODD. Will the gentleman permit me to interrupt him?

Mr. J. PRICE WETHERILL. Yes, sir.

Mr. DODD. If the gentleman refers to the amendment that I have offered, he certainly misunderstands it. It prevents nothing but combinations of railroad companies to increase the price of products by raising freights.

Mr. J. PRICE WETHERILL. I am arguing upon the section. Its wording certainly applies to all manufacturing companies.

The CHAIRMAN. The question is on the amendment of the gentleman from Venango (Mr. Dodd.)

Mr. J. PRICE WETHERILL. Then I will withhold my remarks until action is taken by the committee on the amendment.

Mr. LILLY. Mr. Chairman: This appears to me to be the most monstrous proposition that ever came into this Convention. The idea that the officers of two connecting railroads cannot meet together and talk about the rates that are to be charged on those railroads without

forfeiting their charters, is the most outrageous thing I ever heard of. It would stop all the railroad business in the State. I do not believe that the Constitution, with such a section in it, will stand before the people five minutes; they will reject the whole thing.

The CHAIRMAN. The question is on the amendment of the gentleman from Venango (Mr. Dodd.)

Mr. BUCKALEW. The amendment of the gentleman from Venango, in my judgment, puts into form nothing more nor less than an existing principle of law, that these carrying companies, carriers of the products of the corporations of the State and of the people of the State, shall not enter into an agreement to raise the price of products in the markets of the State. That at present is illegal, in my judgment. It is condemned by principles of just law, in this country and abroad. The only particular advantage we shall get from this will be to have great denuciation of it in the Constitution of the State if we adopt the amendment. We can also make it a cause of forfeiture of charters; but if we adopt a remedy of that sort to enforce this principle, it should be so provided for in the last section of this article as reported by the committee. That provides an appropriate remedy, and one is entirely unnecessary in this section. Commencing at the bottom of the seventh page, you will find provision made that this new public officer, whom we are to create, the Secretary of Internal Affairs, shall assume certain duties now charged upon the Attorney General.

"And it shall be his duty, on complaint made against said corporations by any citizen, person or company interested, of a violation by law, or any infraction of the rules of said corporation, injurious to the rights or interests of such complainant, to investigate said complaint; and if it shall appear that any violation has taken place, he shall proceed either against said corporations or the officers thereof," &c.

There is a remedy pointed out. Beside that, there is a remedy now, because, by the existing laws of the State, the Attorney General can interpose any time upon cause shown, and call a corporation into court and demand from it a response with reference to any complaint which touches its official existence, and cause an investigation, thorough and searching, by well known judicial rules of proceeding, as to any alleged infraction of its chartered privileges, or any violation of public law by which those privileges shall be forfeited.

Passing from the amendment, because it is in contrast with the section itself, I think the section, in the form in which it is presented here, is very objectionable. It speaks of any "understanding" between corporations. That, of course, creates distrust. "Cannot corporate officers talk together? Cannot they have, by means of conferences, or otherwise, an understanding or knowledge of the rates they are respectively charging or going to charge?" The thing to be condemned is not understandings or conferences, such as are described, or supposed to be described, in this section, and which the member from Dauphin (Mr. MacVeagh) has so appropriately denounced. What is to be condemned is a contract or contracts between these corporations, by which the markets of the country shall be affected, and the common rights of the people injured. The only question to determine here, then, is whether we will, as to such contracts attempting to bind parties, place a prohibition in the Constitution of the State.

I take it for granted that if at present the common carrier corporations should unite together in the most solemn form of written contract, by which they should bind themselves not to charge less than certain rates to their customers upon their respective lines of improvement, and should agree in a penal sum, to be recovered by the opposite party, and a suit were brought on that agreement, the courts of law would hold it to be void, because against public policy, because it would be opposed to the common interests of all the people, and therefore null and void, and that no legal remedy could be predicated upon it by either party by reason of a violation of the agreement.

At present, Mr. Chairman, I shall vote for the amendment of the member from Venango, in contrast with this section, reserving my ultimate judgment whether I shall vote to retain it in the Constitution.

Mr. KNIGHT. Mr. Chairman: The gentleman from Columbia (Mr. Buckalew) has pointed out a remedy in the law. If this section is passed I can see but one remedy, and that is, for one large railroad company to buy up all the other railroad companies and canal companies in the State, and then they will not be obliged to consult any one.

Mr. DARLINGTON. I move to strike out the amendment proposed and insert a substitute. If I am not in order in offer-

ing it now, I will read it for information, if I can have the attention of the committee. My object is to combine the just sentiment of the Convention on this subject. This is designed to take the place both of the amendment of the gentleman from Venango and the section itself:

"All combinations between railroad companies or between any such company and any other corporation or company, with intent unjustly to enhance their charges for freight or passengers, or the prices of articles transported by them, shall be void."

The CHAIRMAN. The question is on the amendment of the gentleman from Venango (Mr. Dodd.)

The amendment was agreed to, there being, on a division: Ayes, forty-seven; noes, twenty-one.

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

Mr. MACVEAGH. I ask for its careful reading.

The CLERK read as follows:

"No combination, understanding or agreement shall be entered into or made by and between railroad companies, or by and between railroad companies or individuals, to increase their rates of transportation of freight for the purpose of affecting the prices of mined, manufactured or agricultural products."

Mr. MACVEAGH. I cannot allow that section to pass without simply expressing my profound conviction that if we were to stay here a hundred years, and the Lord should spare our lives, and we were to devote every hour of the interval to passing laws requiring capital to compete, and lose its profits in competition rather than to combine and make profits, not one single practical result could ever be achieved. You simply compel the companies to come to a lease, the one of the other. It is, as the gentleman from Venango himself, I think, understands, utterly hopeless to expect any practical result whatever from such a section as that. It is avoided at once by leasing each other's roads, avoided at once by purchasing each other's stock, avoided by any one of a hundred ways which any one of the railroad lawyers anywhere, not only in Philadelphia but in this country, will devise at ten minutes' notice.

Mr. LILLY. I think there is a misunderstanding as to the action of the committee. As I understand, the amendment offered by my friend from Chester (Mr. Darlington) was adopted.

The CHAIRMAN. It was not offered.

Mr. DARLINGTON. I read it for information.

Mr. DALLAS. Then I hope the gentleman from Chester will offer it. I want an opportunity to vote for it.

Mr. DARLINGTON. I offer it now if I am in order.

The CHAIRMAN. It is too late. The committee cannot vote out what it has just voted in. The only way to reach it would be by voting down the section as amended.

Mr. COCHRAN. I must say that I am very glad to hear the principle enunciated by the gentleman from Dauphin (Mr. MacVeagh) a moment or two ago. It comes from so influential a source that it quite encourages me in regard to something that happened here a short time ago. I contended very strongly, within a few days past, that you never could get capital to fight capital, that it always would combine for its own interest, no matter what was in the way, and it was not going to do anything for the public benefit. Notwithstanding that poor argument of mine, which was exactly in the line of argument of the gentleman from Dauphin this afternoon, the committee voted down the very proposition which would have defeated the devices by which the gentleman now says that this section, if passed would be prevented from going into practical effect. That proposition would have prevented the coalition of these several railroads, and then they would have had to stand out independently, and they could not have avoided this section in that way. I do not dispute, at this moment, that the gentleman's argument may be entirely sound and correct, and that the effect of this section may be rendered futile by the course he has suggested, but I think it shows that there was a slight mistake made in voting down part of the fifth section of the report of the committee.

Mr. MACVEAGH. The gentleman will allow me to remind him that I said then precisely what I say now, that capital will combine and ought to combine, and unity and consolidation of management was what we wanted, and not division.

Mr. LILLY. I voted under a mistake when the vote was taken a few minutes since. I thought I was voting on the amendment of the delegate from Chester (Mr. Darlington.) I therefore move a reconsideration of the last vote.

Mr. DALLAS. I second the motion. I voted with the majority.

The CHAIRMAN. It is moved to reconsider the vote taken on the amendment of the gentleman from Venango (Mr. Dodd.)

The motion to reconsider was agreed to, there being, on a division: Ayes, thirty-eight; noes, twenty-five.

The CHAIRMAN. The amendment of the gentleman from Venango is now before the committee.

The CHAIRMAN. The question is on the amendment of the gentleman from Venango.

Mr. DARLINGTON. I move to amend, by striking out all after the word "combinations," and inserting what I send to the Chair.

Mr. ANDREW REED. I make the point of order, that this is out of order, and cannot be done.

The CHAIRMAN. The gentleman from Chester moves to strike out all after the word "combinations," and insert what will be read by the Clerk.

The CLERK read the words proposed to be inserted, as follows:

"Between railroad companies, or between any such company and any other corporation or company with intent unjustly to enhance their charges for freight or passengers, or the prices of articles transported by them, shall be void."

The CHAIRMAN. The question is on the amendment to the amendment.

Mr. MACVEAGH. Certainly; unless the gentleman can give some good reason for putting a known principle of law, so general and universally recognized as that, into the Constitution, I hope the committee will not adopt it.

Mr. WORRELL. I rose for the very purpose of asking the gentleman from Chester to state his idea in presenting this proposition at this time?

Mr. DARLINGTON. Mr. Chairman: I have no objection to state the object I have in presenting this amendment. Seeing that a determination exits here to put something into the Constitution, I thought I would put it in the most acceptable shape to the majority. It is, it will be perceived, a declaration of a principle that all unjust combinations between railroad companies, or them and other companies, unjustly to raise fares or prices, or the prices of articles, shall be void. I have attached no penalty, because there are a great many penalties in the next section that will apply to those.

The CHAIRMAN. The question is on the amendment to the amendment.

The question being put, a division was called for, and the amendment to the amendment was rejected, there not being a majority of a quorum in favor of it.

The CHAIRMAN. The question now is on the amendment of the gentleman from Venango.

The amendment was rejected, there being, on a division: Ayes, thirty-one; less than a majority of a quorum.

The CHAIRMAN. The question recurs on the section.

The section was rejected.

The CHAIRMAN. The Clerk will read the next section.

The CLERK read as follows:

SECTION 11. No railroad or canal corporation shall issue any stock or bonds, except for money, labor or property actually received and applied to the purposes for which such corporation was created; and all stock dividends, and other fictitious increase of the capital stock, or indebtedness of any such corporations, shall be void. The capital stock and corporate indebtedness of railroad, canal or other corporations engaged in the business of common carriers or transporters shall not be increased, unless the act of Assembly, by which such increase shall be authorized, shall strictly limit the amount thereof, and specify the object to which such increase shall be applied, nor unless sixty days' notice of an intended application to the Legislature for allowance of increase shall first have been published in such manner as shall be directed by law, nor without the consent of a majority in value of the stockholders of such corporation first obtained, at a meeting to be held after sixty days' notice given in pursuance of law. All laws heretofore enacted, by which an increase of the capital stock, or of the bonds or other evidences of indebtedness, of any corporation has been authorized, are hereby declared void, except so far as may be necessary to maintain the obligation of contracts made and executed in accordance therewith.

Mr. HARRY WHITE. Mr. Chairman: I move to strike out all after the word "increased," in the seventh line, to the word "law," inclusive, in the twelfth line. The purpose of this amendment is to strike out the following words: "Unless the act of Assembly, by which such increase shall be authorized, shall strictly limit the amount thereof, and specify the object to which such increase shall be ap-

plied, nor unless sixty days' notice of an intended application to the Legislature for allowance of increase shall first have been published in such manner as shall be directed by law." And then I wish to insert the words, "except in pursuance of general law."

The CHAIRMAN. The gentleman from Indiana moves to amend, by striking out the words he has indicated, and inserting, "except in pursuance of general law."

Mr. HARRY WHITE. My purpose in doing this is to avoid the necessity of the passage of a special statute. The committee will observe that on page five of the report of the Committee on Legislation, in section ten, against special legislation, there is this provision: "No special law," &c., "shall be passed creating corporations, or amending, renewing or extending the charters thereof." The language of the section under consideration which I seek to strike out contemplates the passage of a special law for that purpose. I think the temper and desire of the Convention is to avoid that necessity. We do not want to prevent the increase of capital stock where it is required; but to require it to be done in pursuance of a general law, and then to preserve the other restriction requiring at least sixty days' public notice, and the assent of a majority in interest of the stockholders. It is merely to preserve the harmony of the Constitution in this regard.

Mr. CAMPBELL. I hope that the amendment will be adopted. It is similar to an amendment I offered in committee myself. I am opposed to everything in the report that savors of special legislation. To require a company to go to the Legislature every time they want to have something of this kind done, continues the evils of special legislation under which we are suffering.

Mr. COCHRAN. Mr. Chairman: The whole question that arises here of course arises from this consideration. Is it practicable by general law to provide for all these things? If that is practicable, then I prefer the amendment to the section; but it seems to me that all these cases of an increase of the indebtedness or capital stock depend upon the circumstances of the particular case. Every request of that kind may be, and ought to be, based on some circumstance in the particular corporation which desires the increase of its powers; and this is in that direction. I myself am entirely opposed to a reckless grant of power to increase stock and loans. We had that question talked about here early in the session of the Convention. We know what it resulted in. It is not worth while to refer to it; but it resulted in this: That the Committee on Railroads was instructed by this Convention to report a section on this very subject, and this is the section they have reported. It was reported in this form because we did not see that a general law could be made to fit the circumstances. Therefore, although the gentleman from Philadelphia who has just spoken (Mr. Campbell) concurred generally in the policy of the committee, yet on this point there was a difference of view, because he is opposed to special legislation, I believe, in every case. I suppose there is no case which he would make an exception. But it did not occur to me in this case, as it did not in another which we had before the committee, that it was possible to frame a bill which would properly apply to all these cases. In the other instance, on the motion of the gentleman from Fayette, the proposition for special legislation was stricken out of the section. Whether the committee intends to strike it out of this section, and say that a general law shall cover the case, I do not know. For my own part, I shall stand as an individual by the section, because I do not know how you are going to frame a satisfactory general law on the subject.

Mr. HARRY WHITE. The committee will indulge me a moment. I am surprised at the observations of the very intelligent chairman of the Committee on Railroads as to the impracticability of authorizing, by general law, the authority contemplated in the eleventh section. It is perfectly practicable, and I think a few minutes' reflection will convince him and every other intelligent delegate that there is nothing more practicable. I call the attention of the committee to the provision in our own general railroad law, passed after a very serious contest by the Legislature of 1868, the sixth section of which is as follows:

"Whenever any railroad company, created and incorporated under the provisions of this act, shall, in the opinion of the directors thereof, require an increased amount of capital stock, in order to complete and equip their road and carry out the full intent and meaning of their charter, they shall, if authorized by a majority of stockholders at a meeting called for that purpose, file with the Secretary of

the Commonwealth a certificate stating the amount of such desired increase; and thereafter such company shall be entitled to have such increased capital as is fixed by said certificate."

I also hold in my hand the general railroad law of the State of New Jersey.

Mr. MACVEAGH. That act, I think, has no limitation whatever. The company may, at their mere will, extend their stock. I wish simply to call the attention of the gentleman from Indiana to the plain distinction between his view and the view of the gentleman from York, that the committee may understand it; and that is whether the people should not retain control, step by step, over the increase and growth of their *quasi* public corporations. If they ought, then this section should be adopted as reported. If they ought not, then a general law ought to give them, and undoubtedly would give them, unlimited power at their own discretion.

Mr. HARRY WHITE. Furthermore, in extension of the illustration I was making, in reference to the perfect practicability of exercising this power, as found in our statute of 1868, I hold in my hand the general railroad law passed by the State of New Jersey at the late session of her Legislature. We are familiar with the contest in the Legislature of New Jersey, at its last session, upon the subject of this general railroad law. I find there, in section nine of their law:

"That in case the capital stock of any company formed under this act is found to be insufficient for constructing and operating its road, such company may, with the concurrence of two-thirds in amount of all its stockholders, increase its capital stock, from time to time, to any amount required for the purpose of constructing, maintaining and operating its railroad; such increase may be sanctioned by a vote, in person or by proxy, of two-thirds in amount of all the stockholders of the company, at a meeting of such stockholders called by the directors of the company for that purpose."

Mr. Chairman, I call the especial attention of the members of the committee to these provisions, to force the conclusion upon their minds that it is perfectly practicable to provide for an increase by general law. I am much obliged to the delegate from Dauphin for calling my attention to the fact that the people should have perpetual control of the applications for an increase of capital stock.

Mr. Chairman, the passage of general railroad laws in Pennsylvania was an era in the history of our legislation. A general railroad law only went upon our statute book after one of the most serious contests, after great excitement of public opinion, and it was only yielded by the powers which controlled the Legislature after the public mind had been stirred to its very depths as to the necessity of the largest liberty being given to the people and to capital, to organize in the construction of railroad lines, to develop our industries and relieve them from the influence of monopolies; and let me remark to the delegate from Dauphin, and other delegates upon this floor, that in providing for an increase of capital stock, by virtue of a general law; we are legislating in the interest of the people; we are legislating against the interests of jobs and jobbers; we are legislating in the interest of integrity and honest enterprise.

What was the evil which we labored under before the passage of the general railroad law in 1868? A great railroad company in this Commonwealth—and I admire their enterprise and their public spirit in other respects—controlled the Legislature, or some part of it, so that no railroad corporation could get a special charter; no railroad charter could be authorized unless it had the assent of that peculiar interest The gentleman from Dauphin, if you please, representing in the Senate the district of Lebanon and Dauphin, would read in his place a bill to incorporate a railroad company in his district, or to extend it beyond it. It was referred, under the rules, to the Railroad Committee, and there it would sleep the sleep that knows no waking, unless it received the assent of a peculiar interest. An application was made to modify the charter of a particular railroad company, and authorize an increase of its enterprise and its resources, and that bill was referred in the same way, and could not come out of committee until it had received the assent of a peculiar power.

These abuses created the necessity for a general railroad law. The general railroad law was passed in 1868, not in the interest of corporations, but in the interest of the people. That is an accomplished fact, and the result has been what? Why, sir, that railroads have been projected, and are projected, in different parts of the Commonwealth; bills have been read in place, and they have been passed, and passed only when the threat is made, "if you do

not pass this special charter we will organize under the general railroad law." Hence opposition to the passage of the special charter was thenceforth useless.

Now, I pray members of this committee, I pray the chairman of the Railroad Committee, not to be insensible to this reform that was effected in Pennsylvania after a long contest, and not to require every railroad corporation, after it is organized and wants an increase of capital stock, to go into a contest before the Legislature for the passage of a special bill, and encounter the opposition which it will receive there. Let it be done, as it is now provided it can be done, under the general railroad law of the State, trusting to the people, trusting to the interests of the corporators and a majority of the stockholders, and I apprehend there will no danger whatever. If it is desired by the delegate from Dauphin, or others, to limit the amount of capital stock thus increased, add the words "the amount of the capital stock thus increased shall be specially designated.

Mr. MACVEAGH. I should like to ask the delegate a question before he takes his seat. I attach great value to his judgment, because of his experience. I ask which of the two evils he considers the greater, the evil of giving unbridled power to incorporations to increase their own capital and their own indebtedness at will, or the evil of applying to the Legislature for particular laws to allow them to do so.

Mr. HARRY WHITE. The latter, by all means. The latter gives opportunities for jobs and jobbers. Venal men will always get into legislative bodies; and, of course, when these special privileges and special requests are asked for, the necessary appliances will be used to secure them. I would let the increase of capital stock repose in the hands of those who manage these corporate interests, and let the people and the persons interested regulate it for themselves.

The amendment of Mr. Harry White was adopted.

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

Mr. BAER. Mr. Chairman: I offer the following amendment: Add after the word "any," in the last sentence, the words "railroad or canal," so as to make the sentence read, "all laws heretofore enacted by which an increase of the capital stock, or of the bonds or other evidences of indebtedness of any railroad or canal corporation," &c. As the section stands it embraces all corporations, and interferes with many manufacturing companies who have the right to increase their capital.

Mr. EWING. I hope the amendment will not prevail. To a smaller extent the evil, which this section is designed to reach, exists in regard to many other corporations the same as it does with regard to railroad corporations. Let them all come under a general law.

Mr. MACVEAGH. This section is only applicable to railroads and canals, as I understand it.

Mr. COCHRAN. Mr. Chairman: I would suggest that if the amendment is to be inserted at all, it be put in the alternative; and, instead of reading, "railroad and canal," it read, "railroad or canal." When this section was before the Committee on Railroads and Canals, if I recollect aright, we concluded that the principle contained in this section was a sound one to be attached to all corporations of the kind, whether joint stock or otherwise. We saw no reason for making any distinction in this regard between any corporations. We traveled out of our record, I admit, so far as that is concerned, if you are going to tie down the Railroad Committee to our technical jurisdiction; but we supposed that when we were providing for this we might be excused for enlarging its scope in this particular instance, because this seemed to be a provision which was particularly applicable.

Mr. J. PRICE WETHERILL. Now, will it be possible for a manufacturing company to do business without increasing its indebtedness?

Mr. COCHRAN. Will the gentleman from Philadelphia permit this amendment to be acted upon? It does not prohibit them from increasing their capital stock or indebtedness. It is only putting them on the same rule of increase with other corporations.

The CHAIRMAN. The question is upon the amendment of the gentleman from Somerset (Mr. Baer.)

On the question of agreeing to the amendment, a division was called for, which resulted: Thirty-six in the affirmative, and thirty in the negative. So the amendment was agreed to.

Mr. DALLAS. I move further to amend, by striking out, in the last sentence of the section, all after the words "in pursuance of law."

Mr. COCHRAN. Mr. Chairman: I certainly object to that. It seems to me that

where a power has heretofore been given, which has been a great power and an unbounded power, to create corporate indebtedness, we should stop the operation of that grant just at the point where this Constitution goes into effect. I have no doubt that after a contract has been made, the loan effected, and the bonds and stock issued, it is too late to interfere. I do not propose to interfere or attempt interference with those who have heretofore received such privileges. It may be that those who have so received such privileges may anticipate this Constitution going into effect, and may prevent its practical operation. But there is no reason why those who have such a power conferred upon them, if that power has not been exercised, should not be compelled to come under the same footing as they who apply for the grant after the Constitution has gone into effect. That is the intention of the closing clause of this section, to put all corporations on an equality from the time that this Constitution goes into effect. If there is any pow er that has not been exhausted, that is if any such power is to be yet exercised, it should be exercised under the provisions of this section.

Mr. DALLAS. Mr. Chairman: A very few words in explanation of the amendment that I have offered. The last clause of this section, as reported, reads: "All laws heretofore enacted, by which an increase of the capital stock or of the bonds or other evidences of indebtedness of any corporation has been authorized, are hereby declared void, except so far as may be necessary to maintain the obligation of contracts made and executed in accordance therewith."

When I proposed upon this floor that in providing that no commissions now created for cities should continue in existence, when it was proposed that no others should be added to them, I was met with a very general response from all parts of this hall that we should not undertake to disturb those things which properly exist under the law as it stood to-day.

Mr. COCHRAN. The gentleman from Philadelphia will allow me to say for one, that if anybody raised that outcry I was not one who did it.

Mr. DALLAS. I am very glad to hear that there was one gentleman in the Convention who agreed with me on that subject. He did not make his agreement very distinctly known, for, as I remember, my voice, as I voted for the abolition, sounded almost entirely alone, except the echo that sounds in this hall.

It is very hard to tell how long this Convention is to continue in session. If we are to adopt the nineteen sections of this one report by the slow degrees at which we have thus far progressed, and our action upon this report upon first reading is to be taken as a fair indication of what our general progress in our work is to be upon all the sections of all the reports upon all their readings, it will certainly be a very long time before we get through with our labors. We have then to provide a reasonable time before the people can vote upon the work that we present to them; and up to the time that the people shall adopt this Constitution, I take it that the existing legislation of the State of Pennsylvania will certainly be in force, no matter what we may say in this section as to its repeal. So that if we adopt this section with this concluding clause, we are to-day giving notice to every corporation who may now have the power to increase their stock or their bonded indebtedness, that all they have to do is to hurry it through and put it in the shape of contracts between other parties, or between themselves, betwixt this and the time when this Constitution is adopted, in order to make it perfectly safe. Therefore any provision of this sort is utterly futile for any practical purpose.

But it is not only because it would serve no such purpose that I object to this concluding clause, but because I do not think that in the Constitution we should put any such section as this. We should not say to a body corporate of the State of Pennsylvania, or to any number of them—I do not know how many now may have acts of the Legislature conferring upon them the power of increasing their stock, or of adding to their bonded indebtedness—that powers which have been granted to them by the Legislature of Pennsylvania, and upon the faith of which they have been acting, acts of Assembly which they have accepted, they shall now be deprived of the benefit of by the action of this Convention. We should not here, justly or unreasonably, antagonize the interests of bondholders and stockholders of the corporations of this Commonwealth against the work we are now performing.

The CHAIRMAN. The question is on the amendment of the gentleman from Philadelphia (Mr. Dallas.)

On the question of agreeing to the amendment, a division was called for,

which resulted: Thirty-two in the affirmative. This being less than a majority of a quorum, the amendment was rejected.

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

Mr. DALLAS. I call for a division of the section at the word "created," in the first sentence.

Mr. HOWARD. Mr. Chairman: Before the vote is taken on this section I only desire to say that I think it would be right to amend it, by striking out, in the first line, the word "or," and inserting, after the word "canal," the words, "or transportation company," so as to make the first sentence of the section read: "No railroad, canal or transportation company shall issue any stock or bonds except," &c.

The reason of that suggestion is this: The section as it stands would apply only to railroads and canals, and would not be binding upon common carrier companies in this Commonwealth, which exercise even greater power than the railroads themselves. The Pennsylvania company, for instance, controls two thousand four hundred miles of railroad lines, yet they are not a railroad company. They are a transportation company, they are a common carrier company, and they should be embraced in all the provisions that we enact for the regulation of common carriers. Therefore, I say that we should here add this amendment, so as to make the section read "railroad, canal or transportation companies," because there are corporations for transportation purposes that are not railroads.

The CHAIRMAN. The Chair would state to the gentleman from Philadelphia, (Mr. Dallas,) in reference to his call for a division of the section, that the section is not capable of division at the point he has indicated. If he will call for a division at the word "void," at the end of the first sentence, or if he will move to strike out all between the word "created" and the word "void," his purpose will be reached.

Mr. DALLAS. I make no call for such division.

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

Mr. HOWARD. The first question is on my amendment.

The CHAIRMAN. Will the gentleman from Allegheny state his amendment?

Mr. HOWARD. To so modify the first line of the section, as to make it read, "no railroad, canal or transportation corporation," &c.

Mr. EWING. I move to amend the amendment, by striking out the words "railroad or canal," in the first line.

The CHAIRMAN. There are no such words in the amendment, and the amendment of the gentleman from Allegheny (Mr. Ewing) would not be an amendment to the amendment of his colleague. The question is on the amendment of the gentleman from Allegheny (Mr. Howard.)

On the question of agreeing to the amendment, a division was called for, which resulted: Fifty-two in the affimative, and eight in the negative. So the amendment was agreed to.

Mr. EWING. I now move to strike out the words "railroad, canal or transportation," in the first line, so that no "corporation shall issue any stock," &c. That makes it applicable to all corporations.

The CHAIRMAN. The question is on the amendment of the gentleman from Allegheny (Mr. Ewing.)

The amendment was rejected, there being, on a division: Ayes, nineteen, not a majority of a quorum.

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

The question being put, there were, on a division: Ayes, forty; noes, thirty-four. So the section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read section twelve, as follows:

SECTION 12. No railroad, canal or other corporation engaged in the business of common carriers or transporters shall permit the gratuitous transportation over its road or canal of any person or persons, except its own officers and employees, or poor and indigent persons. Every ticket, except excursion tickets, issued to any passenger by any incorporated company engaged in the transportation of passengers, shall entitle the holder of such ticket to transportation over the works of said company from his place of departure to his place of destination, either by continuous train or by any other train upon which the same rate of fare is charged; and no such company shall require any passenger to pay any additional fare, or subject him to any inconvenience because of his stopping off at intervening points.

Mr. BUCKALEW. I move to amend the section, by inserting, "except members of

the Constitutional Convention." [Laughter.]

The CHAIRMAN. Does the gentleman insist on his amendment?

Mr. BUCKALEW. I am not particular about it.

Mr. FELL. Are they not included under "poor and indigent persons?" [Laughter.]

The CHAIRMAN. The question is on the section.

The section was rejected: Ayes, thirty; not a majority of the quorum voting for it.

The CLERK read section thirteen, as follows:

SECTION 13. Any violation by any railroad, canal or other corporation of the provisions of the fourth or seventh sections of this article shall be punished by a fine of five thousand dollars, and any violation of the provisions of the second, fifth, sixth, eighth, ninth, eleventh and twelfth sections thereof, by a fine of one thousand dollars for the first offence, either by indictment or civil action, at the suit of the party injured, in addition to any damages which may be sustained by said party; and a continued or second offence shall work a forfeiture of the charter and franchises of such corporation, which shall be enforced by writ of *quo warranto*, sued out by the Attorney General, or by any citizen or citizens of this Commonwealth, and proceeded in according to law, and the Legislature is prohibited from restoring the charter and forfeited franchises to such offending corporation, or to any person or persons, so that they shall inure to its benefit. Every violation of the provisions of either of the sections of this article above referred to, by any officer or agent of such corporation, or by any other person, shall be a misdemeanor, and punished in such manner as shall be prescribed by general law.

The CHAIRMAN. The question is on the section.

The Chair put the question, and declared that the noes appeared to have it.

Mr. COCHRAN. I hope this section will not be voted down in a state of excitement. This section is the section which has been hitherto referred to, and is the sanction to those sections which have already been passed by the committee. It has been said by gentlemen here that these sections which we have adopted are of no effect, unless you have something of this kind, and that is true. This section has been arranged for the purpose of providing penalties for the violation of that which we have done heretofore. I presume the committee is now getting impatient and restless under this report, and is indisposed to hear anything.

Mr. CAMPBELL. Will the gentleman yield for a motion to rise? As the committee seems indisposed to give the proper consideration to these sections now, and seems to be anxious to get away, I move that the committee rise, report progress, and ask leave to sit again. ["No." "No."]

The CHAIRMAN. Does the gentleman from York yield for that purpose?

Mr. CORBETT. I rise to a point of order.

Mr. CAMPBELL. I withdraw my motion.

Mr. CORBETT. Mr. Chairman: I rise to a point of order. The Chair had announced the vote. ["No!" "No!"] Yes, sir; the Chair said the amendment was lost, and I heard it distinctly.

The CHAIRMAN. The Chair withdrew the decision, in order to let the gentleman from York have the floor.

Mr. HOWARD. He was on the floor at the time, but had not been recognized.

The CHAIRMAN. The gentleman from York is entitled to the floor.

Mr. COCHRAN. The vote was not taken on the thirteenth section; it was taken on the twelfth. Now I hope, Mr. Chairman, as I said before, that this section will receive consideration, and not be voted down under mere excitement.

Mr. DARLINGTON. I thought it had been decided and another section read.

The CHAIRMAN. Does the gentleman rise to a point of order?

Mr. DARLINGTON. Yes, sir. The point of order is, that the question upon the twelfth section was decided, and we have passed to the consideration of the thirteenth section, and it had been read.

The CHAIRMAN. The thirteenth section is under consideration, [laughter,] and the gentleman from York is entitled to the floor upon it.

Mr. DARLINGTON. I withdraw my point of order.

Mr. CORBETT. I make the further point of order, that when the vote is being taken, it is too late then for discussion. The vote was being taken.

The CHAIRMAN. The point of order is overruled. The decision was not stated, and if it had been, the Chair would have withdrawn it to give the gentleman from

York the floor, under the circumstances. The gentleman from York is entitled to the floor.

Mr. COCHRAN. Now, Mr. Chairman, I am not going to make a long speech, nor am I going to detain the committee if they are disposed to vote on the section. I merely want to call attention to the section as it stands. It is not worth while for me to spend time here in talking about a matter which the members of this committee are certainly competent to comprehend themselves, when they read the section. All I ask is their attention to the section and what it provides. It is the section which is intended to enforce that which the committee themselves have hitherto done and adopted, and I hope that they will not fail to consider this section deliberately, and to discuss it wherever discussion is needed. I move, sir, in the first place, to amend the section, by striking out the words "and twelfth," in the fourth line, and insert the word "and," before "eleventh."

The CHAIRMAN. The question is on the amendment of the gentleman from York to the section.

The amendment was agreed to, there being, on a division: Ayes forty-six; noes, six.

Mr. BAER. I move to amend, by striking out the words, "above referred to," in the fifteenth line, after the word "article," so as to make the section apply to the entire article.

The amendment was rejected.

Mr. WHERRY. I move to amend, by striking out all that precedes the word "every," in the fourteenth line.

The amendment was not agreed to, there being on a division: Ayes, six, not a majority of a quorum.

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

Mr. T. H. B. PATTERSON. Mr. Chairman: I want to say just a few words on this matter before the vote is taken. I do not think that the delegates properly consider this matter, from the mode in which the last vote was given.

Now, this section is the section that has been referred to by delegates on this floor in the discussion of several of the sections of the article that has been adopted as the section which was to put into effect the various sections of this article. It has been said here, over and over again—and I call the attention of the delegates to it, and I shall detain them but a moment—it has been said over and over again, that the common law and the equity proceedings of the ordinary trials of our courts were not an adequate remedy for the citizens and shippers of the State, and that the proposition and the object of the sections of this article were particularly to give a remedy by forfeiture, some such strong fundamental provision as would prevent the officers and managers of common carrier corporations from needlessly violating the rights of shippers, and in order that the strong hand of the Commonwealth might be held over these corporations, in order to keep them within proper bounds; and in order that all individual citizens, whether in corporations or out of them, should have their rights with regard to the carriage of property, and with regard to these corporations, without being compelled, individually, to run the risk of going into a contest in our courts.

That was the specific object of many of these sections, and if this section is stricken out, if these penalties and these strong remedies of forfeiture are needlessly stricken out, we might as well have voted down many of the sections we have adopted, and we might as well have saved the time we have consumed in their consideration. I speak in all candor and soberly. I ask delegates on this floor to consider carefully before they, by one vote, strike out the effective force of all the work of this week, and to consider carefully before they abandon, thus needlessly, the fruits of all their labors, if they are of any value whatever. This hurried vote, and this attempt to prevent discussion of this section, and to force it to a decision without deliberation, seemed to me to evince a determination to defeat it without an adequate consideration of its importance. I hope that members will look upon it carefully, discuss it carefully, and make up their own minds for themselves as to whether they are going to defeat the whole object of this article by defeating this section.

Mr. H. W. PALMER. I should like to inquire of the chairman of the Committee on Railroads, or of the gentleman who has just taken his seat, how he is going to frame an indictment for the violation of this section, and whether such a thing was ever heard of since the world began as a penalty for a violation of what is merely an act of Assembly in a Constitution? How would he go to work to enforce the provision?

Mr. T. H. B. PATTERSON. It provides for the enactment of a law.

Mr. H. W. PALMER. I know it provides for an indictment for violating this provision.

Mr. T. H. B. PATTERSON. It provides for making it a crime, a misdemeanor. I will state, as the gentleman has interrogated me, that I now have in my pocket letters from a citizen of a commercial city of this State, suggesting, as the only adequate remedy that shippers can see for any violation of chartered rights, and of common carrier rights, and the rights of the citizen with regard to shipment, that a provision should be introduced into this article providing that the Legislature shall pass an act making it a crime for the officers or managers of common carrier corporations to violate the rights of citizens and shippers, and providing adequate penalties for criminal procedure, which is the character of the law contemplated by this section; and this comes from a man who is acquainted with the rights and difficulties of shippers in one of the largest commercial centres of this State, and who has had vast experience.

Mr. MACVEAGH. I trust that if an adverse vote is given on this section, it will not be ascribed to an indifference to the subject matter of the article, nor to any apparent haste exhibited by anybody to get rid of it. I am sure every member of the committee appreciates the importance of it; but some of us will feel constrained to vote against it, not because we are not willing to hear it discussed or discuss it, not because we are not willing to afford a remedy for admitted evils, but because we are unwilling to enact a penal code in the Constitution of the State. I submit that it is the part of wisdom for everybody here, whatever may be his feeling with reference to corporations and the danger of the growth of their power, to vote at least against this section of this report. It will give strength to the other sections to vote it down. To associate the sections that have been adopted with this section will only be a source of weakness to them all, in my judgment, for it will lead thoughtful people, if I am not mistaken, and especially thoughtful lawyers, to believe that we have allowed our prejudices or our feelings to carry us beyond all legitimate limits in the framing of the fundamental law.

Mr. HOWARD. I am unable to agree with the gentleman from Dauphin (Mr. MacVeagh) in regard to this section. I have heard a great deal said in this Convention, and there is no necessity for repeating it, in regard to the Pennsylvania Legislature. The principal attack was made upon the fifth section. That section was defeated because there was a simple proposition in it that when a railroad was to be purchased or leased the consent of the Legislature should be required; and yet gentlemen now propose to strike down all constitutional penalty for a violation of the provisions that we have adopted in the Constitution so far, and turn the people over to the Legislature of Pennsylvania. I do not like men to blow hot and cold. I like consistency.

Sir, I would not give you two cents for the preceding sections, unless we provide a penalty in the Constitution itself, to be enforced for a violation of the provisions that we adopt in regard to these great corporations. Why, sir, if anything has been demonstrated, it is that these corporations are too large to be handled by the people, too large to be handled by the Legislature. They have been so large and so powerful that they have corrupted the Legislature; and here we are asked to provide general principles for the purpose of controlling and governing them. We are prescribing that corporations shall not do this, and shall not do that, and then we are to vote down the only sensible section that is provided here to enforce the provisions that we have created. I hope that we shall not be guilty of such folly. It seems to me to do that certainly would be folly. Why declare that men shall do this, that, or the other thing, unless we provide a penalty? If it is necessary for us to provide in the Constitution at all on the subject of railroads, why shall we not also say: "Gentlemen, you must observe these provisions, or abide by a certain penalty."

Mr. Chairman, I am unwilling to take up the time of the committee. I certainly have no desire to speak merely for the purpose of being heard on this question; but I regard this section as one that is vital to the work of this committee, vital to the work of this Convention, and of vast importance to the people of this Commonwealth. Unless we provide the proper penalties, I think our work will be almost, if not entirely, good for naught.

But it is said the penalty is too severe. For the first offence we have provided some trifling penalty. If they are guilty of a second offence, then there is to be a forfeiture of the charter, that is, for the violation of some of the sections.

Then the latter clause of the section applies more particularly to the officers, declaring that any violation on the part of the officers shall be a misdemeanor. What will be the state of affairs if we provide that railroad officers shall not do this and shall not do that, and make no provision for their punishment at all, unless it may be an appeal to their board of directors, or to drive the shipper to a suit against the railroad company. The shipper will be afraid to do that. He is afraid to do it now. We propose to make it a penal offence for the officer to violate these provisions. Then any man whatever may become the prosecutor; any man may appear on behalf of the Commonwealth, and he may make the information, and that officer may be arrested, tried and punished. That is the proper way for us to provide for the punishment of these men if they violate the provisions that we have enacted. Why should we sit here and waste our time in the consideration of this subject if we are to turn our work all over to the Legislature? The sting of the law is its virtue; it is the penalty, and we know from past experience what we may expect in the future, especially in regard to the management of these great corporations, that nothing but the most stringent penalties will hold these institutions to their proper bounds. I certainly hope that this section will be adopted, as it has been amended, at the suggestion of the chairman of the committee.

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

The section, as amended, was rejected, there being on a division: Ayes, twenty-seven; less than a majority of a quorum.

The CHAIRMAN. The next section will be read.

Mr. T. H. B. PATTERSON. I move that the committee now rise.

["No! No!"]

The CHAIRMAN. The Chair will suggest to the gentleman that he first allow the section to be read.

Mr. T. H. B. PATTERSON. Very well.

The CLERK read as follows:

"SECTION 14. All railroad and canal corporations shall be liable for the payment of consequential damages committed in or resulting from the construction, repair or enlargement of their works, and the said damages shall be paid or secured to be paid before the injury is done."

Mr. T. H. B. PATTERSON. I now insist on my motion.

Mr. KAINE. I simply wish to make a remark. I consider this a very important section, perhaps one of the most important in the whole article. I have not troubled the committee in the entire discussion of this subject. I therefore hope that the committee will now rise.

The CHAIRMAN. It is moved that the committee rise, report progress, and ask leave to sit again.

The motion was agreed to. The committee rose, and the President having resumed the chair, the Chairman (Mr. Broomall) reported that the committee of the whole had had under consideration the article reported by the Committee on Railroads and Canals, and had instructed him to report progress, and ask leave to sit again.

Leave was granted the committee of the whole to sit again on to-morrow.

Mr. D. N. WHITE. I move that the Convention do now adjourn.

The motion was agreed to, and at five o'clock and forty-five minutes P. M. the Convention adjourned until to-morrow at ten o'clock.

EIGHTY-SIXTH DAY.

FRIDAY, *April* 25, 1873.

The Convention met at ten A. M., Hon. Wm. M. Meredith, President, in the chair.

Prayer by Rev. Jas. W. Curry.

The Journal of yesterday was read and approved.

RAILROADS AND CANALS.

Mr. COCHRAN, chairman of the Committee on Railroads and Canals, presented the following report:

The Committee on Railroads and Canals respectfully report:

That they have had under consideration the resolutions hereunto annexed, which were presented to the Convention and referred to this committee. The propositions therein contained were considered by the committee before they made their general report on the subject committed to them, and their conclusions thereon were embodied in that report, now pending in committee of the whole. There being nothing new or additional which this committee is prepared to recommend, the following resolution is respectfully submitted:

Resolved, That the Committee on Railroads and Canals be discharged from the further consideration of the subject.

[The resolutions annexed were submitted on Wednesday, April twenty-three, by Mr. Broomall.]

The resolution reported by the Committee on Railroads and Canals was read twice and agreed to.

Mr. LILLY. I move that the Convention do now resolve itself into committee of the whole for the further consideration of the report of the Committee on Railroads and Canals.

The motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Broomall in the chair.

The CHAIRMAN. The committee of the whole resumes the consideration of the article reported by the Committee on Railroads on Canals, and the question is upon the fourteenth section.

Mr. KAINE. Mr. Chairman: I move to amend the section, by striking out all after the word "all," in the first line, and inserting: "Corporate bodies and individuals shall be liable for any consequential damages resulting from the construction, enlargement, repair or operation of their works."

I think, Mr. Chairman, that a provision of this kind is necessary in the Constitution. The amendment offered contains the substance of everything that is in the section as reported by the committee, but is in somewhat different language. The section, as reported from the committee, provides that "all railroad and canal corporations shall be liable for the payment of consequential damages, committed in or resulting from the construction, repair or enlargements of their works; and the said damages shall be paid or secured to be paid before the injury is done."

I apprehend that last part of it would be impossible of execution. Consequential damages can only be ascertained after the injury is complete, after the act has been done that produces the injury. So far as direct damages are concerned, we have already a provision in the Constitution, and I have used the words of that section, so far as I could, in this amendment. The section, as reported from the committee, provides that "all railroad and canal corporations shall be liable." I have stricken that out, and inserted this language, from the fourth article of the old Constitution: "The Legislature shall not invest any corporate body or individual with the privilege of taking private property for public use, without requiring such corporation or individual to make compensation to the owners of such property, or by giving adequate security therefor, before such property shall be taken."

That, of course, applies only to direct injury for taking property directly. It has been held by the Supreme Court that there can be no compensation recovered for consequential damages unless a provision for that purpose has been inserted in the charter of the corporation. It was decided by Judge Strong, in 5th Wright, "that a corporation invested with the right of eminent domain is liable for consequential damages to private property no further than it is declared to be so in the act of

incorporation." That decision, and all its cognates, were based upon the celebrated decision of Coons *vs.* the Monongahela Navigation company, for the destruction of a mill and mill dam upon the Youghiougheny river. The doctrine was first enunciated, I believe, by Chief Justice Gibson, in that opinion, and our Supreme Court have followed that decision from that day to this.

The Supreme Court decided that boroughs, cities and counties were capable of subscribing to the stock of railroad companies; and the great case upon that subject was Sharpless *vs.* the mayor of Philadelphia. When the mayor and authorities of the city of Philadelphia undertook to and did subscribe to the stock of the Hempfield road, a Mr. Sharpless, in the city, brought an injunction to restrain them from that act. Upon the hearing of that case before the Supreme Court, Chief Justice Black decided that the city had a right to do it. That decision, and others of the same kind, produced the amendment to the Constitution of 1857, prohibiting subscription of that kind by municipal corporations.

That course of decision upon the part of the Supreme Court induced that amendment. Since its adoption there has been no injury arising therefrom, because nothing of the kind has been done. The decisions of the Supreme Court on this other question, I think, now require to be corrected by a provision in the Constitution, such as the amendment proposes.

There are various kinds of damages that are done by corporations in the construction of their works, for which there is no remedy. For instance, a man owns a mill, and his custom is entirely from the country. A railroad is built right alongside of his mill. It becomes a great thoroughfare. Cars and locomotives are passing along it continually. That drives the customers from his mill; persons are afraid to go to the mill, for fear of injury to themselves or their horses or their property, and the result is that the mill property becomes perfectly worthless. For a thing of that kind there is no remedy.

The Pittsburg and Cleveland railroad built a road from Pittsburg to the city of Cleveland, commencing in Manchester, and in the construction of that road they built it close by a dwelling house. Cars were placed upon the road and allowed to stand there. Locomotives were continually passing and shaking the house, and filling it with smoke. The owner of the house brought an action against the railroad company for damages, but the Supreme Court decided that he had no remedy; that the railroad company was not liable

Now, sir, I think a provision affording a remedy for things of that kind should be placed in this Constitution. Consequential damages in this country, I believe, are now a recognized fact. They have been claimed, at any rate, before the highest tribunal that has sat in the world for years; I refer to the arbitration at Geneva. I think we had better put such a provision into our Constitution, to make it the law of the land. If the party chooses to withdraw his claim for damages he may; but, nevertheless, he should have the right to enforce it if he will.

Mr. DARLINGTON. Mr. Chairman: I feel very much averse to the introduction of a provision such as this into the Constitution, for the reason that its present provision seems to be ample for all practical purposes. You cannot take private property for private use; nobody ever pretended that you could. It can only be taken for public use under any pretence. The Constitution guarantees that private property shall not be taken for public use, whether it be by the State or by any company or individual authorized by the State to take it, without not only paying, but, if necessary, securing the payment, before the property is taken, of the damages that will be done.

Now, it is proposed to engraft upon this a new principle, that consequential damages shall be secured by the Constitution. Precisely what "consequential damages" may mean, it is a little difficult to fortell. You cannot anticipate all the circumstances that may arise; but one thing we do know, that there may be damages arising from the taking of private property for public use, which are already sufficiently secured. I do not know of any instance in which damages done by the taking of private property for public use may not be assessed and paid. I know of no such case under our existing Constitution. "Consequential damages" may refer to speculative, uncertain, contingent things that may never arise, and which, of course, ought not to be compensated. But what we should seek to do is to secure to every individual the right, not to damages, but to compensation (for that is the proper word) for the taking of his property. If it be taken by a canal company, they must pay for it. Although it be not taken

directly by the canal company, if they flow water back on the land of a private owner, it is to all intents and purposes a taking; and all damages resulting from such taking are now assessable and payable.

The damages in the case put by the gentleman from Fayette, of running a railroad alongside of a man's property, thereby injuring it, are also now ascertainable and payable. I admit that you cannot assess damages for and cannot compensate for an injury which may never happen, such as the liability of buildings to be burnt down; but if you run your railroad so near to the buildings of an individual as to lessen their market value and make them unsafe for occupation by reason of the danger to which every one is subjected in going to and from them, then damages may be assessed.

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

Mr. DARLINGTON. Yes, sir.

Mr. KAINE. Has that case ever been decided in that way?

Mr. DARLINGTON. Precisely; and that is what I am about to refer to.

Mr. KAINE. What is the case?

Mr. DARLINGTON. In the case of Stauffer *vs.* the East Brandywine and Waynesburg railroad, in Chester county, a case in which I bore a part.

Mr. KAINE. How long ago?

Mr. DARLINGTON. Three or four years.

Mr. KAINE. The Supreme Court decided exactly the other way in the case to which I referred.

Mr. DARLINGTON. The case to which I refer was based on the decision in Johnston *vs.* the Railroad, which arose in the western part of the State. The circumstances of Stauffer's case were that a railroad was laid through a barn-yard, and although no damages could be claimed for the burning of the building, yet the court held that if the road was so near as to make it unsafe for a prudent man to store his grain there, it was injury and must be paid for. In other words, if its market value was reduced by the position in which they placed it, injuring it as a place of storage for grain or produce, then it must be paid for. That case went to the Supreme Court, and the judgment of the court below was affirmed.

Mr. COCHRAN. Will the gentleman allow me a word?

Mr. DARLINGTON. Certainly.

Mr. COCHRAN. If I understand the statement of that case by the gentleman from Chester, it was a case of direct and not of consequential damages.

Mr. DARLINGTON. I answer to that, that it was not a case of actual taking of the building, but it was a case of damage to the freehold.

Mr. KAINE. Will the gentleman allow me to interrogate him?

Mr. DARLINGTON. Yes, sir.

Mr. KAINE. I know that the gentleman who is now addressing the committee is a distinguished railroad lawyer; he has been counsel in an adjacent county for the Pennsylvania railroad; and in stating that case, with which he is perfectly familiar, I hope he will deal candidly with the members of this Convention.

Mr. DARLINGTON. I will answer the gentleman's suggestion by saying, first, that I am not here as a railroad lawyer. I am here as a man with equal rights on this floor with every other member, but not with equal talents. I have been concerned as much against as for railroads, and I am, almost every day I live, concerned against them as well as for them—not so concerned as to place me in the unfortunate position of being on both sides on the same question; I do not mean that.

Mr. KAINE. What I complained of was that the gentleman, in stating that case, did not tell the Convention that the damages there were considered as direct damages, as the result of the original taking.

Mr. DARLINGTON. I state with candor, what the book will show, that the claim there was that the property was injured in the market by reason of the occupation of it and the road running so near to the barn as to make it an unsafe place to store grain, and therefore useless as a place of storage. That was the exact point.

Mr. KAINE. The question was considered as part of the taking.

Mr. DARLINGTON. Of course it was in the taking, because for nothing else could damages be given but for the taking. It was a taking of the property so that it could be used for no such purpose as before, and therefore the damages were assessed and paid. The party was compensated for the injury done, by rendering his barn useless as a place of storage, though they did not actually take the barn. That case, I venture to say, has not been over-ruled; at least it has not came to my knowledge that it has been over-ruled, nor can it be over-ruled, I apprehend, while the law is

founded upon reason and common sense, because, although you may not take my house from me, if you render it uninhabitable by the proximity of your railroad, you lessen its market value.

Mr. DE FRANCE. I should like to ask the gentleman a question?

Mr. DARLINGTON. I will yield to the gentleman.

Mr. DE FRANCE. Suppose that the railroad had not touched the freehold, suppose it had gone one rod outside of the freehold, then could there have been anything recovered at all?

Mr. DARLINGTON. If you do not take the land in any way, of course you do not damage the individual. If you run along near the line of my friend from the west, on his neighbors' land, and not his, what right has he to damages? His property is not taken; it is the land that is taken or occupied which is to be compensated for; and I would not permit an assessment of damages in favor of my friend who owns an adjoining farm, upon any imaginary notion that he does not want a railroad quite so near him. It is one where you take the property and apply it to public use, that you ought, in justice, to be called upon to pay or compensate; and that I understand to be the well-settled principle of the law, not only here, but elsewhere, and it is the only sound principle upon which we can legislate or form a Constitution.

Every man holds his property subject to the public rights. Every man holds his land subject to the right of eminent domain. Everybody knows that. My property and yours may be taken for anything which the Legislature of the State decides to be, and which is, a public object; but compensation must be made for it, not to the man whose land is not taken, but to the man whose land is taken.

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

Mr. DARLINGTON. Certainly.

Mr. TEMPLE. I desire to ask this question, whether the gentleman means to say to the committee that if a man's house stands immediately on the line of his own freehold, and the railroad company passes within ten feet of his line, within ten feet of his own dwelling, thereby destroying the right to use that building, the injury thereby occasioned would not be consequential damages?

Mr. DARLINGTON. If the railroad take or render useless the property, then you may compensate; but that is not consequential; that is direct.

Mr. TEMPLE. The gentleman said a moment ago that it could not be done.

Mr. DARLINGTON. Would anybody else like to ask me any questions? [Laughter.]

Mr. HUNSICKER. Yes, sir, I should like to ask a question.

Mr. DARLINGTON. Very well.

Mr. HUNSICKER. It has been decided that a railroad may take the street of a town. Now, suppose there is a row of houses on both sides, and the railroad company comes along and takes up the whole street, and thus shuts up those people from getting out of their houses, can they recover damages?

Mr. DARLINGTON. I am not sure whether they can or cannot. That is not the case I am arguing. I know that in the city of Reading, where my friend on the right (Mr. H. W. Smith) resides, a railroad company filled up one street so as to bury the first story of the buildings, and the owners could get no damages for that, because every man holds his land in the town, as well as in the country, subject to the public necessity, and cutting down a street, or filling up a street, may do him a fancied injury, but the public good requires the sacrifice. But the case I am speaking of is not that of a municipal corporation, but a railway company; I could deal with it as I deal with others. I would say, just as the Constitution has said ever since 1837, and, indeed, ever since 1790, that they shall not take private property for public use without paying for it; and the only change which was made in 1837, upon the Constitution of 1790, was that a corporation should not take private property for public use without securing the payment before they took the land, because of the danger of insolvency.

What kind of consequential damages is it that gentlemen have in their minds that the corporations are to pay for? Certainly not damages done to those who are not touched by the road. Does it mean that the owner of a mansion in the neighborhood of a railroad or in the vicinity of a station, which attracts about it a population which aristocratic gentlemen like myself [laughter] may not like, shall be entitled to damages for making the mansion less desirable than it was before? No. The law is more reasonable than that. It is settled in New York that even the cutting down of a bank, which took

away a beautiful slope to a man's ground, was not a matter for which compensation was to be given. The question is, at last, what is the market value of your property before the improvement is made, and what is it after? Consequential damages are but an ideal thing at the best. No jury can be trusted with them; no court can be trusted with them, and the law will not trust them. Men are not to be trusted to run away with the rights of corporations. Experience has shown that everywhere—I know it in cases where I have been against railroads, as in cases where I have been for them—jurors are not to be trusted unless they are bound by rules of law that they cannot get away from. It is so easy to lay the burden upon the corporations; and there is no safe rule in this particular, except that laid down by the Supreme Court in Thoburn *vs.* the Schuylkill navigation company, and recognized in every case that has come up from that time to the present, and not likely to be changed in all time to come, that the true measure of damage or injury done to a man's property, by the location of a public improvement, is that which is easily and readily applied by juries of all grades and stamps, viz.: Simply an inquiry, not as to what your fencing costs, not as to what your land is worth, not as to the injury the improvement brings upon you by destroying the beauty of your mansion, but what is the value of your property in the market after the improvement is made, as compared with what it was in the market before the improvement was made. If it is worth just as much in the market for any purposes to which any one may chose to apply it, after the road is built, as it was before the road was constructed, where is there a man who can say that any injury has resulted from the improvement?

Mr. HAZZARD. If the gentleman from Chester will allow the interruption, will he tell me whether juries do not generally lean toward railroad corporations rather than to individuals?

Mr. DARLINGTON. The gentleman from Washington has asked me whether juries do not lean to railroads rather than to men. That has not been my experience. I never saw one that would lean that way. I think, always, in their anxiety to be just to the individual, they will lean toward him and not in favor of the railroad. The difficulty I have experienced is known to every man who has been familiar with the administration of justice on the bench, known to every man in the practice of his profession, that the difficulty always is in getting justice at all in favor of a corporation, even under the most favorable circumstances.

I do not say this in disparagement of any one individual over another. It is mankind. It is nature. It is easier to lay the burden upon broad shoulders than upon light ones. That is what my friend, the delegate from Montgomery, (Mr. Boyd,) will say when he makes his speech on this question. He cannot get justice in favor of a corporation, and if he cannot, who else need attempt it? (Laughter). So, that, talk as you will about consequential damages, talk as you will about things which are incapable of definition—for nobody knows where these consequential damages will stop—the only true, sensible rule at last is the one which I have stated, and which has been acted upon and approved by every judge from the day of Chief Justice Tilghman down to the present time, and which I hope never to see departed from. And that principle is, what is the property through which a railroad runs, worth as a tract, as a farm, as a lot, or whatever it may be, in the market for any purpose before the road is built compared with its worth in the market subsequent to the building of the road. If it is enhanced in the meantime, or if it will sell for as much after the road is constructed as it would have sold for before, then it is not damaged; there is no injury done, either consequential or direct. But if it will not sell for as much then, the damage is just the difference, and it is dangerous to put into the Constitution anything which recognizes consequential damages.

Mr. CORSON. Mr. Chairman: I believe that the gentleman from Chester is so entirely at fault in his law upon this question, that I am willing to trust the statement of the law to a gentleman of whom it has been said, in this Convention, that he is in the interest of railroad companies, and I call upon my friend, the delegate from Philadelphia, (Mr. Cuyler,) to state whether the gentleman from Chester is not at fault in his law upon this question.

Mr. CUYLER. Mr. Chairman: Hereafter I may say something on the general issues that are involved in this article. At present, while thanking my friend from Montgomery (Mr. Corson) for his courtesy, I desire to say that I am not here in the interest of railroad companies. My

professional duty almost as often calls upon me to act upon questions that are adverse as it does upon questions that are in favor of their interests. I am a friend of railroads and may hereafter state why I am a friend of railroads; but on this particular question I differ wholly from the gentleman from Chester, (Mr. Darlington,) and do not think that he states the law correctly. The Constitution of Pennsylvania provides that the Legislature shall not entrust any corporate body or individual with the privilege of taking private property for public use, without making compensation therefor. The Supreme Court of Pennsylvania, in the interpretation of that section, has held that the word "taking" is to be understood in its literal sense, and that, therefore, corporations are not liable for damages except where they actually take the property; and under these words of the Constitution, the case to which the gentleman from Chester alludes never would have been decided as he says it was decided. But the courts have held that as the Legislature may or may not grant the charter, that having the privilege of granting or refusing, they may prescribe the terms upon which it shall be granted; they may require, if they please, the payment of consequential damages; that they are not bound to do it, but that they may lawfully create a corporation and authorize it to take property, and when they do, and say nothing about consequential damages, then, no matter what is the injury done to the individual, they are not bound to pay such damages, but that they have the power, if they think proper to do so, to prescribe that they shall pay consequential damages.

Thus it has come to pass that there are many charters in the State in which consequential damages are required to be paid, and a much larger number in which they are not required to be paid. In those cases in which the Legislature has required consequential damages to be paid, or in which a doubt has arisen on the terms of the charter, just such cases as those that are alluded to by the gentleman from Chester have come to be decided. The case to which he specially alludes is one in which there was a doubt about the interpretation of the charter, and it was interpreted by the courts to mean that consequential damages were to be paid, although the courts have uniformly held that the Legislature, if chose, might not do so.

Thus, precisely in the same way, while the general doctrine of the law is that a railroad corporation takes only the *user* of a particular piece of property, merely the right of way, nevertheless it has been held that the Legislature may authorize the corporation to take in fee. The case of Haldeman *vs.* the Pennsylvania railroad, in regard to the old canal basin at Harrisburg, is an illustration of that principle. There it was held that a fee had been taken and paid for, and thus the Pennsylvania railroad company, as the successor to the Commonwealth, under the main line act of 1857, was held to be entitled to the fee of that property. But if the words used in the original authority to take, had not been such as authorized the taking of a fee, there would have been but a mere *user*, and when the canal basin was abandoned it would have reverted to its original owners.

Therefore, I say the law of Pennsylvania is simply this: Where the Legislature merely authorizes a corporation to take, consequential damages are not to be paid; where it authorizes them simply to take a *user*, the fee of the property does not go to the corporation but simply the *user*, and on the abandonment of that use the property reverts; but the Legislature may and does authorize, in some instances, the payment of consequential damages, and may, and in some instances does, authorize the taking of a fee. It is within its power to do so. Therefore I am, so far as I understand this subject, of opinion that as the law now stands it is purely discretionary in the Legislature.

Now, I will say a word further with regard to the policy of continuing this condition of the law.

Mr. DARLINGTON. Will the gentleman allow me to inquire in what cases have consequential damages been allowed?

Mr. CUYLER. I could refer you, sir, at my office, to numerous cases. I could refer you to twenty decided cases in the reports.

Mr. DARLINGTON. The character of them I mean.

Mr. CUYLER. I could refer you to numerous cases, I think, occurring in my own experience.

Mr. DARLINGTON. I do not not care about the cases. I want to know under what circumstances, what were the facts of the cases in which consequential damages were allowed?

Mr. CUYLER. I will illustrate what I mean:

The first case in which this question of liability to consequential damages was the subject of very thorough discussion, was a case of the kind, which has been alluded to in the inquiry made by the gentleman from Montgomery to the gentleman from Chester, and that was the case of the Philadelphia and Trenton railroad, reported, I think, in 1st Wharton, and argued, I believe, by the learned and distinguished President of the Convention, as one of the counsel. There the Supreme Court held, that as the authority was to take, there was no liability for consequential damages, and that property owners along the line of the street had no claim for damages. That might work in some cases very great hardship. I have in my mind, at this very moment, a case argued by Mr. Meredith and myself within a very few days and yet undecided, where I think very great injury has been done. Here is Market street, a great highway of the city of Philadelphia, characterized by the founder of the city as a street for the great mercantile business of the city, and yet the Legislature loads that street with passenger railways, and does it to such an extent as to abridge the reasonable enjoyment of the property on either side of the street; but under the authority of the Philadelphia and Trenton railroad case, to which I have alluded, and of a multitude of other cases, although those tracks should be so multiplied as to occupy the street from curb to curb and utterly to destroy the commercial uses of the warehouses along that street, there is no remedy, simply because the Legislature, in its discretion, has not seen proper to impose upon the companies that lay tracks there, a liability to pay consequential damages. It might have done it, but it has not done it. Who shall say that there is not a great injury inflicted in that case? Yet it is probably an injury without a remedy. That is a great hardship.

Now, I, for one, am in favor of imposing upon corporations a liability to pay for consequential damages under reasonable circumstances; but I am not in favor of an iron rule written into the Constitution which shall be absolutely inflexible upon that subject. Somewhere there must be lodged a wise discretion as to the exercise of such a power. I am in favor of a provision which shall require the Legislature to make *reasonable* provision on this subject, but I am not in favor of a rule that shall impose it as an obligation in all cases. Therefore do not like the section as written; but I would cheerfully vote for a section which should impose upon the Legislature the duty of making reasonable provision upon that subject.

Mr. DALLAS. Mr. Chairman: The present Constitution provides that no man's property shall be taken or applied for public use without compensation.

Mr. CUYLER. "Taken" is the only word.

Mr. DALLAS. In another portion the word "applied" is used. Under that provision of the present Constitution, only two questions, I believe, have been mooted in the courts, two questions which the gentleman from Chester, I think, in his argument, confused, and which it is well that we, in our consideration of this subject, should keep distinct.

It was claimed, in some of the cases, that a person whose property had been taken should be indemnified against the possibility of future damage to arise in the use of the railroad or other improvement for which his property had been appropriated, as, for instance, in the case of the possibility of fire resulting from the use of locomotives. The courts decided that that was an element which should not be considered by the jury in assessing the damages for the taking of the property. I think that they so decided, very properly, and that this Convention should do nothing which would lead to the necessity of a different decision upon that question in the future, for the ground of the judgment of the courts upon that subject was that when any such injury actually occurred, the party could and would be compensated in damages.

Now if, in the use in this section of the words "consequential damages," (which I cannot but agree with the gentleman from Chester are dangerous words, because of their indefiniteness,) it is the intention of the committee to say that hereafter a man shall be compensated in advance for the risk of such possible damages in the future as I have just referred to, then I think those words should not be adopted; but if the sole intention is (and that sole intention be properly expressed) to declare that hereafter a man shall be compensated for *injury* to his property, whether it be taken or not, then I am of opinion that this section should be placed in the Constitution.

In the case to which the gentleman from Fayette referred, and which is the leading case under the section of the Constitution

of 1838, upon the subject now under consideration, it was held by the court that the provision, "nor shall any man's property be taken or applied to public use without compensation," and the one, "nor can he be deprived of his property, unless by the judgment of his peers or the law of the land," do not apply to a case where a corporation, by damming one stream, consequentially injures a mill on another—the ruling of the court being based upon the necessity of keeping to the precise language of the Constitution, and that an *injury* merely is not within the purview of that language.

Whilst, therefore, it may be true, as has been claimed, that where there is an actual taking of one portion of a man's property, and in consequence of that taking some other portion of the same premises is indirectly injured, that may be considered by the jury in finding the damages to be paid for the taking. I think it is very safe to assert upon this floor, that the case which I have quoted, has never been doubted, and certainly has never been over-ruled by any court, in so far as it decided that a man's property must be taken, or he must be deprived of it before he can be entitled to any damages for anything whatever.

I am in favor of so amending the Constitution as to secure every man compensation for injury as well as for taking, but I think it may be more briefly and better reached than by adopting this section; and that is, by inserting, by way of amendment, in the section now in the Constitution, after the words, that "no man's property shall be taken, nor shall he be deprived of it without compensation," words to the effect that for all *injury* to his property in the construction of any public improvements he shall be compensated. That would cover everything that is properly included in the words, "consequential damages," and would avoid the necessity for adding a separate and additional section to the already long article upon which we are now acting.

Mr. BIDDLE. Mr. Chairman: I am in favor of this section as reported; and at the proper time, when we come to consider the Declaration of Rights, I shall be in favor of incorporating in it, in the tenth section, where it would appropriately come, a similar provision. I am in favor of the section for the reasons I shall state, and in discussing it I propose to call the attention of the Convention to a decided case, in which almost all the arguments that may properly be advanced in favor of this view are tersely stated by the late distinguished Chief Justice Gibson. I am in favor of the section, among other reasons, for the reason that it meets the supposed objection suggested by the gentleman from Chester (Mr. Darlington.) He says, as I understand him, that the true test of damage is the difference between the value of the property before the improvement and the value of it afterward. I accept precisely this definition. I say the standard by which to ascertain the injury to the man who alleges injury, by reason of the improvement going through his property, is just this: The difference between the value of his property the day before the improvement was placed there and the day afterward. It must be very apparent that the mere TAKING of the man's property cannot give the standard by which, exclusively, you are to ascertain this injury.

Take the case that I think was put by my friend from Allegheny, (Mr. J. W. F. White,) or if not put by him in debate, suggested by him to me, where a railroad runs through a man's property, close to his barn or house. In estimating the relative advantages and disadvantages, you take into view the disadvantage caused by the close proximity of the road, the danger of fire, the annoyance from sparks, smoke, &c.

Mr. GUYLER. Will the gentleman allow an interruption at this point?

Mr. BIDDLE. I would rather finish what I have to say, because I am obliged to keep an engagement outside of the Convention, and therefore my time is valuable.

But if the road was not to run *through* the man's property, but run *near* it, no matter what the injury to his property, he would get just nothing.

I have before me the report of a remarkable case, in which the Supreme Court struggled to give the plaintiff relief, but were compelled, by the existence of the constitutional provision, without the clause in it reported by this committee, to deny it to him altogether, saying at the time of the denial that they left him without a remedy for what was practical ruin to his property.

The case was this: The Catholic denomination owned a property called St. Paul's church, in the city of Pittsburg. It was situated on Grant street, built according to the original grade, passed by the councils in 1828, and therefore, conformably to

law. Some time later, in 1847, the grade was changed, the street was cut down, and this church was left perched on a bluff, without, of course, ability to the worshippers to get in or get out, except by going to the expense of a stairway, and even then leaving the property in a very much injured condition. The bishop, on behalf of the congregation, claimed for this injury to the property. The answer was quite as ready as the answer made by the gentleman from Chester, although in the spirit of the constitutional provision the property was injured; yet, because it was not literally *taken*, the church was remediless. The Supreme Court, feeling the gross hardship of the case, commence their opinion, which is to be found in 6 Harris's Reports, 187, in the following language:

"We have had this cause reargued in order to discover, if possible, some way to relieve the plaintiff consistently with law; but I grieve to say we have discovered none."

The court proceed to say that, in many charters, as my friend and colleague (Mr. Cuyler) has stated in his remarks, the Legislature, feeling the injustice of such a state of things, have put in a liability for consequential damages. The court says:

"But to attain complete justice, every damage to private property ought to be compensated by the State or corporation that occasioned it, and a general statutory remedy ought to be provided to assess the value. The constitutional provision for the case of private property taken for public use, extends not to the case of property injured or destroyed; but it follows not that the omission may not be supplied by ordinary legislation."

Now, what this House is asked to do by the report of the Committee on Railroads, is not to leave to the mere accidental insertion by ordinary legislation in the charter of this or that corporation, this necessary language, language necessary to prevent injustice, but to make it compulsory in regard to every charter hereafter granted that such language shall be introduced as a primary and fundamental law of their existence.

What is the objection to this? Does not every gentleman feel that in the case put by me, or rather put in this volume of reports, the injury is quite as great to the individual as if his property had been taken? Does not every gentleman feel that it is a standing disgrace to jurisprudence that, by reason of the narrowness of the provision, a man's property may be practically destroyed, and yet he be left remediless? Does not everybody feel that the true standard is not the injury caused by the mere *taking* of so many yards or so many cubic feet of soil, but the injury caused to the property by the construction of the improvement? Does not everybody feel that you accomplish a great benefit if you adopt language which enables you to lay down the standard just as the gentleman from Chester himself suggests it, just as it was laid down by the Supreme Court, very recently, in the case of Hornstein *vs.* The Atlantic and Great Western railway company, reported in 1 P. F. Smith's Reports. What was the market value of the property the day before the improvement is made, and what is the difference after it is made? Whatever this difference is, is what the party should be compensated for.

Now, by putting in the language, "consequential damages," you put in language which has stood the test of judicial decision. You are not introducing new terms; you are not wandering in the dark. You are using language to which application has already been made by the judge, and it is obvious that you are doing no more than saying, in a comprehensive way, that whatever the damage is, caused by the erection and construction of the improvement, that damage being ascertained by the standard that the law has laid down, to wit, the difference between the value of the property the day before and the day after the structure is erected, *that* the owner of the property affected shall receive.

In regard to the concluding portion of the section, it is said, and perhaps said with force, that you cannot very well ascertain with precision what the damage is before the improvement is actually made; before the road, if it be a road, is actually constructed.

I do not, however, see any objection to the language of the section on this ground. It is quite true that you cannot ascertain before the jury is called to view the property what the damage will actually be by the construction of this contemplated improvement; but you may say that equally with regard to the *taking* of property. You cannot say, with the present language of the Constitution, which applies only to the *taking* of property, what the damage will be in any given instance by such taking; and yet our Constitution

now requires that before property can be taken the damages must be either paid or secured. I have not just before me the very words of that clause; but I speak, I think, accurately from recollection, and I can see no more difficulty in ascertaining in advance the consequential damages (which always must be measured by precisely the same standard as the damages caused by the taking) in the one case than in the other; and therefore I would leave the section, in this respect, as it now is. In ascertaining in advance what the supposed injury is to be, you must always take a certain margin.

You will refer, in the first place, to the existing value of the property. Suppose it is a house worth ten thousand dollars; it is very obvious that the injury cannot be more than the outside value of the house, and therefore a bond about the value of the house will be sufficient. There will be no undue, no onerous burden cast upon these corporations by requiring them to give bond to such an extent. Probably in a vast majority of cases it would suffice to fix the security at less than the full value of the property; it never should be more. Probably in some cases it would be up to the full value. There may be cases—I can see cases, and I understand from my friend who sits to the left, and next to me, (Mr. S. A. Purviance,) that in his own experience he had a case where two-thirds of the actual value of the property was entirely wiped out by the erection of the proposed improvement. I think in just such cases as those, if the damage is not paid in advance, which in the great majority of instances it is impossible to ascertain, the corporation should not complain if it is called upon to give a bond to meet what the damage will presumably be.

For these reasons I shall vote for the section substantially as it is, and also, at the proper time, endeavor to have a similar clause introduced into the Declaration of Rights, as to cover all cases of property injuriously affected by municipal improvements, as well as by the constructions of these railway and canal corporations, so that every case may be covered in which the property of the citizen is injured in the construction of any public improvement.

Mr. HUNSICKER. Mr. Chairman: The gentleman from Philadelphia, (Mr. Biddle,) who has last spoken, has substantially covered the whole ground. I am also in favor of this section, but it does not go far enough; it does not reach the class of consequential damages which it ought to reach. Take the very case of O'Connor *vs.* the city of Pittsburg, which has been cited. In that case the church was built after the grade had been established by the city; and then after the cathedral was built, at a very large expense, the city authorities dug down the street so that the building was in great danger of falling; and it was held by the Supreme Court, in that case, that the party was not entitled to any compensation, because the damages were merely consequential.

And now, for the information of the delegate from Chester, (Mr. Darlington,) let me say to him that consequential damages are defined by judicial decisions in the case of the Black Rock bridge company *vs.* Buckwalter, decided by the Supreme Court.

The case was this: The Black Rock bridge company obtained a charter to build a bridge across the Schuylkill river, a mile beyond Buckwalter's ferry; and it was further provided that if they built their bridge within a mile of his ferry they should pay him consequential damages, if any. The parties arranged the matter by referring it to three men to assess the damages; and they assessed the damages. Joseph J. Lewis was one of the arbitrators; Judge Longaker was another; who the third one was I do not remember. At any rate, they assessed consequential damages.

An application was subsequently made to the court to set aside the report, upon the ground that the arbitrators had included consequential damages; and upon that point the award was set aside in the court below. Then the case was carried to the Supreme Court. Mr. Boyd was of counsel for the plaintiff in error; and the Supreme Court reversed the judgment of the court below, and reinstated the award of the arbitrators. Thus, Mr. Buckwalter recovered consequential damages, because the erection of the bridge had destroyed his ferry; and, as the gentleman from Philadelphia, who first spoke, declared, there are numbers of decisions to the same point. This is a case that must be familiar to the gentleman from Chester, because it arose on the line dividing our counties.

Consequential damages can as easily be ascertained by the verdict of a jury as direct damages.

I take it the rules of law which regulate the payment of damages at present, are

these: First, that there must be an actual *taking* of the land. If there is not an actual taking of the land of the party injured, he is hopelessly without remedy—but if you take his land, then, second, the correct rule is: "The difference betwixt the value of the land before the road was built and its value after it was finished."

But in estimating the disadvantages, consequential or speculative damages are to be rejected, and in estimating the advantages, such only as are special and peculiar to the property in question are to be considered, and not such as are common to the public. This is the precise rule, laid down in a *per curiam* opinion of the Supreme Court in the case of Hornstein *vs.* Atlantic and Great Western railroad company, 1 P. F. Smith, page 90.

It is true that if the railroad company set up advantages in reduction of damages, the party whose land is taken may set off as against those advantages, the liability of his buildings being fired and burned by the fires of locomotives, but that is as far as he can go.

I can conceive of a case, and every other gentleman on this floor can conceive of a case, in which the very worst kind of damages would be the consequential, and yet no actual damage would be done within the meaning of the present Constitution.

The Supreme Court has decided that a railroad corporation may construct its road over and across a street in a public town or city; in other words, that it may swallow up the street; and that process of swallowing is now going on in our town. We have two railroads upon one street eighty feet wide. It is true it is in litigation, but it will eventually be decided that one of the railroad companies or the other shall take the entire street; and here are property owners, owning thousands upon thousands of dollars' worth of property, who cannot get out from their houses except upon the railroad, and yet not a foot of their property has been taken, and they are entirely without redress. Taking this case, and the other cases which will suggest themselves to the minds of members, this section does not go near far enough, because it restricts its operation simply to railroad and canal companies.

I like the amendment of the gentleman from Fayette much better, but it does not go quite far enough. His amendment reads: "That all corporate bodies and individuals shall be liable for any consequential damages resulting from the construction, enlargement, repair or operation of their works." That does not go quite far enough. It should extend to municipal corporations of all kinds, to all public and private corporations, those created for public purposes as well as those created for private purposes.

Mr. KAINE. It does.

Mr. HUNSICKER. I think not. If it does go that length, if it covers all the consequential damages I have spoken of, I shall vote for it; but I do not think it is exactly the right place to put it under the head of railroads. It seems to me, although I am not tenacious on that point, that it more properly belongs in the Declaration of Rights. However, not to lose it, I shall vote for it here, trusting that the Committee on Adjustment and Revision will put it in its proper place.

Mr. DARLINGTON. I wish to ask the gentleman one question before he takes his seat, if he will allow me.

Mr. HUNSICKER. Certainly, sir.

Mr. DARLINGTON. Does the gentleman from Montgomery mean that by using the term "consequential damages," a railroad company who should by their operations destroy the profits of a tavern on a common road by taking the travel from it, would be liable for these consequential damages?

Mr. HUNSICKER. No, sir.

Mr. DARLINGTON. Why not, if these are consequential damages?

Mr. HUNSICKER. That is a business regulated by special law. A man must have a license before he can go into that.

Mr. DARLINGTON. No; not under special law; it is property.

Mr. HUNSICKER. The answer is that that would be too remote. At any rate, if he sustains actual injury, I see no reason why he should not be compensated.

Mr. J. W. F. WHITE. Mr. Chairman: I am in favor of what is designed to be reached by the section reported by the committee and by the amendment of the gentleman from Fayette; but I think we had better postpone this subject for the present, because this is not the right place in the Constitution for putting in such a provision. I am unwilling to adopt the broad language of this report, declaring that railroad and canal companies shall be liable for consequential damages, without some limitation or qualification of the language. What would be the construction of such language by the judiciary I con-

fess I cannot see beforehand, and I doubt whether any human being can divine. An unlimited, unqualified declaration that railroads shall be liable for consequential damages might lead to a length and extent that we have no conception of now. Suppose, for example, a railroad should meet with an accident by which a car should take fire, and that fire should spread and destroy a town or a village on the line of the railroad; would not the destruction of every man's property in that town be a consequence of the accident on the railroad? The gentleman in front of me (Mr. Kaine) says that is too remote. How are you to limit it? There are certain classes or kinds of consequential damages that railroad companies should be liable for. I think that one great defect in our Constitution, heretofore, has been that it simply used the word "taken." I am willing to say that persons and corporations generally shall be liable for *damaging* as well as *taking* property for public purposes.

I shall favor inserting in the Declaration of Rights, or in the article on corporations, a section embracing the whole subject, and providing "that private property shall not, by any corporation, be taken, appropriated or damaged for public purposes without just compensation." I believe that language will properly meet all cases where consequential damages should be allowed.

We may, perhaps, reconcile the difference of opinion between the gentleman from Chester and some others, as to the legal liability of railroad companies, in this way: Where a railroad has been constructed through a man's farm, and is located so near his dwelling house or barn as actually directly to injure them, the injury done to the dwelling house or the barn becomes an element in his damages. It is an injury resulting directly from the taking of a portion of his property, and properly is counted in estimating his damages. It is justified on the rule that if property be damaged in the aggregate more than it is benefited, the owner is entitled to compensation. If, before the location of the road, his property was valued at a certain sum, and immediately after was of less value, the difference is the measure of damages. That is the rule that has been laid down by the Supreme Court. In ascertaining the injury to his property you estimate the injury done to his barn or his dwelling house as well as the ground actually taken. The contingent or doubtful injury that may be apprehended from sparks of the locomotive, by which his property may be ultimately destroyed by fire, is not to be estimated, because it may never occur, and if, by the negligence of the railroad company, his property should afterwards be destroyed by fire, then he has an action of damages for the loss; but the direct injury to his dwelling or barn, resulting from the location of the road, may be counted by the jury in estimating his damages for the land taken. But if the company should take no portion of a man's property, but only locate their road very near it, although it may greatly depreciate the value of his dwelling or his barn, may depreciate it one-half in value, yet under our present law he has no remedy, because none of his property is "taken." If, however, they take a part of his property, and by doing so directly injure his dwelling, then he has a remedy and is entitled to compensation. If the company take nothing whatever from him, although they may greatly damage his property, he has no remedy. That is wrong, and it ought to be corrected.

So with municipal corporations, and so with various other corporations besides railroads and canals. We have in the oil regions of our State pipe companies, and there may be various other public corporations that may be authorized by law to take property, and in doing so may do, directly and indirectly, injury to property. All cases of the kind should be provided for. Therefore, in place of inserting a clause in the section relating to railroads, we ought to have a section applicable to everything of the kind, applicable to municipal corporations and to every other corporation that may exist in the State. The proper place for that section would undoubtedly be in the Bill of Rights, or if not there, it legitimately and properly belongs to the article on corporations generally. The Committee on Private Corporations has not yet reported, but when they do no doubt they will report a section covering all the cases and applicable to all corporations as well as railroads. Such a section is before that committee, and most likely will be reported.

Further than that, I apprehend, we ought to go further than the rule laid down by the gentleman from Chester, (Mr. Darlington,) and referred to by the gentleman from Philadelphia, (Mr. Biddle.) They have indicated what has

been the law and the decisions of our courts upon this subject, namely, that the measure of damages is what the property has been injured, ken s a whole, or, as the gentleman from Philadelphia said, what was the property worth before the improvement was made, and what will it be worth after the improvement is made. I apprehend that that is not a correct rule. I apprehend that whenever private property is taken or damaged for public use it ought to be paid for, although the owner may be incidentally benefited. The rule ought to be that where private property is taken for public purposes, it shall be paid for, no matter whether the owner is benefited by the improvement or not. It is unjust to take one man's property and make him contribute for a great public improvement, when others, as much, and in many cases far more, benefited, contribute nothing at all. Let me illustrate this. You cross a man's lot. The man may have a little improvement, an acre or half an acre of ground, and you take a part of his land. Yet, because the remainder of his lot may be worth as much after taking off a part, as it was before, he is not entitled to any compensation. He loses a part of his property, but gets no pay for it. His neighbor may own a farm over which the road may not be located, bu immediately by the side of it, and he may be benefited thousands of dollars, yet he contributes nothing whatever to the improvement. The man who owns a little lot contributes a portion of that to the public work, while his neighbor, who is benefited a thousand times more, contributes nothing.

This rule is manifestly unequal and unjust. I trust a section will be inserted in the Declaration of Rights providing that private property shall never be taken or injured for public purposes without being paid for, and that the measure of damages shall be the value of the property taken, or the injuries done or likely to be done. In other words, the benefits that may be derived incidentally from the public improvement shall not be deducted from the value of the property taken. That would be a safer and better rule. Either all who are benefited by a public improvement should contribute towards it in proportion to their benefits, or none. Do not compel a few to contribute to a public improvement, and allow others, who are benefited by it to a far greater extent, to reap the benefits without contribution. It is not unjust or unreasonable to require a city, a railroad, or any other corporation which takes a portion of a man's property for public purposes, to pay the value of the property taken. On the other hand, it is unjust to say, "true, we have taken some of your property, but you are benefited like the rest of the public, and therefore you are entitled to no compensation."

I hope, when this subject comes before the Convention properly, a clause of that kind will be inserted in our Constitution. I refer to these features of this question now, to show that we had better postpone this section for the present, and let it come up hereafter, when the whole subject will come up properly on the report from the Committee on Corporations.

Mr. HOWARD. Mr. Chairman: I do not desire to detain the committee, and do not think it necessary after the law in the case has been so fairly and clearly stated by the distinguished delegate from Philadelphia (Mr. Cuyler.) Some gentlemen seem to think that it will be difficult, if this section be finally adopted, to determine where a line of distinction should be drawn upon the subject of these damages. My distinguished friend from Allegheny (Mr. J. W. F. White) seems to think that it might apply to the burning of a town or some remote contingency of that description, and that, perhaps, it was not a proper subject of consideration for the Committee on Railroads and Canals, and some gentlemen seem to think that it should have embraced damages committed by all corporations. If we had made it general and applied it to all corporations, others would have said that we had got out of our bailiwick, that we had no business to be trenching upon the grounds that properly belonged to other committees.

Now, I ask the attention of the Convention to the reading of this section. There are qualifying words in the two concluding lines: "All railroad and canal corporations shall be liable to the payment of consequential damages. Now, if the section stopped there, how would the matter stand? It would just simply mean this and nothing more, and the law is as well settled upon this subject as upon anything else. It would simply mean that railroads and canals should be liable for consequential damages, just as an individual is now liable for them under the well settled law, as understood by every lawyer, that in every case where an individual has committed an act whereby

consequential damage flowed to some other party, or resulted to some other party, you could bring an action upon the case and recover. The question of proximate or remote, and all that, would be applied to this, the same as it would be to an individual, and if the damage was not too remote you could recover against the corporation, just as you could against the individual, and the whole field of that law, that is well understood by every lawyer, would be applicable to this section. Does any man dissent from the principle that these great corporations, if they take private property, should pay for the damages consequent upon the taking as well as the direct damages which may be imposed? That is all that would be meant by this section.

But, then, what is the reading of the concluding lines? The two should be taken together in order to see if the section is open to the objections and the criticisms that have been made upon it, especially by the distinguished delegate from Allegheny (Mr. J. W. F. White.)

"No damages committed or resulting from the construction, repair or enlargement of their works, and the said damages,"—*and the said damages*—"shall be paid or secured to be paid before the injury is done."

Thus no damages can be recovered that are consequential in their nature, except such as will be fully apparent before the injury is done, and it is not at all likely that anyone will consider the burning of a town, or an old shanty, or a haystack in the list of such consequential damages. This section applies to no damages at all, except such as shall be paid or secured to be paid before the injury is done. "The said damages." What damages? Why the consequential damages that are allowed to be recovered by this section. They are only such damages as can be seen; such damages as can be proven; such damages as can be known when the direct taking or the direct act is committed.

Very much may result from consequential injury, and with this qualification, the section is perfectly plain and perfectly safe. The only question, then, is whether it is a proper subject for the Committee on Railroads and Canals, or whether it ought to have been considered by one of the two committees of which the delegate from the county of Allegheny (Mr. J. W. F. White) is a member. He is on the Committee on the Bill of Rights. I have no objection at all, if this section is accepted here, that it may be transferred to the Bill of Rights; or, if it is thought more proper, it may be transferred to the Committee of Private Corporations, and it may be included in their report. I do not care where you take it. I think it is right. I think the principle is a proper one, and I suppose the committee of the whole might safely adopt the principle here, and after it is passed upon the gentlemen who deem it out of place, as it at present appears, can transfer it wherever they choose.

But I say the proper construction of that section is that no consequential damages can be recovered, except such as can be provided for in advance of the injury, such as can be seen, and therefore they will be such reasonable and direct consequential damages that they will be properly recoverable under any circumstances, and an action on the case could be brought to recover against a corporation under this section, that you could not bring an action against an individual if he committed the injury.

Mr. ANDREW REED. Mr. Chairman: I am opposed to the section, and also to the amendment of the gentleman from Fayette (Mr. Kaine.) In opposing them, I am not insensible that there are certain particular cases, which have been referred to by the gentlemen who have preceded me, where injuries are done which ought to be remedied; but it will be impossible for us to put into our Constitution provisions which will remedy every evil that will happen. If we attempt to do this we shall have a Constitution as large as our Debates, and even then we shall find that, in endeavoring to cure the evils and injuries which already exist, we shall have created a great many more than those which the section is designed to cure.

The Committee on Railroads and Canals have reported some nineteen sections, endeavoring to meet evils which exist, or are supposed to exist, in our present railroad system. I venture to assert that that provision in their report which gives the right to every person and every corporation to build a railroad between any two points in this State will cure more evils than all the rest of the report put together. I have little faith in these provisions of brimstone and forfeiture, and everything else, to prevent railroads from doing injustice. If we give the right to build railroads freely, that will be the greatest corrective that we can put in our Constitution against the evils complained

of; but now we desire to place in our Constitution a provision that will prohibit the building of railroads hereafter, or if it will not prohibit them, will at least put such a clog upon them that they cannot be built with the facility with which they should be.

For that reason, and for that chiefly, I am opposed to this section. The gentleman from Fayette has given us an instance of a man that had a mill where a railroad passed near by; although it did not take any of his land, the mill was destroyed because persons would no longer go there on account of the nearness of the railroad, and his mill property was thus destroyed or rendered less valuable. Suppose a new railroad is to be built near a man's mill, if this provision is put into the Constitution how can you assess the damages that the owner of that mill has suffered? Nobody can tell how the railroad will affect the mill. While it may drive away some timid men, and prevent them from bringing their teams to the mill, it may bring fifty others, who will come on the railroad, and make the property more valuable than it was before the road was built. Yet this mill owner may hold his case up to the public and say: "I am damnified," and go to a jury and get large damages, whereas, after the railroad is completed, the result will be that, instead of his being damnified, he will be greatly benefited. It is not possible for the wit of man to devise remedies for all the evils which will arise, for all the injuries which will be inflicted upon private property by the construction of public improvements. Suppose a wagon-maker living in a section of country not developed; the freight which has been hauled in that country has required heavy wagons for its transit, and the wagon maker has built a large manufactory and invested large means for the purpose of building these heavy wagons. If some enterprising people project and build a railroad through that section, hitherto undeveloped, are they to be assessed for the damages that this man may sustain because his wagons may not be necessary after the railroad is built? Does this section contemplate that in such a case as that of the wagon-maker, who built this manufactory for the purpose of making these wagons which would have been used if this railroad had been built, should be paid for his losses?

I say that the railroads of this State have been the chief cause of building it up, and the complaints of the people have been against unjust discriminations under the present railroad system, and not against railroads themselves. Where would our State be to-day if our railroads were wiped out? The wealth of our State, now I believe the greatest and the richest in our Union, would sink into comparative insignificance. It is true we have had abuses in the railroad system of the Commonwealth, but the way to correct these abuses is to give every facility to build other railroads, if those that are built are misused. That is the true preventive, and not the clause which we are now asked to put in our Constitution. To adopt it would, in my opinion, be a step in the wrong direction, and tend to prevent the development of our State.

If we once open the question of consequential damages, we will never reach its end. It is said that the rule of damages is to ascertain the price at what a man's property will sell for before and what it will sell for after an improvement is made. That is not exactly the true rule, because the land owner is entitled to the benefits which arise to all the country, and it is only the specific advantages and disadvantages that are be to be taken into consideration in determining the amount. The owner is entitled to the rise in value of property which affects property generally, and he is entitled to it without diminishing any damage he may or may not have sustained from the construction of any public improvement. It is true that consequential damages, as a general thing, can never be allowed, but they are allowed in a certain way.

The law is, that a railroad corporation must pay for the specific injuries which result to a man's property; but the corporation is entitled to a credit for the amount of specific advantages that result to the same property. In estimating these advantages, the consequential damages that arise may be taken in consideration as an offset; and in that way he gets them allowed, although he cannot put in any substantive claim for them. For the reason that I have stated, that this section will tend to prevent the building of new railroads, and will only foster the evils that now exist, and that, instead of remedying the wrongs that we wish to avoid by this report, it will only increase them, I am opposed to its adoption.

Mr. MEREDITH. Mr. Chairman: I am very reluctant to take part in this debate, but it appears to me that we are about to

act on a section which does not at all express the views or opinions of this body.

By the common law, under the protection of which it is to be wished we had been content to live a little longer, every public improvement was preceded by a writ of *ad quod damnum*, to ascertain the damage that would be done to any of the subjects of the crown, by the construction of it; and that issued before a spade was put in the ground, and as soon as the route of the improvement and the nature and character of it were fully understood.

Our Constitution provides that private corporations authorized to make improvements shall pay damages to the owners of property taken by them; and the Supreme Court have construed that, in the only way they could, to restrict the claim for damage to property, a part of which is actually taken. The Supreme Court have also decided very properly, as I think everybody will agree, that consequential damages in such a case are not to be allowed.

The claim in Thoburn's case, and in some other cases which succeeded it, was founded upon speculative damages. A tavern or some other establishment was hindered in its business. The company were therefore called upon to pay the principal sum which would be yielded by the income calculated as interest on that tavern's present and prospective business. The court refused that and laid down the plain and sensible principle that the rule of damages should be the actual value of the property, what it would sell for immediately before the taking, and what it would sell for immediately afterwards; and the difference they held to be direct damages; and that I think every man of common sense will agree to.

Now, what does this section as it stands do? It does not extend the right to recover damages to owners of property, part of which is not taken by the public work. It says nothing about that; but it simply says that consequential damages shall be recovered. That is to say, it overrules that decision of the Supreme Court. It does not reach at all the mischief that is complained of, but it over-rules that decision and leaves the damages open to those speculations which the court have rejected, and very properly rejected.

We have been here a long time. I was in hopes some other gentleman would present this plain, palpable view; but finding it not to be so, I have ventured to say the few words that I have, in hopes that the body of the Convention will see the propriety of the suggestion I have made. The object here is, I believe, a perfectly good one. It is, that parties who are injured by works made in the vicinity of their property shall be entitled to recover direct damages for that injury.

Now take the case of the Catholic church in Pittsburg, which has been referred to. The damage there was not consequential; it was direct; but nothing could be recovered. Why? Because no property of that church was taken, and the words of our Constitution tied down the granting of compensation to the owners of property part of which was taken; but it was not because those damages were consequential that they could not be recovered; they were as direct as could be. In the case in Reading, where a whole street was occupied by the Reading railroad company, and a deep cut made through a square of the city, the houses on each side being almost entirely cut off from the highway, totally so for most purposes, the property owners could not recover damages. Why? Because none of their property had been taken; not because that damage was consequential.

Now, sir, what I would suggest, is what I am satisfied from the debate the members desire, and I think very properly desire; that is to say, that the companies constructing works, public or private, (I would not make any difference,) shall be liable for damages for injuries done by the construction of their works to property in their vicinity. That is what we want, and that covers the whole thing. Then the damages will be made direct under the decisions of the courts. There is no reason why a man, in the neighborhood of a public work, injured by the construction of it, should not recover damages just as much if his property is not taken as if it is. For instance, the corner of a man's farm is taken, he comes for damages. What is the injury done to him by that, in the taking of the property? It is the value of the part of the farm taken; but the value of the whole has been injured; that is, property of his in the vicinity of the work has been injured. He recovers damages every day for that; and yet, if it so happens that they go just an inch outside of the corner of his farm, and he may be equally injured as the owner of the farm, he cannot, under this blind clause, as I may call it, in our

present Constitution, recover a dollar of damages.

Sir, let us try to regulate that and restore it to the reason and the experience and the protection of the common law, by providing that when these works are made, property injured by them, whether part of that property be taken or not, shall be entitled to recover damages; that is, if the value of the property in the neighborhood is depreciated, its owners shall recover the difference between what the property would be sold for before the work and what it will sell for afterwards.

I hope some gentleman will offer an amendment of this kind, for it meets the case, which the present section does not at all do, and I believe it will be acceptable to members generally.

Mr. GOWEN. Before the gentleman sits down will he let me read this to him, which I was about to offer:

"All railroad and canal corporations shall be liable for the payment of damages to real estate resulting from the construction of their works, as well to owners of land not actually occupied as to those which are actually taken; and such damages shall be paid, or secured to be paid, before the injury is done."

Mr. MEREDITH. That covers it exactly, and I am very glad to be confirmed in my view by so intelligent and judicious a gentleman.

Mr. STRUTHERS. Mr. Chairman: I was very glad to hear the expressions that came from our honorable President in regard to this subject, and they cover precisely the ground which I had intended to cover by an amendment which I had proposed to offer. I believe that the proposition of the other gentleman from Philadelphia, (Mr. Gowen,) who has prepared an amendment, is nearly synonymous with the amendment which I had prepared to offer. I do not know that it is now in order. It is not, perhaps, exactly an amendment to the amendment.

The CHAIRMAN. No amendment to the amendment has yet been offered.

Mr. HARRY WHITE. Send it up and let it be read.

Mr. STRUTHERS. I offer, then, the following amendment, which I send to the desk.

The CHAIRMAN. The Chair is informed by the Clerk that it cannot be an amendment to the amendment.

Mr. STRUTHERS. I would like to have it read as a part of my remarks. I wish to make some further remarks on the subject now.

The CLERK read as follows:

"Railroad and canal companies shall pay, or secure to be paid, to the owners a just compensation for all lands which they appropriate for uses and purposes of their roads and canals, before occupying the same, and all damages which may be occasioned to the lands and property of the same or other owners along and adjacent to the lines of their railroads and canals, by reason of the location, construction and use thereof."

The CHAIRMAN. That not being an amendment to the amendment, is not in order at this time. The question is on the amendment offered by the gentleman from Fayette (Mr. Kaine.)

Mr. HARRY WHITE. I move to strike out of the amendment of the gentleman from Fayette all down to the word "construction," and to insert:

"The Legislature shall provide by law for compensation for consequential damages in all cases in which such compensation should reasonably be made by railroad and canal companies in the construction or enlargement, repair or operation of their works."

Mr. Chairman, I have no disposition to enlarge on the discussion of this question, with which the Convention is by this time so familiar. It occurs to me, however, that it would be exceedingly unwise in this Convention to adopt the clause as it comes to us from the hands of the committee. Let me call the attention of the committee to the section itself:

"All railroad and canal corporations shall be liable for the payment of consequential damages committed in, or resulting from the construction, repair or enlargement of their works, and the said damages shall be paid, or secured to be paid, before the injury is done."

With all deference to the Committee on Railroads, it seems to me the adoption of this section in the Constitution would repress legitimate enterprise. Instead of being a reform, instead of being a step in the right direction, it would be discouragement of legitimate enterprises, and in the interest of those corporations to-day, which have control of the railroad lines of the Commonwealth. It would be a discouragement to capitalists and enterprising energetic men in the Commonwealth, who desire to organize and construct lines of railroad.

Mr. Chairman, what is the rule of Pennsylvania to-day? The statute of 1849, known as the law regulating railroads generally, is exceedingly well defined and perspicuous. I call the attention of the committee to the thirty-fifth section of the act of the 19th of February, 1849, in which it is provided:

"And the viewers, or any five of them, having been first duly sworn or affirmed, faithfully, justly and impartially, a true report to make concerning the matters and things to be submitted to them, and in relation to which they are authorized to inquire, in pursuance of the provisions of this act, and having viewed the premises, shall estimate and determine the quantity, quality and value of said lands so taken or occupied, or to be so taken or occupied, or the materials so used or taken away, as the case may be, having due regard to the advantages to and the disadvantages therefrom.

Now our courts have well defined this provision, and where the road is constructed upon the land of an individual or any materials taken, there is no difficulty whatever in getting your view and assessing your damages; and hitherto, in Pennsylvania, we have experienced no difficulty and no disadvantage under the law as it has been intrepreted. No great complaint has come up in this direction. The only difficulty that is not provided for by law, at present, is the damage likely to result to an individual by reason of the construction of a road close to his property and injuring its value, although none of it may be taken or none of his materials may be consumed. That is a proper case to be provided for. It is perfectly clear, that under the law as it now stands, there can be no remedy except for negligence; but the committee will understand, that if the door is opened as is proposed in the section under consideration, there will be no security, there will be no encouragement whatever to railroad corporations to organize. Any contentious individual in the locality where a railroad is proposed to be constructed may exert his prejudices, and have a view organized, and any imaginary consequential damage, any imaginary injury by reason of the vibration of the soil, or from smoke or dust, brought into consideration, and thus everybody may embarrass a railroad in the construction of its enterprise.

Now, it occurs to me, while we want to give a remedy, while we want to make a change in this respect, we only want to provide for the payment of damages in those cases where they come as near direct as possible. For instance, where the railroad is operated so near to a man's premises, that from sparks there is danger to the property, and therefore his price of insurance is increased, that approaches very near to direct damages, and that should be provided for; and it seems to me that that is the only change which we require in this regard.

In England, in the English statutes, there are two ways of assessing damages. One is for land and materials actually taken; another is for injuries done to or affecting the lands near which the railroad is constructed. Now, I apprehend that is where we need something, and in the amendment which I have suggested as modifying the amendment offered by the delegate from Fayette, there is a discretion allowed to the Legislature to provide for the payment of damages resulting to property from the construction of railroads in all cases where they should reasonably be paid. This, of course, is addressed to the legislative discretion. The Legislature passed the railroad act of 1868; it passed the general railroad law of 1849, and it is fair to trust the Legislature with the discretionary power of passing a supplement to the act of 1849 and modifying the rule there indicated. I trust we shall not insist upon the incorporation in our Constitution, our organic law, of an inexorable rule which will discourage legitimate and honorable enterprises.

Mr. ALRICKS. Mr. Chairman: I think the amendment which has been offered by the gentleman from Indiana is not so acceptable as the amendment which we have had under consideration. It does not reach the question. It does not provide for any speculative damages; it leaves the matter just as we find it now, but increasing the liability on the part of railroads almost indefinitely.

The gentleman from Philadelphia (Mr. Gowen) suggested an amendment which would have met the difficulties so well presented by the distinguished President of the House, and he presented them so well that I feel a delicacy about saying anything on the subject. But at common law all natural persons are responsible for consequential damages. In an action for slander, in a civil action for libel, the defendant is responsible for consequential damages. Where two persons are the owners of adjoining properties and the owner of unoc-

cupied property undertakes to build a house, although he owns from the clouds to the middle of the earth, or, as is said, *Cujus est solum ejus est usque ad cœlum et ad inferos*—(Whose is the soil, his it is, even to heaven and to the middle of the earth;) yet if he builds so near his neighbor's line as to throw down his wall, it is consequential damage, and he is responsible in an action at law.

The question came before the Supreme Court of Pennsylvania how far a corporation was responsible for consequential damages, in the case of Shrunk *vs.* the Schuylkill navigation company, reported in 14 Sergeant and Rawle, 83. It arose in this way: A man owned a valuable fishery. The Legislature incorporated a canal company, and by the construction of their dam in the river they destroyed that fishery. The owner of the fishery, a property that yielded him some eight or ten thousand dollars a year, brought his action to recover damages. The Supreme Court held that they were consequential damages; they were *damnum absque injuria;* and that he could not recover anything. Now, I apprehend that we want to provide for a case of that character.

The next case that came before the Supreme Court that I remember was reported in 9 Watts, the case of Landis *vs.* the Union canal company. In that case Mr. Landis owned a mill on Swatara creek. He had obtained from the Legislature authority to use the waters of the Swatara, which was a public highway. The Union canal company built a dam and destroyed his mill by the back water. The question then was whether Mr. Landis was entitled to recover damages. The Supreme Court held that he could not recover; that it was *damnum absque injuria;* that his mill was built upon a public highway, and before he had a right to use the waters of that highway the Commonwealth had granted to the Union canal company the right to use the waters of that stream, and, therefore, if they backed water on and destroyed his right, he could not recover any damages.

Now, I understand that corporations ought to be made responsible the same as individuals, the same as natural persons; and to do that we must have the provisions stated in the language we have heard from the gentleman from Philadelphia; that is, that the owners of property over which a public improvement does not pass, if they are damnified, shall be entitled to recover their damages; not that they are to recover consequential damages, because we cannot tell, if you undertake to incorporate such a word in the Constitution, what damages may not be sued for and what damages men may not have a right to recover. It is true they will be consequential damages, and the court will grant them as consequential damages; but it will only be on the ground that their property, although it is not touched by a public improvement, is so convenient to that improvement that it has been materially damaged, the present Constitution only providing for the payment of damages where the property itself is taken. Therefore I hope the amendment of the gentleman from Indiana will be voted down.

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Philadelphia (Mr. Gowen) to the amendment of the gentleman from Fayette (Mr. Kaine.)

The amendment to the amendment was read, as follows:

"All municipal or private corporations and individuals shall be held for the payment of damages to property resulting from the construction and enlargement of their works, as well to the owners of property not actually occupied as to those whose property is taken; and said damages shall be paid or secured to be paid before the work is done."

Mr. KAINE. If the gentleman will insert the words, "taken or injured," I will accept it.

Mr. GOWEN. The gentleman from Fayette seems to understand that that only applies to persons and property actually taken. It is just the reverse. The word "taken" there means that they shall be liable for injury done to any property, as well to those whose property is not taken as to those whose property is taken.

Mr. KAINE. If that is it, I will accept it as a modification of my amendment.

The CHAIRMAN. The amendment is accepted by the gentleman from Fayette as a modification of his amendment. The question is on the amendment to the section.

Mr. S. A. PURVIANCE. I move to insert, in addition, after the word "construction," the word "use," so as to read, "the construction, use and enlargement of their works." Perhaps the gentleman who offered the amendment will accept that amendment to it.

Mr. GOWEN. When you pay for constructing a thing, it necessarily implies

that you pay for the maintenance of it. I do not think the word "use" is necessary.

Mr. S. A. PURVIANCE. I think it is necessary. I will state the case to which the gentleman from Philadelphia (Mr. Biddle) referred, which will show the importance and necessity of inserting the word "use." That was an action brought by a man by the name of Spear—it is reported in the books of the Supreme Court—to recover damages for an injury done to his property in the village of Manchester, below Pittsburg. The evidence showed that the railroad was located on the street, and that in the use of the road the locomotives were stopped very frequently, and necessarily, as was proven by the employees of the company, right under the windows of this house, a house which was valued at about $7,000, and that the smoke and soot of the locomotive so completely permeated the house as to destroy its value and to incommode the family in the use of the house by its occupants, so as literally to drive them away, and to deteriorate the value of that property from $7,000 to about $2,500. For that, however, the Supreme Court say there was no remedy whatever; it was *damnum absque injuria.* I therefore want to insert the word "use," which my friend from Indiana (Mr. Clark) has in his amendment, and my friend from Warren (Mr. Struthers) has in his amendment, and if adopted it will make the matter all right.

Mr. GOWEN. The only objection to the word "use" in connection with the word "construction," is this, that when you adjust damages for the taking of a railroad property, the jury assessing those damages has a right to take into consideration every legitimate use to which the company can put their property after they have acquired it, and these very damages which the gentleman from Allegheny speak of could be included in the amount to be recovered at the time the original compensation is paid.

The difficulty in that case was that there was no statute remedy whereby the owner of a house fronting on a street upon which a railroad was located, had any right to apply for damages at all; but now, under this amendment to the Constitution, wherever a railway is located in the street of a city or town, the owner of property abutting upon that street, will have a right to recover damages, and in the recovery of those damages at the outstart, will be enabled to obtain compensation for every injury that can be done by the legitimate use of the property for the purposes of a railway; and it is well that this question of damages should be settled at one time. It is well that the law should be that the man who applies for damages, must get, at that time, all that he is entitled to, and not that by every succeeding use of a railroad in a different manner or by a different kind of fuel, or by different cars, some new liability for damages should be imposed upon the company.

It is well known now that where the property is taken directly, and therefore the man who is injured has a status in court, all these subjects are proper subjects of consideration before the jury. There has never been a case in which there has been any want of legal remedy to a person whose ground was actually taken. All these cases that have been referred to, the case in Pittsburg, the case in Reading, and the case the gentleman from Allegheny refers to, have been cases where the owner of the property had no status in court by reason of the fact that the act of Assembly, which alone could give a remedy, had confined the recovery to the person whose land was actually occupied, and the moment that distinction is abolished, as it will be by this amendment, the man whose land is not actually taken, but who is injured, will have the same right of redress as the one whose property is taken.

The CHAIRMAN. The question is on the amendment to the amendment.

Mr. COCHRAN. Is that the amendment of the gentleman from Allegheny (Mr. S. A. Purviance?)

The CHAIRMAN. That is the amendment pending.

The amendment to the amendment was agreed to: Ayes, sixty-two; noes, not counted.

Mr. COCHRAN. Mr. Chairman: I rise, very reluctantly, to say but a word or two with regard to the question as between the amendment and the original section; but I feel compelled to say something, and, under that feeling, I shall occupy a few minutes of the time of the committee.

The only object which the Committee on Railroads designed to accomplish in this matter was that of providing for cases in which the property of the individual was not actually taken or applied to its uses by any improvement company, and for that reason this section was reported. It seems, however, that the language of the section is not satisfactory to gentlemen who appear to concur in reaching the same

object. Now, with regard to that, I wish simply to say that while I defer with as much respect to the opinion of the President of this Convention as any other man in it, I cannot concede that the words, "consequential damages," are not the proper words to meet this case. I know it is almost folly for me to say this in the face of a body of this kind, and in the comparative position of that gentleman and myself, but still, I should be unjust to myself and the committee if I did not say that I believe we met the case.

Mr. Chairman, the term "consequential damages" has been recognized in the decisions of the Supreme Court to meet the very case where a man's property is not infringed upon at all by a railroad or any other improvement company, but has been injured by its construction, and the committee based their language upon the decision of the Supreme Court, and particularly upon the distinction drawn by that court, in the very case which was referred to by the gentleman from Philadelphia (Mr. Biddle)—the Pittsburg church case. The reason why damages were not conceded in that case was because the property of the church was not infringed upon by the improvement. It is a matter of indifference to me which form of expression is adopted. I am satisfied to take the amendment of the gentleman from Philadelphia (Mr. Gowen) as now presented, if it is preferred to the language of the committee; but I cannot consent to admit that that expression, included in the amendment of the gentleman from Philadelphia, is one bit more clear, more distinct, or more in accordance with the decisions of the courts on the question than the phrase "consequential damages," which has a distinct legal significance. That is all I have to say on the subject.

Mr. MINOR. A single word, sir. I supposed that the amendment last offered to the amendment would not be adopted, or I should have said something at that time. It seems to me that in the way we have now left the amendment, if we adopt it, we shall fall into a very great error. The word "use" is now in the amendment; and yet the railroad companies are required to either pay, or give security for the payment, before they commit the injury. The injuries now referred to embrace the use of the road and embrace the use whether rightfully or wrongfully conducted; so that as it now stands the railroad companies must be under constant bonds to every owner of property along the entire length of their road for injuries resulting from either a proper or improper use of the roads in all time to come. That would seem to be unjust both to the companies and to the individuals. The railroad company may pay what a jury adjudge for the use; and yet after that they may improperly use their road, giving rise to much greater injury. This proposition contains no limitation. Are we not getting into a difficulty there? You see the point, sir.

In some States, like the State of New York, railroad companies have been held liable, not for the ordinary use, but for the careless use of their franchise, in burning property, and in other instances.

Now, sir, are we not endangering the rights of individuals? Take a single illustration: A man has a vacant lot which is of little value when the road is built. They pay him for the damages resulting from the use of the road in advance. The damages to the use of that lot, so far as can be determined, may be ten dollars. But suppose the man goes on subsequently and erects works upon that lot, that become a part of it, worth millions of dollars, and the railroad company, by proper or improper use, destroy that property; the man is without remedy under this provision, because it has been all settled, or because the bond which is given against the use is so small that it does not cover the loss. There is the difficulty. On the other hand, it may be wrong to the railroad company, because they can never know when they will be at peace. It seems to me we have made a serious mistake in our action.

A single word further, while I am up, to save repetition. I think we ought to do something that will cover more than the actual taking of property; and as facts help us in determining principles, I will state one fact. In the city of my residence a railroad company applied for leave to lay its track along a street. The council granted the privilege. It largely injured the property, buildings and factories along the line of the street, extending several blocks, but there was supposed to be no remedy. A little while after, another railroad company came and made application to lay their track on the same street, and that was granted, so that, from curb to curb, there is given a space of about forty feet to the roads, one now there and another being constructed. A third railroad company is interested in

obtaining the same privilege on the same street, and the street will be filled with tracks, so that no man scarcely can pass on foot, much less with a team; ordinary business cannot be transacted anywhere along that part of the street. If they had taken the rear end or the front end of the lots located there, the owners would have been able to obtain damages; but now the lots for long distances are in danger of being absolutely ruined, and the owners are not able to obtain one cent of compensation; they are being driven away almost as effectually as if an earthquake had torn the place to pieces, or a volcano had burned it up.

It seems to me, therefore, that some provision on this subject is necessary; but let us be careful that we do not make any mistake in advocating and adopting these new remedies.

Mr. MACVEAGH. Mr. Chairman: I entertain no doubt that this section, as now amended, will receive the sanction of the committee; but as I am unable to vote for it, I trust I shall have permission simply to state, very briefly, the reasons.

I do not understand that the amendment changes, in the slightest particular, the effect of the section as reported from the committee. If any one matter has been clearly distinguished by the Supreme Court of this State, so that it has become a part of our settled law, it is that as contradistinguished from speculative damages, direct damages are used in one sense; as contradistinguished from consequential damages, direct damages are used in another sense; and the language of the amendment now pending is precisely the sense in which the Supreme Court has been accustomed to speak of consequential damages done by direct taking of land.

We are, therefore, upon the section to all intents and purposes; and to the section I am opposed because, while there are many individual cases of hardship under the rule of the present Constitution, I am satisfied that to allow every person who believes that his property is injured by the creation or use of a railway company, or by the creation or use of any other public corporation, to have redress, would be a very dangerous doctrine indeed. There are many people who believe that the noise of passing locomotives is a very great damage to property. Certainly it impairs its saleableness and its value in the market. There are others who believe that the danger from sparks, even to a very considerable extent, impairs it. Through the towns and villages that are already grown up and are daily growing up in Pennsylvania, why should not the owner of every tenement have an action for the use of a railway company along the line? Certainly it injures property along farm lands and along timber lands. Why, sir, whoever traveled on one of the great highways last fall remembers that he traveled, as it were, through the flame and the smoke of burning forests for miles. Pasture was burning; all the land was smoking with fires communicated from engines, because of the peculiar state of the atmosphere and the peculiar state of the combustible materials along the line of the highways.

If damages are to be assessed for lands not taken, and not only for the negligent use, but also for the lawful use of franchises, as it is admitted by everybody this section will allow, then I think we are taking a very dangerous leap in the dark. It may be that I have misunderstood the full purport of it; but remember, it is a constitutional provision. It is not allowing the Legislature to throw, in the form of a general law, sufficient guards around the matter and allow actions where actions are necessary; but it is in the hard and fast lines of a constitution declaring that whoever is injured by the use of a railway company or by its construction, no matter where his land may be situated, or how its franchises may be used, so that the property is in the vicinity of the railroad, shall have an action against it.

Mr. CORSON. Do I understand the gentleman to say that a railroad company ought not to pay for a field of grain on the line of that railroad set fire to by a locomotive?

Mr. MACVEAGH. If negligently managed, they ought to pay for it. If, on the other hand, they are in the discharge of a lawful duty, and use every safeguard known to science, and give the fullest protection they are capable of giving, then they ought not to be insurers of property along the line of the road. Insurance is a totally different business from that of a common carrier.

Mr. TURRELL. If I understand the objection of the gentleman from Dauphin (Mr. MacVeagh) to this amendment, it is that by it if a man believes himself to be injured by any of these companies he has the right to bring his action. That is the gist of his objection. Why should he not

have that right? Is not that the rule in every case? If the gentleman believes that his neighbor has injured him he has a right to bring his action. If he fails to establish the fact that he has been injured, he pays the penalty for it by going out of court and paying the costs of the action, and so it would be in this case. It seems to me that you ought not to deprive of a right of action men who believe they are injured, and claim the right to vindicate that or prove it in a court of justice. The drift of the gentleman's argument would be simply to prohibit a man from bringing an action because he believed himself to be injured. If he chooses to take the risk, we ought to let him do it. Why say that he shall not?

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

Mr. JOHN R. READ. I move a reconsideration of the vote by which the word "use" was inserted in that section. I voted in the affirmative, and I desire to state my reason for so doing. I voted for it rather hastily. After the explanation made by the gentleman from Dauphin, (Mr. MacVeagh,) I believe that the same purpose, at least the beneficial part of it, would be better preserved by leaving out the word "use," because if a railroad is used negligently, or there is gross carelessness exercised in its use, and a field alongside of the railroad is injured by fire, I apprehend the owner of that field could bring an action against the railroad company for such negligent use of their works, and that he could recover damages. For that reason, principally, I move a reconsideration.

The CHAIRMAN. Is the motion seconded?

Mr. CORSON. I second the motion, for the purpose of allowing the gentleman to ventilate that idea, although I do not say that I will change my vote.

The CHAIRMAN. It is moved and seconded that the vote by which the amendment of the gentleman from Allegheny (Mr. S. A. Purviance) was agreed to, be reconsidered.

The motion was agreed to, there being, on a division, ayes, forty-five; noes, thirty-five.

The CHAIRMAN. The amendment to the amendment is before the committee, offered by the gentleman from Allegheny, (Mr. S. A. Purviance,) inserting the word "use."

Mr. MEREDITH. Mr. Chairman: I merely wish to say that I think a great number of the committee are voting under a total misapprehension. At present the jury to assess damages do assess damages, not only for the value of the property actually taken, but for all the injury which will probably be incurred to the remainder of the property by the use of the railroad. If they do not do that, what would be the damage to a farmer of laying a couple of iron tracks across a quarter of an acre of his ground? It would be simply the value of a quarter of an acre of his farm. They do daily and constantly, and must always assess as damages all the injury which will probably be sustained by the use of that road in a proper manner. This, therefore, is covered without inserting the word "use." If, on the contrary, you want to cover by this section damages done by the railroad through the negligence of the company in the course of its use, you want nothing of that kind in the Constitution; the law provides a sufficient remedy, and it is enforced every day; and you cannot put that into the original assessment of damages; you cannot get it there; you cannot assess it before the road is made, nor until the negligence occurs.

Another case I have heard of is a complaint that where a railroad was laid through a street of a city, the company stopped their locomotive in such a manner as to incommode, very greatly, an inhabitant who owned the house he lived in. Well, that was an abuse. The Supreme Court said the company were not liable for damgages because that was a legal use of their privilege. Very well then where they run through a street, or run through any property that will expose houses to an inconvenience of that kind, it is a common, ordinary, regular precaution of the party, either to make them pay the damages that a jury would assess for such a use, or to make them stipulate that they will not let their locomotives stand before that edifice. It is very easily and simply provided for in that way, whereas, I must confess, if you insert "use" here, which has never been done before, you will make the thing extremely difficult to understand, and still more difficult to execute, and you will find also, that in the old Constitution this word was never thought of, for the reason that I have given. The damages occasioned by all probabilities of the use are assessed in the first instance. If any occur afterwards by negligence, the com-

pany are liable for them in an action at law.

I beg pardon, sir, for I do not wish to intrude on the committee.

The CHAIRMAN. The question is on the amendment to the amendment, to insert the word "use."

Mr. MACVEAGH. The gentleman from Philadelphia includes municipal corporations in the construction of their works. Does that mean to cover the construction of a street?

Mr. GOWEN. Yes; I see no reason why not.

Mr. MACVEAGH. Then say, "in the construction of highways or other works."

Mr. GOWEN. "Any works."

Mr. MACVEAGH. Say "of highways or other works," if that is to go in.

Mr. HOWARD. I do not know why, in considering the report of the Railroad committee, as the committee have been requested on various occasions to confine their work to the subject matter referred to them, this amendment should be permitted to embrace other than railroad, canal and transportation companies. Why should it embrace municipal and other corporations and individuals? I think all that matter is out of place here. I think it is not in order. I think it is not a proper amendment. It does not relate to the subject matter. We were treating of railroads and canals; that was our report; and we had nothing to do with municipal corporations.

The CHAIRMAN. It is too late to raise such a question of order at this late time.

Mr. HOWARD. I hope it will be voted down.

Mr. S. A. PURVIANCE. I regret, Mr. Chairman, that I have to differ from our worthy President in reference to this matter. In answer, however, to one of the difficulties suggested by him, I have to say that I can see no greater trouble in taking security for the injury done in the use of the works of a corporation than there is in taking security for the construction of these works.

Now, sir, if you strike out the word "use" you leave a class of people unprotected in any way whatever from a serious wrong, for if in the case referred to by the President the damages are recoverable, certainly it is not so in regard to damages inflicted by the construction and repair. The recovery of damages, such as the President refers to, from the careless use of property, we all own is a common law right; but I want to cover a class of cases where the injury is not the result of carelessness or improper use. I have a case in my eye where an injury occurs to a man and his property through the legitimate exercise of the rights and powers of a corporation, and in that case they ought to pay for it. If it is of advantage for them to lay their road upon a public street, and in fact an injury such as I have already referred to in the case I have mentioned is done, they ought to be held responsible for that injury, and without this word "use" the injury for which a railroad is liable would simply be such as results from the construction and repair of the road, and that certainly would do wrong, and great wrong, to many of our citizens.

The CHAIRMAN. The question is on the amendment to the amendment.

The amendment to the amendment was rejected, there being on a division, ayes, 35; noes, 40.

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

Mr. DARLINGTON. I move to amend the section by striking out the words "municipal or." I have only to say with regard to this amendment, that I fear every city and town in the Commonwealth would find themselves very much embarrassed by a provision of this kind. In not a single city can they grade a street, either to reduce or raise it, and the improvement of any town would be most effectually under the control of persons who might be denominated "old fogies," of whom I am not one.

Mr. GOWEN. I will accept that amendment if I can.

The CHAIRMAN. It is too late to accept an amendment.

Mr. GOWEN. My amendment is now just in the shape in which I presented it.

The CHAIRMAN. One amendment to it was adopted, reconsidered and rejected.

Mr. DARLINGTON. But the original amendment has not been voted on.

The CHAIRMAN. The Chair, on reconsideration, will rule it to be in order. The amendment of the gentleman from Chester may be accepted by the mover of the original amendment. The gentleman from Philadelphia, however, is not the mover of the amendment; but the gentleman from Fayette. The gentleman from Fayette accepted the amendment of the gentleman from Philadelphia as a modification of his own.

Mr. DARLINGTON. No; the gentleman from Fayette withdrew his.

The CHAIRMAN. That is not the recollection of the Chair. The gentleman from Fayette accepted the amendment of the gentleman from Philadelphia. It is, therefore, for the gentleman from Fayette to say whether he will accept the modification suggested by the gentleman from Chester. If he does not accept it, the question is on the amendment of the gentleman from Chester to the amendment.

Mr. MACVEAGH. I trust that will not be adopted. That, I think, is intended to cover one of the most serious classes of injuries, that of a street suddenly, just as described by the President of the Convention, cut through property, leaving houses unapproachable and without a remedy. That was just the Bishop's case, the O'Connor case in Pittsburg, if I remember, which is one of the hardest cases mentioned here. I, of course, am opposed to the provision, because I think some evils must be borne in every organized society, and I think it very much safer to undergo individual cases of hardship than to import into the Constitution. If any such thing is to be provided for at all, do not allow people who live away from a railroad, and who have imaginary damages, to get a jury to assess damages as they always do, and we always succeed in persuading them to do, against railway corporations, and allow a municipal corporation to go through property at their will, and absolutely destroy it, without a remedy to the owner.

Mr. DARLINGTON. Mr. Chairman: If there were any place for it, it would be in the article on cities and city charters, if any such provision is needed in cities.

Mr. MACVEAGH. Put it in here.

Mr. HOWARD. Mr. Chairman: Before the vote is taken I wish to say that I hope this word "municipal" will be stricken out. The delegate from Dauphin has reminded the Convention that damages frequently arise in cities in regard to the opening of streets, and that compensation is not provided. I desire to say to the delegate that that is not now the law. The law has been changed since that cathedral case, and now those damages are assessed, and the property holders of cities have enough to bear without having this provision put into the Constitution. There is no necessity for it so far as compensating the owners of property for damages that arise in consequence of the grading and opening of streets. That is amply provided for now by law. I understand this business of overloading an honest and fair proposition for the purpose of murdering it. I presume that the delegate from Fayette is in favor of some section whereby, under certain limitations, consequential damages may be recovered.

Mr. KAINE. Undoubtedly I am.

Mr. HOWARD. Then why include in it municipal corporations?

Mr. H. W. PALMER. I desire to ask whether, in the opinion of the gentleman from Allegheny, a citizen whose property is damaged by the change of the grade of a street by a town council or city council can recover any damages now?

Mr. HOWARD. I say the law has been changed on that subject since the decision in the Cathedral case, and I know perfectly well that I have paid those damages myself within the last two years in at least six or seven cases.

Mr. H. W. PALMER. Is not that under a special act of Assembly?

Mr. HOWARD. I think not. I think the general law has been changed.

Mr. H. W. PALMER. It is perfectly well known, I believe, to every lawyer in this body that the damage which occurs to citizens by reason of the change of grade of a street cannot be compensated for in damages. There may be a special act applying to the gentleman's city. I understand from Pittsburg gentlemen that it is the case there; but in this Commonwealth, generally, it is not only possible, but probably the everyday practice, for city councils and town councils to change the grade of streets, thereby damaging in a larger degree the property of citizens, by cutting down a street in front of a building, so that the owner cannot make use of the highway, or by raising the grade of the street to make the lot of the citizen a water lot. I say that is the common practice, and for that damage which thus occurs nothing can be recovered at law. The cases are frequent; there are many of them in our courts, and I pretend to speak by the book on this subject.

Why this great wrong should not be remedied, as well as the wrong that citizens suffer by reason of the encroachments of the railroad companies, I am unable to discover. It is simply a defect in jurisprudence, just as there is a defect existing on the subject of taking land; and while we are in the way of righting wrongs, let us right this wrong, and not go half way at it.

Mr. MINOR. Just one word. I have had occasion to see both sides on this question

practically, in my own place, by way of both benefits and injuries to property. The point with me is this: There are evils in these municipal affairs in regard to streets in various particulars, but this amendment covers only two, namely, construction and enlargement. The cases the gentleman refers to are cases of repairs of streets, and are not, of course, embraced. That is one objection. I say, further, that while there are evils in the construction and enlargement, and also in repair of streets, this is not the place to provide for them. Vote the subject out here and vote it in when we come to the article on cities, when we can cover the whole subject and embrace all the evils, and not attempt it here, where we can at best cover only a part.

The CHAIRMAN. The question is on the amendment to the amendment.

Mr. COCHRAN. Mr. Chairman: I hope that if this committee of the whole has determined to depart from the sphere of the report of the Committee on Railroads and Canals, and to enlarge the scope of the provision, and make it generally applicable to all corporations, it will not strike out the word "municipal." The truth of it is that I felt slightly apprehensive just now, that in this departure the railroad and canal corporations may escape altogether. The proposition here is in this amendment of the gentleman from the city—I know he did not mean it—to include only "municipal and other private corporations." Now, are we sure that railroads and canals come under that designation? Railroads and canals are, and have been decided by the Supreme Court of this State to be, in at least one aspect, more than private corporations. They have been decided to be public corporations; and the difficulty here is that, adopting the stringent language of this provision, we may omit them entirely. Now I suggest to the gentleman from Philadelphia, who may not concur with me in this view, but as a compromise of views, that he allow the section to read "all municipal, railroad, canal," and if he chooses, put in the word "other," so as to go on, "and other private corporations," and that will avoid all difficulty on our part. If that be done, I have no objection.

Mr. GOWEN. I have no objection whatever that it shall be so modified; and now I want the time of this committee for five minutes, if they will give it to me, and I hope I shall be listened to. I want to say, Mr. Chairman, that the time is rapidly coming when I intend to call every gentleman to order that insults me on the floor of this House. Mr. Howard says he understands ——

The CHAIRMAN. It is not in order to refer to a gentleman by name.

Mr. GOWEN. The gentleman from Allegheny says he understands this thing of loading an amendment to defeat it. I want to tell the gentleman that I believe he does understand it, but that I do not. He has had some experience in the Legislature; he may have learned it there. I do not understand it. I did not put this word "municipal" in for the purpose of defeating this section, and no gentleman upon the floor of this Convention has the right to suggest such an idea. The gentleman from Allegheny, at my right, yesterday said that no honest man upon the floor of this House believed that the courts would apply a remedy, and I had just sat down from saying that the courts would apply a remedy. The inference was that I was not an honest man. The gentleman from Lancaster, the day before yesterday, said that he had seen the representatives of corporations flitting about the floor of this House talking to members upon this subject. I do not think he believed what he said.

Mr. D. W. PATTERSON. Will the gentleman allow me?

The CHAIRMAN. Does the gentleman yield to the gentleman from Lancaster?

Mr. GOWEN. No, sir; I will not yield to the gentleman.

The CHAIRMAN. The gentleman declines to yield, and he is entitled to the floor without interruption.

Mr. GOWEN. The gentleman said that he had seen notorious agents of corporations flitting about among the members of the Convention to amend the Constitution of the State of Pennsylvania.

Mr. D. W. PATTERSON. I must correct the gentleman.

The CHAIRMAN. The gentleman from Philadelphia declines to yield, and he is entitled to the floor. The gentleman can reply when the gentleman from Philadelphia yields the floor.

Mr. D. W. PATTERSON. I made no such statement.

Mr. GOWEN. The fact that the gentleman did say it can be attested by twenty members upon the floor of this Convention, whose attention was called to it at the moment that it was said.

Mr. AINEY. Mr. Chairman: I rise to a point of order, and it is with great reluctance. The question before the House at the present time, as I understand it, is in no sense the question the gentleman from Philadelphia is now discussing, and I object and raise the point of order because of his opening up two hours or three hours of debate which must follow.

The CHAIRMAN. The point of order is sustained. The gentleman from Philadelphia will continue his remarks in order if he desires.

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

The CHAIRMAN. Does the gentleman from Philadelphia yield the floor?

Mr. GOWEN. Yes, sir.

The CHAIRMAN. The question is on the motion of the gentleman from Indiana.

The motion was not agreed to, there being on a division, ayes, twenty-eight, less than a majority of a quorum.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Chester to the amendment of the gentleman from Fayette to strike out the words "municipal or."

The amendment to the amendment was rejected, a majority of a quorum not voting for it.

The CHAIRMAN. The question is on the amendment.

Mr. COCHRAN. I ask the gentleman from Fayette if he will modify the amendment to make it read: "All municipal, railroad, canal and other corporations."

Mr. GOWEN. "Municipal and other corporations and individuals" will cover everything, leaving out the word "private."

Mr. COCHRAN. Is there any objection to putting the words in?

The CHAIRMAN. Does the gentleman from Fayette modify his amendment?

Mr. KAINE. In that way.

Mr. COCHRAN. I move to amend the amendment by inserting after the word "municipal" the words "railroad, canal."

The CHAIRMAN. The question is on the amendment of the gentleman from York to the amendment of the gentleman from Fayette.

The amendment to the amendment was agreed to.

The CHAIRMAN. The question recurs on the amendment as amended.

The amendment as amended was agreed to.

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

Mr. BOYD. I offer the following amendment, to come in at the end of the section: "And in the decision of such damages the advantages of said railroad or canal, if any, shall be taken into consideration."

The amendment was rejected.

Mr. HOWARD. I had the floor before that vote was taken. Instead of "railroad, canal," it ought to be "the advantages of the improvements," because I understand ——

The CHAIRMAN. The question has been decided. The question is on the section as amended.

Mr. MACVEAGH. Let it be read.

The CHAIRMAN. It will be read as amended.

The CLERK read as follows:

"All municipal, railroad, canal and other corporations and individuals shall be liable for the payment of damages to property resulting from the construction and enlargement of their works, as well to owners of property not actually occupied as to those whose property is taken; and said damages shall be paid or secured to be paid before the injury is done."

The section as amended was agreed to.

Mr. HAY. Mr. Chairman: I move that the committee of the whole now rise, report progress and ask leave to sit again.

The motion was agreed to. The committee rose.

The President having resumed the chair, the Chairman (Mr. Broomall) reported that the commitee of the whole had had under consideration the article reported by the Committee on Railroads and Canals, and had instructed him to report progress and ask leave to sit again.

Leave was granted the committee of the whole to sit again this afternoon.

REPORT OF THE COMMITTEE ON ACCOUNTS.

Mr. HAY. I desire to ask leave to offer a report at this time from the Committee on Accounts.

HALL EXPENSES.

Mr. HAY, from the Committee on Accounts and Expenditures, submitted a report, which was read, as follows:

The Committee on Accounts and Expenditures of the Convention respectfully report:

That under the direction of a resolution adopted by Convention on the twenty-

second day of March last, which referred certain accounts which had been presented to the Committee on House to this committee "for examination and payment," the accounts so referred were examined, and on the twenty-seventh day of March a report was made, recommending the payment of a portion thereof, which were readily ascertained to be correct and proper. In addition to these accounts, the following have also been submitted, viz:

1. William M'Carter, for glazing, &c.	$17 90
2. E. C. Markley & Sons, for printing and stationery furnished to and by order of the Committee on House	84 47
3. William F. Murphy's Sons, for inkstands for desks of members, gavel and stationery	232 05
4. John A. Voorhees, for repairs to water closets, &c.	40 60
5. Griffith & Page, ice chest, water filter, cooler, &c.	77 10
6. William R. Elliott, for hardware furnished for repairs, additions and alterations made in the building used by the Convention	118 80
7. Hall, Garrison & M'Clees, for porterage and hanging portrait of William Penn in Hall,	10 00
8. E. D. Trymley, desks and chairs for Sergeant-at-arms and postmasters, purchased by order of the Committee on House	115 00
9. Howell, Flinn & Co., for papering document rooms	32 79
10. Cornelius & Sons, for gas fixtures for document room	29 85
11. J. B. Lippincott & Co., for furnishing five hundred copies of Memorial volumes of Hon. William Hopkins, deceased, ordered to be printed by the Convention	294 00
12. John Sartain, for engraving portrait and autograph signature of Hon. William Hopkins, deceased	85 00
13. Philadelphia gas works, for gas used from March 22 to April 19	40 94
14. J. P. Lanning, for towels furnished for use of Convention,	13 63
15. J. Addison Buch, three dozen black ink	12 00
Total	$1,204 13

These accounts have been carefully examined by the committee, and all of them are believed to be correct in their charges. The payment of several of them, in the opinion of the committee, should properly have been provided for by the city of Philadelphia, under the terms of its invitation to the Convention to hold its sessions in that city, accepted by the Convention on the first day of its session in Harrisburg, by which it was agreed that "a suitable hall, *properly furnished and arranged*, would be provided for the use of the Convention, *at the expense of the city.*" Amongst these accounts are those for furniture for the post office and for the sergeants-at-arms, and for the arrangement and fitting up of the document room and other rooms necessary for the use of the Convention and its officers, and for various additions and improvements necessary to be made soon after the Convention resumed its sessions in Philadelphia. The work, supplies and furniture, however, for which these bills were rendered, having been done and furnished under the direction of the Committee on House of this Convention, and the indebtedness covered by the accounts having been mainly incurred after the commencement of the session in this city, and it being understood that the city authorities supposed that all had been done which it was necessary to do for the convenience of the Convention under the terms of their invitation, the committee respectfully report that these bills, as well as all of those above mentioned, should be paid.

The committee further report that it is necessary that further provision should be made for the payment of the incidental expenses of the Convention, including the wages of its employees, by placing additional funds in the hands of the Chief Clerk for that purpose.

The following resolutions are accordingly reported:

Resolved, That the accounts mentioned in the foregoing report, together amounting to the sum of $1,204 13, be and the same are hereby approved; and that for their payment and for the payment of the wages of the employees of the Convention, a warrant be drawn in favor of D. L. Imbrie, Chief Clerk, for the sum of three thousand dollars."

The resolution reported by the committee was read twice, and agreed to.

On motion of Mr. Darlington, at one o'clock and six minutes P. M., the Con-

vention took a recess until three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at three P. M.

RAILROADS AND CANALS.

Mr. LILLY. I move that the Convention resolve itself into committee of the whole, to further consider the article on railroads and canals.

The motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Broomall in the chair.

The CHAIRMAN. The article reported by the Committee on Railroads and Canals is before the committee of the whole, and the question is on the fifteenth section, which will be read.

The CLERK read as follows:

SECTION 15. All railroads shall be substantially fenced by the owners or controllers thereof, wherever such roads shall pass through improved lands; and any railroad company, which shall neglect to erect and maintain such fences, shall be liable for all damages sustained in consequence of such neglect, and the Legislature shall, by a general law, provide for carrying this provision into effect.

Mr. DARLINGTON. If the design of the committee, in this section, be to apply this provision to railroads already in existence, then it would be extremely unjust, because all roads now in existence in Pennsylvania have been fenced by the owners, and the damages paid for by the companies.

Mr. LILLY. I should like to ask the gentleman a question. I ask if this constitutional provision would go beyond a settled contract with a road?

Mr. DARLINGTON. I am just about to speak of that. I say, if it was designed to apply to the roads already in existence, there are two objections to it; one of which is that you cannot affect it, and the next that it would be extremely unjust if you could, for in the settlement of railroad damages by means of legal process, it is an invariable rule, so far as my practice has extended, to take into consideration the cost of building the fence on either side of the road and the cost also of maintaining it forever, and such a sum of money is usually awarded to the landholder as will enable him not only to fence, but to forever maintain the fence. It would, therefore, be extremely unjust to attempt to interfere with it, even if we could.

Now, if it is intended to apply only to the roads hereafter to be made, I have an objection to it also, that it is unwise to cast this burden upon the railroads. It is unwise because it is much better for the public interest, for the railroads themselves, and for the community, that the landholders should make and maintain the fences, and it is much better that the railroad companies should, in the first instance, in settling the damages, pay for this as an element in the damages. I say, I think it is better for the landholders to do it, because they can do it cheaper; they are on hand. If a rail gets out of place, or a panel of the fence is knocked down, they can more cheaply and more readily, and with less liability to damage to the traveling public, put it up and maintain it; and full and entire justice is done to them, by giving them such a sum of money in addition to the cost of the fencing as, if put to interest, will enable them to maintain it forever. Therefore, in my judgment, it is the best policy. It is the policy that has been pursued, I believe, throughout the State everywhere, and, in my judgment, it is the best policy. Instead of the railroads being compelled to fence and maintain fences, let them pay the damages which the erection and maintenance of fences will cause.

Mr. COCHRAN. Mr. Chairman: The question of fencing railroads is one which has attracted considerable public attention, and which has also passed under judicial decision. Now, with regard to this subject, we shall mistake greatly if we do not consider this point—whether the railroad company or the landholder should be the party who should suffer by reason of injuries sustained in consequence of railroads not being fenced. It is not worth while to attempt to laugh this thing down, because it involves a question of public police, a question of public safety of the lives of individuals, and even of the lives of large numbers of individuals; and let us consider it gravely, and see how the matter should be disposed of.

We know, sir, that this is a Convention containing about one hundred lawyers, I believe, of the large and the smaller kind mixed together, and especially the smaller kind, including the speaker. [Laughter.] Now, we know that under the ruling that now exists the responsibility is thrown upon the private landholder. Should it rest there entirely? It is a question of public police, a question of the safety of the conveyance of passengers upon railroads; and

these questions, as we know, spring up from time to time, and they involve considerations which affect large communities very seriously, and bring distress into families.

Mr. Chairman, this matter is not without legislation. We have examples on the subject. The Legislature of Pennsylvania has passed laws requiring railroad companies, in certain localities, to fence their roads. Those laws have been before the Supreme Court of the State, and they have been decided to be constitutional, and on the ground that they were matters coming under the general power of police regulations necessary for the safety and security of the public. The Supreme Court has decided such laws to be constitutional and within the scope of legislation. The question is, shall we bring it now within the scope of the Constitution? Shall we make these laws, which are local so far as they have been passed, general laws, and adopt a general principle upon this subject? I think that where large and great privileges are conferred by charter, and which operate for the benefit and the profit of individuals to a great extent, those who are concerned and interested in those public works should be bound to protect the safety of the citizens and of property along the lines of their roads.

This section provides that "all railroads shall be substantially fenced by the owners or controllers thereof, wherever such roads shall pass through improved lands."

It is not intended to make railroad companies fence their lines through wild, uncultivated and unsettled regions. It is confined to improved lands only.

Then it requires that the railroad companies are to be responsible for injuries sustained in consequence of not complying with this provision. I cannot see the injustice or the impropriety of this.

The gentleman from Chester (Mr. Darlington) raises two points. The first point is that this would be unjust, as to railroad companies already in operation, and then unjust as to companies not in operation, and between the two, of course, he wipes out the whole section. Why unjust to companies that are already in operation? Does the gentleman contend that to pass a provision of this kind is to invade rights which are vested? If he does, I submit that his contention is in opposition to the Supreme Court of the State.

Mr. DARLINGTON. The gentleman will allow me to state that my sole object was to inquire whether the committee so understood it.

Mr. COCHRAN. The committee understand that in all cases where there are not specific contract relations between the railroad company and the landholder, by which the landholder is bound to maintain these enclosures, the railroad company shall do it, whether it is an old railroad company or a new railroad company; and we maintain, moreover, that it is within the power and province of this Convention to determine that point.

In order to make this point clear, if it is necessary to make it clear at all, I move to amend the section, in the third line, after the word "lands," by inserting, "except where, by virtue of actual written contract, the landholder, his heirs or assigns, have agreed to fence such roads."

The CHAIRMAN. The question is on the amendment of the gentleman from York (Mr. Cochran) to the section.

Mr. COCHRAN. It will be observed that I have no disposition to interfere with existing contracts. I propose to provide that wherever there is a contract between the railroad corporation and landholder that the landholder shall fence his road, that contract shall not be violated; but in the absence of such contract, then that the liability to fence the road shall rest upon the railroad company which has constructed it through the land.

Mr. DODD. I hope, sir, that this amendment will not pass. Our object is to have railroads fenced, for the protection of life and property. If that is not our object, we should say nothing about it. If we adopt this section, it applies not only to railroads hereafter to be constructed, but to any now in existence. That has already been decided by the Supreme Court of this State, in one or two cases, to be constitutional, as a part of an act which requires railroad companies to fence their tracks, under the police power of the State. It is important in that view. It is important for the protection of life and property. Now, we well know that when we require, by an act of the Legislature, or by constitutional provision, any company or any individual to do a particular thing, it makes no difference whether he does it himself or whether he contracts with some one else to do it. All that the law requires is that it be done, and all that we wish to secure by this provision is that the railroad tracks be securely fenced, so that

passengers may go over them in safety, and not have their lives imperiled by the farmers' cows and horses getting on the track and throwing off the train. If the railroad companies have already contracts with the land owners by which the land owners are bound to fence the tracks, that is a matter between the railroad companies and the land owners, and the Constitution should not mix in that business at all. It is no difference to us, as the lawmakers here, in regard to that, whether it is done by the land owner or by the railroad; but it is important that it should be done, and this section simply declares that the company shall do it, putting on the company the primary obligation, and allowing them to get the land owner to do it if they see fit.

Mr. BIGLER. I only desire to say that I feel an aversion to this section, because it occurs to me to be rather a matter of detail in the policy of constructing railroads, which might very properly be part of a general railroad law; but I feel disinclined to see it incorporated in the Constitution. I am not disposed to discuss the general question of fencing railroads. There are places where fencing would be a matter of security; but I can see that in my own region of the State, to require railroads to be fenced would be a very serious matter. We get railroad extensions there by making their construction somewhat cheap. We generally have to find the right of way; we have to find the ties; we have to bear all the incidental expenses. If this condition is incorporated in the Constitution, I take it, the citizens will have to make all these fences, and it will increase our difficulties in getting extensions into the wilder portions of the State.

But I rose only to say that it had occurred to me from the moment I read the section, that it was a matter of detail which did not properly belong to the Constitution.

Mr. MACVEAGH. I agree entirely with the delegate from Clearfield (Mr. Bigler) that the citizens will have to make these fences, not only in cases of new railroads, but in cases of old ones. Whatever pecuniary burdens are imposed upon the railway companies, of course, will eventually come upon the traveling public in the shape of increased rates. But it does seem to me that this is an eminently wise provision, and as we are considering this article upon the theory that we are entitled to legislate and may not safely remit ligislative provisions to the legislative body, I should hope that the committee would agree to this section, virtually as it is reported. It seems to me that the answer of the gentleman from Venango (Mr. Dodd) to the gentleman from Chester (Mr. Darlington) is complete, that this section in no manner assumes to impair, as in no manner could it impair, under existing laws, the obligations of contracts previously made, and that whatever remedies the railway company might have against individual land owners would remain to them.

Certainly it is very important for the public, that put in the hands of these corporations such powerful engines for danger, that they should put upon them also the duty of seeing that the pathway of the public travel is free, as far as human foresight can keep it free, from a deadly peril; and there is no peril, I suppose, more frequent and more dangerous to human life than that of cattle straying upon railway tracks. Every person traveling knows how frequently the whistle is sounded and the train is stopped, in order to get rid of them. It seems to me that, as the railroad companies receive this privilege, it is not at all unreasonable to ask, not of the land-owner, who may be in indifferent circumstances, who may be far removed from the line of the railway, whose buildings may be some distance from it, who may be careless in his general management, but to require the companies, because they are in possessson of engines of such power and such peril, to see that their entire pathway is secured from the approach of straying cattle. I shall, therefore, vote for the section.

The CHAIRMAN. The question is on the amendment to the section.

The amendment was rejected.

The CHAIRMAN. The question is on the adoption of the section.

The section was rejected, there being, on a division, ayes thirty-one, less than a majority of a quorum.

The CHAIRMAN. The Clerk will read the next section.

The CLERK read as follows:

SECTION 16. Every borough or city shall have power to regulate the grade of railroads and the rate of speed of railroad trains within its limits.

Mr. HOWARD. I understand there is not a quorum of members present. I ask for a count of the other side on agreeing to the last section.

The CHAIRMAN. It is too late. The next section has been read.

Mr. HOWARD. I ask for a call of the house to see if there is a quorum present.

The CHAIRMAN. There is a quorum of members present. There cannot be a call of the house in committee. The question is on agreeing to the sixteenth section.

Mr. CUYLER. I suppose it is hardly worth while to say a word on this section, for I cannot suppose it possible that gentlemen are inclined to vote for it. If every little borough, every little town, and every little village between Philadelphia and Pittsburg is to have a right to prescribe that no train shall pass at the rate of more than four miles an hour, or less, through its limits, we may as well close up our railroads at once and be done with them.

The section was rejected.

The CHAIRMAN. The Clerk will read the next section.

The CLERK read as follows:

SECTION 17. No law shall be passed by the Legislature granting the right to construct or operate a street railroad within any city, borough or township, without providing for the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad.

Mr. HEMPHILL. I desire to offer an amendment to the section, which does not change the meaning of the section at all, but is merely for the purpose of abbreviating it. I move to substitute for it the following:

"No street railroad shall be constructed within the limits of any city, borough or township without the consent of its local authorities."

The CHAIRMAN. The question is on the amendment.

The amendment was agreed to.

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

Mr. EWING. I should like to ask the gentleman from Chester for information or for instruction, what is the necessity of having "townships" in? What evil is to be remedied in townships?

Mr. CURTIN. Your street railroads in Pittsburg run out to the township.

Mr. GOWEN. I should like to ask the gentleman who presented this amendment a question. Does this apply exclusively to such a railroad, the entire length of which is within the municipality? If it does, then I submit there might be but little objection to it, for local roads should not be built without the consent of the people in the locality, as expressed by their public officers; but if a local railroad between Pittsburg and Philadelphia is never to be built through any township, without the consent of that township——

Mr. HEMPHILL. It is confined to street railroads.

Mr. GOWEN. Well, every railroad is a street railroad that is built on a street, I suppose. ["No." "No."] That distinction I want to draw; but I see what the understanding is. It ought to be, I think, expressed in the section. It ought to be said that it must be a street passenger railway entirely within the municipality.

[Several Delegates. "That is it."]

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

Mr. HEMPHILL. I will accept the amendment of the gentleman from Philadelphia.

The CHAIRMAN. It is too late to accept it, but the motion to amend is in order. The gentleman will indicate the amendment he desires to move.

Mr. HEMPHILL. Strike out the word "railroad," and insert the words "passenger railway."

The CHAIRMAN. The question is on the amendment just moved by the gentleman from Chester.

The amendment was agreed to.

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

Mr. CUYLER. Let it be read.

The CHAIRMAN. The reading is called for; it will be read.

The CLERK read as follows:

"No street passenger railway shall be constructed within the limits of any city, borough or township, without the consent of its local authorities."

Mr. LILLY. I move to strike out the words, "or township."

The CHAIRMAN. The question is on the amendment of the gentleman from Carbon.

The amendment was rejected.

The section as amended was agreed to.

The CHAIRMAN. The Clerk will read the next section.

The CLERK read as follows:

SECTION 18. No railroad, canal or other transportation company in existence at the time of the adoption of this article, shall have any beneficial legislation by general or special laws, except on condition of complete acceptance of all the provisions of this article.

Mr. CUYLER. This section is the embodied threat of the Commonwealth to her railroad companies, that if they will

not give up their vested rights protected by the Constitution of the United States, they are to have no further favors from the Commonwealth, for that is simply what it amounts to. It simply amounts to saying to existing corporations who have their rights by authority of law, protected by contract, "unless you give them up without compensation being made to you for the rights that are taken away, we will deny you the rights of citizens of this Commonwealth." The proposition is perfectly monstrous. It is beneath the dignity of the Commonwealth; it is beneath the dignity of the Convention; it has no proper place in our organic law, and I trust gentlemen will consider very carefully before they vote in favor of any such proposition.

The CHAIRMAN. The question is upon the section.

Mr. CAMPBELL. Mr. Chairman: I think this is a very good section, and I hope it will pass. Several of the gentlemen who have spoken upon the report of the Railroad Committee have stated that they opposed a number of the sections of the report, because, whilst they considered them good in themselves, especially if they could be applied to all railroad corporations now existing or to be hereafter incorporated, yet their adoption would only be placing more power in the hands of certain large corporations of this State, by giving to those corporations a monopoly of the enormous privileges which they now possess, and preventing any future corporations from competing with them.

Now, this section proposes to say to the large corporations or monopolies referred to: "You have obtained from the Legislature certain rights and privileges that have enabled you to become great monopolies—injurious to the Commonwealth—you say we cannot get from you any of the franchises which you have obtained, because you are protected by the Constitution of the United States. Now, unless you will be willing to come within the constitutional provisions that we lay down for all corporations in the future, you shall have no more legislation." This is eminently proper. It is but fair, if we can in any manner apply to them the same rule that we apply to the corporations that will hereafter come into existence; it is but fair to make them accept the provisions of this article, provisions that, by adopting, we declare to be wise and proper.

Mr. HUNSICKER. Allow me to ask a question?

Mr. CAMPBELL. Certainly.

Mr. HUNSICKER. What is meant by beneficial legislation?

Mr. CAMPBELL. The word "beneficial" may be stricken out if you wish. I, myself, prefer to say that corporations now existing shall have "no legislation whatever." The wording of the section is not mine. I am merely speaking of the general principle of the section. If the gentlemen does not like the word "beneficial" strike it out, and say simply that they shall have no further legislation at all. If we can in any way make the two or three giant corporations of Pennsylvania act within the provisions of the article that we are putting forth as the fundamental law of the State we should do so.

Mr. GOWEN. One of the members of the Railroad Committee the other day said that this was no place to ventilate a man's legal learning on the subject of vested rights, and that the only question which a Constitutional Convention should take into consideration was not the right of doing a thing, but whether it was expedient or not. I take it that that sentiment has found utterance in the section which is now the subject of consideration, and upon that subject I desire to speak to this Convention as the representative of a railroad company, owning from fifty to one hundred million dollars' worth of property, which they obtained by virtue of a contract with the forefathers of this Convention.

Let us say that, in the year 1830, at a time when nobody could charge the Legislature of Pennsylvania with corruption; when it was not the custom to go to the Legislature corruptly to obtain a charter, and when a charter was obtained after great deliberation, and when a charter was not a matter of one or two sections, as it now is, but was a subject sufficiently important to occupy twelve or fifteen pages, many of the corporations of this State were chartered. It was thoroughly well known that that charter became a contract. The people of Pennsylvania, at that time at least, were anxious to have corporations develop their material interests. They invited men to become stockholders. They invited the citizens of this State and the people of other States, and the people of other countries, and asked them to expend their money upon the solemn faith of the Commonwealth of Pennsylvania; and had it been once in

timated in those early days that such a thing, even in the wildest conception of the most infuriated reformer, would ever come to pass as that a Constitutional Convention should assemble in the city of Philadelphia for the purpose of taking away those vested rights, simply because it was deemed expedient to do so, I apprehend that the vast amount of money expended in the development of this State would have remained in the pockets of its owners. Every corporation created prior to 1857 holds its franchises by a title founded in contract, which contract cannot be altered, cannot be varied, cannot be impaired, unless the Constitution of the United States is changed. Every incorporated body that holds its franchises since the year 1857 holds them by exactly the same contract, only subject to this limitation that its charter may be altered or annulled or repealed, but only in a certain way, and only so as to do no pecuniary injury to the stockholders.

Therefore, every incorporated company holds its franchises by virtue of a contract. If the incorporation dated prior to 1857, that contract is absolute and cannot be changed; if since 1857, the Legislature has the power to alter or annul that contract, provided it is done in such a manner as not to do injury to the owners of it—the stockholders.

It is said that it is expedient to do this. Sir, it never is expedient to violate a contract. No possible good can ever come from the State of Pennsylvania violating a contract with her meanest citizen; and this attempt to violate it, not by striking it actually out of existence, but by saying it shall have no legislation hereafter, is just as bad as an attempt to violate it altogether. Corporations pay large amounts of taxes, it is well known. Many of those taxes were imposed during the war, and it might happen that the taxation of Pennsylvania would be reduced in the future, and no general law reducing taxation upon every one could be taken advantage of by an existing corporation without a surrender or a practical surrender of its franchises. The effect would be that you tax an existing corporation where you will tax another one, and impose a penalty upon them because their charters are thirty or forty years old. But if gentlemen want to strike down contracts because questions of expediency and not a question of right should control, let me tell them that we have a burden that is borne by every citizen of this Commonwealth. We have a State debt of twenty millions of dollars, I think, at present. It is very oppressive, and every man, woman and child has to labor to raise money to pay taxes. We get the money from the people, and the question of right would not prevail. It would be expedient to reduce taxation by repudiating this debt, and it seems to me that to repudiate a contract of any kind with any person is just exactly the same as to repudiate a debt; and I trust that the people of Pennsylvania will never have laid to their charge hereafter anything which savors of repudiation, either of their public debts or of their public contracts.

Mr. CUYLER. Mr. Chairman: It has often been thrown in the teeth of gentlemen on this floor that they are the representatives of great railway corporations, and it has been sought to disarm anything they might say and render it powerless to influence the minds of members because of that circumstance. I do not desire to criticise such remarks in the slighest degree, so far as they touch me personally, because if I have not character enough among my brethren of the Convention to render such criticisms upon me worthless, it would be quite useless in me to say anything in reply to them. But I am here to ask gentlemen solemnly to consider this one simple fact: There are six hundred millions of dollars that the people of this Commonwealth have invested in railroad property, and we are to be gravely told that that six hundred millions of dollars worth of property not only has no right to a voice upon this floor, not only has no right to consideration upon this floor, but that every gentleman who, from the accident of his business relations or other circumstances in life, may be supposed to have acquired peculiar knowledge on the subject, is to be regarded with distrust whenever he alludes to this subject. This large interest in this Commonwealth is to be handed over to a committee of gentlemen, for whom, personally, I entertain the profoundest possible respect, but who, I must say, with profound deference to our distinguished President, seem to have been selected not only because they were not acquainted with the particular subject committed to them, but because, by their past walk and conversation, they stood committed to a position hostile to it.

And therefore it has come to pass that a crude result, not founded upon experience, nor upon knowledge of the subject,

a result founded largely upon hostility to the interests to be considered, has been presented to this Convention for its adoption. Let gentlemen look how differently things are done on the other side of the water. When great interests like these are to be discussed in England, a parliamentary commission is created, and weeks, and months and years are devoted to a thorough inquiry into the question, to a careful investigation of the whole subject, to an examination as witnesses, of everybody who may be supposed, as an expert, to have any knowledge with regard to the question, and then, when at last they have arrived at all the facts that are proper to be considered, in reaching a conclusion, they generalize from these facts a law which is wise and prudent, and is based upon a thoughtful contemplation of all the interests that may be affected by it. I could exhibit to this Convention the results of the inquiry of the Railway Commission of Parliament in the shape of several large folios, each containing hundreds of pages of testimony, resulting at last in the English railways traffic act, in which there is crystallized the highest wisdom upon the part of British statesmen, after a thorough investigation of the subject, in the shape of a law which is to the British people upon this subject what this Constitution, and laws made in pursuance of it, ought to be to us.

But, on the contrary, railroads have been arraigned in this Convention as if they were the natural enemies of the people. It seems to be thought that they were created for the very purpose of oppressing the people, that their designs were inherently dishonest, that they were public enemies to be guarded against, and that the great question for us here to consider is, how shall we frame this Constitution in such a manner that those who stand hostile to the State are to be rendered powerless for mischief? Let gentlemen consider for a moment what railroad companies are to the State of Pennsylvania and to the Union of which the State of Pennsylvania is a part. Let them look at the configuration of our country, traversed by three great ranges of mountains, the Allegehnies, the Rocky Mountains and the Sierra Nevada. Let them remember that the great streams which form the natural highways for the trade of this continent empty, one of them into the Gulf of Mexico, and the other into the St. Lawrence river, and thence down to the Gulf of St. Lawrence and to the ocean, beyond the jurisdiction of the United States. Let them remember that there is nothing to bind the people of this country together and to make them one people except their railroad system; that it is simply by an interchange of traffic between the western and the eastern sections of this country and, *vice versa*, between the eastern and the western sections, by these artificial highways overcoming the natural highways of the country, that we are made one people and that our Union is possible to-day. A bushel of corn, when corn sells at seventy-five cents a bushel, can be carried over the old-fashioned highways one hundred and fifty miles, and wheat, when wheat is worth $1 50 per bushel, can be carried two hundred and fifty miles, and that limits the possibility of carriage. It cannot go beyond that at these prices, and as the price increases relatively a small additional distance—and the reason is that it costs to carry upon the common highway twenty cents for every bushel of grain—but when you place it upon these grand artificial highways it costs one and one-fourth cents, and that is all. So that you may carry wheat three thousand two hundred miles and it will pay at this price; or you may carry corn one thousand six hundred miles and it will pay at this price, if carried over these artificial highways; without them there could be no commerce among our people—no community of interest—such as must underlie and support and vitalize our political institutions.

Let us think for a moment what the effect of this is upon a country like ours. I cannot follow it out. The human mind staggers under the thought. No gentleman can grasp and fully develop in his own mind the extent of the blessing that these great highways have been to this people in the promotion of their prosperity and happiness and the development of all their material interests. I will not linger in a vain effort adequately to describe the vast blessings which these corporations have been to this country of ours. I might occupy hours in the effort to illustrate it, but I could not make it more distinct than it must be to the minds of gentlemen who will for themselves thoughtfully reflect upon it.

These corporations have come into existence because favorable legislation has enticed our people to place their money in these perilous investments. Thus created and constituted we are not to regard

them as institutions which overshadow, with an unreasonable power, the liberties of the people. The people themselves, out of their own pockets; they, the stockholders of these roads, enticed by the favorable legislation of the country, have put their money in these investments for the public benefit. And now the public, reaping these benefits, thus inestimable and beyond the power of language adequately to express, arraigns these very corporations as great public sinners, whose sole purpose is the oppression and the ruin of the people.

It was not, however, with any intent to indulge in this line of remark that I have risen at this late stage of the discussion. I have a few thoughts to offer touching some of the leading features of the amendments reported by the committee, and a few suggestions to make for your consideration relative to the one immediately before us.

These corporations have certain vested rights. Your fellow-citizens, the stockholders of these companies, who have put their money into perilous investments for your benefit, and for the benefit of the people of the State, and the people of the whole country, have certain vested rights, and those rights are protected by the Constitution of the United States, and yet we are gravely told in this Convention that the law of superior force is to be exercised by the great Commonwealth of Pennsylvania, the highwayman's law; that she is to take her pistol, and placing it at the breast of the corporation, is to say: "Your money or your life! No further legislation for you! No remembrance of past service! No further protection! Hand over that which you have by law as a vested right! and stripped of all you have, lean upon our simple grace for all the future." That is the doctrine of this section, founded upon an unnecessary and unreasonable fear of corporations, founded upon oblivion of all moral principles—for the doctrine is simply thievish, and no other word can adequately describe it. It is simply the doctrine of superior force taking away that which is property, that which is vested right, simply because it is in the power of the Commonwealth to do it, and gentlemen are expected to vote for such a proposition as that.

I have risen, Mr. Chairman, merely to say a very few words as to what I conceived to be the positive immorality of the doctrine of this section. I will not linger here to discuss the doctrine of the Dartmouth college case, which has been so often alluded to. No man, it seems to me, at this late day, can doubt that that is the law of this country. No man can doubt that what these corporations have is property, that they hold it by contract, and that when an attempt was made to take away that which is a vested right, or which is possessed by contract, without making compensation, the doctrine settled by this great and leading case is contravened. To doubt it is to doubt the plainest dictates of one's own judgment. It is to doubt the wholesome utterances of the law, pronounced, after full discussion, by some of its greatest masters, through the lips of the greatest Chief Justice that ever presided in this country, and whose name is to be ranked as a peer with the name of any Chief Justice who ever presided abroad.

The Dartmouth college was a foreign charter, a charter granted by the Crown. The State of New Hamsphire laid its hands upon it, in only what you or I would think almost non-essential particulars. It enlarged the number of its trustees from twelve to twenty-one; it enlarged the scope of the application of the funds which it held in trust for educational uses. Yet, after solemn argument by Mr. Webster, whose greatest legal reputation is built upon this case, replied to by Mr. Wirt, then Attorney General of the United States, was the law pronounced by Chief Justice Marshall, and declared to be that, though its charter was granted by the Crown, it was not competent for the State of New Hampshire to modify it or change it in any degree without the consent of the corporation. And from that day to this has the most conservative doctrine been recognized by statesmen and by lawyers as part of the great constitutional law of every State of the American Union.

And if I turn to my own State, I have but to point to two or three cases familiar to every Philadelphia lawyer, one of them so closely resembling the Dartmouth college case in its doctrine that it is almost precisely like it. I mean the case of the Western Saving Fund *vs.* the city of Philadelphia, where the city of Philadelphia undertook to do nothing more than to add four trustees to the number of those who administered the gas works, without one single change in the trust beyond this, without an enlargement of the powers of the trustees or a modification of the trust, but simply adding four men to the number of trustees, they having

themselves created that trust; and the Supreme Court of Pennsylvania, I think by a unanimous decision, said that it was unlawful and could not be done in this Commonwealth. Yet we are to be gravely told that, although the $600,000,000 which have been invested in railway corporations in this State, on the faith of the law, cannot, by reason of the doctrine of those decisions, be taken away from them by any direct application of the power of the Commonwealth, the State may take them by the throat and extort it from them as a matter of actual and positive force, for that is the doctrine of this section.

Now, sir, I will not consume the time of the Convention ["go on!" go on!"] by any further discussion of such a doctrine as that. I want to say a word or two on one or two other points; but so far as that particular thing is concerned, I scorn to utter another word to this Convention. If the dignity of character, if the moral sense, if the sense of common honesty of this Convention does not rise high enough to trample upon and spit upon such a doctrine as that, then we are unworthy of the seats we hold here. But I want to say a word or two, though not entirely, perhaps, germane to the particular question which is before the committee, with regard to one or two other matters which have been alluded to here, and which are presumed to effect interests that I am supposed peculiarly to represent.

Sir, suffer me to say as to those interests that I am supposed peculiarly to represent that, if I know my own heart, I am incapable of standing upon this floor to advocate that which I believe to be wrong; that I am incapable of defending the Pennsylvania railroad company, or any other corporation or any other client, (for I am not an officer of the company,) in that which I believe to be wrong. It has never occurred to me yet to do so. I am but simply the general counsel of that company, its defender and advocate in courts of justice, and its advisor to endeavor to keep it rightly and duly observant of its duties and its obligations to the law.

Now, I have to say with regard to this corporation that when I hold up that sizeable book in the eyes of my brethren of the Convention, [holding up an octavo volume of about eight hundred pages,] they will join me in saying this is a law-abiding corporation, for I think the size of the volume indicates a great deal on that subject. This little volume embodies the laws which affect that company down to 1864, inclusive. I suppose that about one-third might be added to its dimensions for those which have been passed since. But I want to say with regard to that company, which on a former occasion I have endeavored to show has done large service to this Commonwealth, that in the year 1861 an act of Assembly was passed, which is commonly known as the commutation tonnage act, and without taking up time by reading at any length from that act, I desire to read a few of its provisions, in order that I may bring them to bear upon the minds of gentlemen who have spoken here with regard to certain discriminations which are alleged to have been made.

The recitals of this act confess that it was the right of the company to have the tonnage tax taken off—its right by contract with the State; and then they proceed to say that if the company will make a certain contract, which I will read, with the State, the arrears of that tax, amounting to some $800,000, shall be not released, as in justice they should have been, but be paid over in development of the resources of the Commonwealth, by aiding various struggling railroad companies. True, those companies were generally companies that would be feeders of the line of the Pennsylvania railroad company, but nevertheless, though feeders of the line of the Pennsylvania railroad company, they were developers, if I may use such a word, of the wealth and resources of the State. The act says:

"That from and after the passage of this act, all railroad, canal and slackwater navigation companies, incorporated by this State, and liable for the payment of taxes or duties on tonnage, imposed by any laws heretofore enacted, shall make a reduction of their charges for transportation on their local freight, as fixed by their respective toll-sheets, on the first day of February, 1861, equal to the full amount of the tax or duty chargeable upon such freight or tonnage by the laws aforesaid; the present winter rates, between the first day of December and the first day of May, shall be considered as fixed at ninety cents per one hundred pounds for first class; seventy-five cents per one hundred pounds for second class; sixty cents per one hundred pounds for third class, and forty cents per one hundred pounds for fourth class; summer rates, between the first day of May and first day

of December, in each year, shall be seventy-five cents per one hundred pounds for first class; sixty cents per one hundred pounds for second class; fifty cents per one hundred pounds for third class, and forty cents per one hundred pounds for fourth class, on all trade carried between Philadelphia and Pittsburg; and a failure on the part of either of said companies to make such reduction shall render the company so neglecting liable to the Commonwealth for double the amount of the tonnage tax heretofore chargeable against them upon such trade; and every such company shall, within thirty days after the passage of this act, under a like penalty, file in the office of the Auditor General, under the oath of the president or other proper officer, a toll-sheet," &c.

And then it proceeds, and this is what I wish to invite the attention of gentlemen to:

"*Further*, The Pennsylvania railroad company shall not, at any time, charge or collect rates on any description of freights from any eastern or sea-board cities to Pittsburg higher than the gross rates charged or collected by the same route from same points to any point west of Pittsburg."

The CHAIRMAN. The gentleman's time has expired.

Mr. HEVERIN, and others. Let it be extended.

Mr. AINEY. I object.

Mr. NILES. Mr. Chairman: I move to strike out the words, "general or," in the third line.

Mr. CUYLER. I rise to speak to this amendment.

The CHAIRMAN. The gentleman from Philadelphia.

Mr. CUYLER. I will continue the remarks I have been making. This section of the act of Assembly then proceeds:

"The Pennsylvania railroad company shall not, at any time, charge or collect rates, on any description of freights, from any eastern or sea-board cities to Pittsburg, higher than the gross rates charged or collected by the same route from same points to any point west of Pittsburg; nor shall the said Pennsylvania railroad company, at any time, charge or collect rates on any description of freights from Pittsburg to Philadelphia, Baltimore, New York or other sea-board cities, higher than the gross rates that may be charged by the same route from any point west of Pittsburg to the same points on the same decription of property. The local rates from Pittsburg or Philadelphia to stations on the line of the Pennsylvania railroad shall at no time exceed the gross rates charged through between Philadelphia and Pittsburg; nor shall local rates between any two stations on the road between Philadelphia and Pittsburg exceed the through rates, as made from time to time under the provision of this act; nor shall the rates charged to any local points exceed those charged to any point of greater distance in the same direction from the place of shipment."

And then follows a provision as to the rights of those who ship to or from Pittsburg by way of the river.

Now, I am here to say, and say by authority, that a solitary instance cannot be produced of a violation of the requirements of that section. I am not unaware that gentlemen on this floor have said, and many have said out of doors, that a contrary state of affairs existed; but I am here by authority to say that any and every charge of that sort is without foundation in fact, and if the facts are presented, and the cases are investigated, it will be found not to have its basis in truth.

It is not more than five years ago that a great litigation occurred in this Commonwealth, in which my friend, Mr. Gowen, was one of the counsel on the other side, and with eminent colleagues represented the Pennsylvania railroad company, in which these charges were made, and in which this question was the subject of thorough judicial investigation. Mr. Thompson, Mr. Scott, and every gentleman connected with the transportation department of the Pennsylvania railroad, was subjected, under oath, to a most thorough and sifting scrutiny, and there was a failure to substantiate a solitary instance of the violation of these provisions.

I heard a gentleman on this floor, I think it was my friend from Pittsburg, (Mr. S. A. Purviance,) allude to a merchant in Pittsburg, and others said that numbers of other cases of the same sort had occurred, who could send his goods to Alliance, and then have them brought from Alliance to Philadelphia at a less rate than the Pennsylvania railroad carried from Pittsburg to Philadelphia. I stated that case to Mr. Scott, who, protesting his own profound ignorance of anything of the sort, caused inquiry to be made, and reported that no such thing had ever occurred, and added a fact which I think will carry conviction to the minds of all here.

Mr. HOWARD. Will the gentleman allow himself to be interrupted?

Mr. CUYLER. Certainly, sir.

Mr. HOWARD. I have this fact, that so far as the shipment of fourth class freights is concerned, shippers are prevented, by the discriminations made by the Pennsylvania railroad, from shipping to the city of Philadelphia. They make discriminations in favor of the west. I have it from gentlemen whom I know personally, men engaged in the flour and feed business, and the difference is just precisely the figures given, the difference between forty-five and thirty. Western men pay thirty and Pittsburg men are charged forty-five. I have this from men of as high veracity as live. Now, is that true or false?

Mr. CUYLER. It is false, if the gentleman wants to know.

Mr. HOWARD. Very well. I do not think it is false.

Mr. AINEY. I rise to a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. AINEY. I raise the point of order that this discussion is not germane to the subject under consideration, namely, the amendment before the committee.

The CHAIRMAN. The Chair over-rules the point of order. This section opens a wide field of discussion. It is impossible for the Chair to say thus far that there has been any departure from it.

Mr. CUYLER. Mr. Chairman: I have consumed but little of the time of the Convention in the discussion of this question, and I thought I was entitled to the courtesy of being heard. I am sorry my friend does not seem so to think. ["Go on!" "Go on!"]

I have read, Mr. Chairman, from the law, the right of the citizen, and I say that that citizen, cognizant of such facts as are stated by the gentleman from Allegheny, (Mr. Howard,) who does not avail himself of the remedy which the law clearly places in his power as a protection, is as unjust to himself as he is to the citizens generally of this Commonwealth.

Mr. S. A. PURVIANCE. Will the gentleman from Philadelphia allow me to ask him a question?

Mr. CUYLER. Certainly.

Mr. S. A. PURVIANCE. Under the law as read by the gentleman, could not just such a state of things exist as I have referred to, and at the same time be within the purview of the law?

Mr. CUYLER. Clearly it could not.

Mr. S. A. PURVIANCE. If the law to which the gentleman refers had made use of the words "collected," "tolls charged and collected," it might have been very difficult to evade it, but simply using the word "charged," may not those charges be abated? And, further, I will say that my colleague (Mr. Guthrie) was informed by Isaiah Dickey, a gentleman of the highest standing and integrity in Allegheny county, that he was obliged to do the very thing which I stated.

Mr. CUYLER. I will, in a moment, demonstrate to my friend from Pittsburg how mistaken that must be, and I will answer the question he puts to me by putting to him a question. He is a lawyer. I ask him whether he knows a member of the bar who would have the face to go into the Supreme Court and contend that the absence of the word "collected," when the word "charged" was used there, would protect the company in any litigation that arose under it? The provision is that no rates higher than the gross rates that may be charged by the same route from any point west of Pittsburg to the same place shall be imposed. Now, does my learned friend believe for a single instant that the Supreme Court of Pennsylvania, or any other court, would for a moment tolerate an argument based upon a verbal criticism of that kind?

Mr. S. A. PURVIANCE. I should hope not; but, nevertheless, if abatements of that kind were made and not brought before the Supreme Court, it would show the existence of a wrong that ought to be corrected.

Mr. CUYLER. But how can that be when the law provides for the citizen the largest possible remedy, and her courts of justice are open to the citizen? But, instead of going into the courts of justice to have his wrongs redressed, he utters, in the looseness of statements on the floor of deliberative bodies, or from the stump or the hustings, the denunciations which have been so often repeated on this subject.

But what I wanted to present to gentlemen was this: The Pennsylvania railroad company owns the line between Philadelphia and Alliance, owns to Chicago, owns to Cleveland; and on what earthly consideration could the company make a double carriage from Pittsburg to Alliance, and from Alliance back to Pittsburg again for nothing, in order to get the freight from Pittsburg to Philadelphia?

Let gentlemen reflect upon the absurdity of it.

Mr. GUTHRIE. Will the gentleman allow me? I desire to explain. I think my friend from Allegheny erred in his statement in regard to shipping from Pittsburg. Mr. Dickey told me that he had shipped his freight from Philadelphia to Alliance, and then from Alliance back to Pittsburg, and thus saved money. And I will say further that I think that was stated on oath by Mr. Dickey in an investigation. I am not sure of it, but I think it was stated under oath in an investigation.

Mr. CUYLER. My friend from Allegheny will perceive that the case he supposes is practically the same as that put by his colleague. It amounts simply to this: It amounts to the supposition that the Pennsylvania railroad company, owning the entire line all the way to Alliance, would carry this gentleman's freight for nothing from Pittsburg to Alliance, and back again from Alliance to Pittsburg in order to earn the freight she is to get between Pittsburg and Philadelphia. The officers of that company have had some little reputation for sagacity; they have not been reputed to be fools, whatever else may be said with regard to them. Such conduct would be so transcendantly foolish that every intelligent mind must regard it as being positively incredible. The fact is that these charges are loosely and thoughtlessly made, and that, although the specified cases are infinitesimal in number compared with the vast mass of transportation, yet they suffice to stir the hostility which exists to corporations, and are magnified to large and overshadowing proportions in the public mind.

Mr. SHARPE. Let me ask the gentlewan whether there was not a competing line from New York, which came in at Alliance, which might explain the mystery why the company should ship produce to Alliance and back again without charge?

Mr. CUYLER. What competition does the gentleman refer to?

Mr. SHARPE. The New York Central.

Mr. CUYLER. I do not think so. I do not think it touches it as a competing line. It would still carry with it the absurdity of which I have spoken, and still leave the citizen with the full redress which is pointed out by the act of Assembly, and if he will not avail himself of his clear statutory right by going into the courts of justice, which are the places where men and corporations are to be arraigned and to be punished for their wrongs, it is his own fault that he does not do it. Let him make his complaint there, where the facts may be calmly investigated, and their truthfulness ascertained, and an effectual remedy provided. This is not his proper tribunal.

I will not go into a more lengthy discussion of these cases, but I will allude to another that was mentioned on the floor. The gentleman from Susquehanna (Mr. Turrell) stated that he had been informed that the Cambria iron works had proposed to introduce the manufacture of shoes, had put up a capital of $200,000 for the purpose, and employed two hundred men, with a view to it, but had been compelled to abandon the business because of persistent discriminations against them, and in favor of Chicago. I can only say that I addressed an inquiry on that subject to every leading officer of the Pennsylvania railroad company, and I was informed by them, in answer, that it was the first time they had ever heard of such a thing; that it was not true that any application on the subject had ever been made to them, or any of them; that they had never heard that those works contemplated the manufacture of shoes; that it would not be a natural business for them to engage in; and that the whole subject was purely one upon which they were wholly uninformed.

Mr. DODD. Will the gentleman permit me to ask him a question?

Mr. CUYLER. Certainly.

Mr. DODD. Did the gentleman, in his inquiries, make any inquiries about the South improvement company?

Mr. CUYLER. I say the Pennsylvania railroad company never had any relations with the Southern improvement company of any sort or kind.

Mr. DODD. Colonel Scott signed the contract.

Mr. CUYLER. I have nothing to do with Colonel Scott personally; he is able to take care of himself; but I say the Pennsylvania railroad company, in no manner whatsoever, directly or indirectly, was ever mixed up with that business. I speak of the corporation. I am not Colonel Scott's defender; nor am I to be understood as at all justifying any criticism that is made upon him. He is abundantly able to take care of himself, as gentlemen will find when they come into intercourse with him.

Now, Mr. Chairman, I have only to say that this company has once submitted to thorough investigation in the courts of justice; that those courts of justice are all the while open to the citizen, and the rights of the citizen are defined in words so clear that the wayfaring man, though a fool, need not err therein; and that it is not manly, it is not right, it is not proper, when the plain remedy is pointed out and the tribunal for redress is established, that this species of wholesale denunciation should be resorted to and these vague allegations made, which, if true, should go into the courts of justice, where they properly belong.

I pass from this to another subject——

Mr. TURRELL. Will the gentleman permit me to say a word?

Mr. CUYLER. Certainly.

Mr. TURRELL. I simply wish to say that I made the statement from Mr. Morrell almost word for word, as he gave it to me; and in further corroboration of that I am happy to say, lest my veracity might be doubted, that Mr. Morrell has since that time, and since that article was prepared, had it submitted to him by the gentleman from Somerset, and he made the same statement to him.

Mr. CUYLER. I can only say after searching for Mr. Morrell, whom I have the pleasure of knowing very well, after going to three places where I hoped to find him, without success, I have written to him in regard to it, and his reply, when received, will be submitted to the Convention.

Mr. TURRELL. I only say this in justification of myself.

Mr. CUYLER. I do not doubt for a moment that the gentleman designed to state with precise accuracy what he supposed was told to him.

Now, Mr. Chairman, I wish to make this single remark: The law of railroad life is inequality. It is a matter of absolute vital necessity that it should be so. It cannot be otherwise. No two railroad companies are, or can be, situated alike. There is inequality in their construction by reason of the region of country they pass through. There is inequality in their business relations by reason of the greater or less wealth of the communities which they reach by their lines. There is inequality in their relations by reason of the varying competition they encounter. All these circumstances combine to make the very law of railroad life *inequality*. Therefore I say that the effort to bring all these companies down to a single and inflexible rule, which shall be written in the Constitution of the State as an iron rule, must of necessity be nugatory; it cannot work out a just result.

Take the line of the Pennsylvania railroad. To build the line between Altoona and Cresson, over the mountains, cost vastly more than to build the line through the valley of Chester county. To operate that line, where the power of a locomotive is reduced to less than one-third the power it has upon a plain, requires a large expenditure all the while. To say, therefore, that freights shall be carried over the mountains elevated two thousand four hundred feet, and carried over such grades at the same price precisely that it shall be carried over the plains of Chester county, is an absurdity; and yet this bill does provide for a uniform rate of charge all the way through. It ignores the great general laws of trade and business and finance. No merchant dreams that he is to sell at the same price from a store where he is exposed to severe competition as he would from a store where he had no competition at all. No man could reason fairly or justly that, when the lines of the Pennsylvania railroad reach Cincinnati, for example, and come into competition with other lines of transportation, they shall charge precisely the same rates that they would charge from Pittsburg, or from other points where no such competition exists. Nor is it an injustice to Pittsburg, because capital is entitled to earn its fair dividend, and if it can earn any dividend, no matter how small, toward that competent sum it should divide among its stockholders by the carriage of freight at a point where it encounters the greatest competition, it is in relief of the other community where no competition exists that it should carry that freight. That is the natural law of trade.

But we seem to be sitting here in this Convention to ignore all the natural laws of trade and finance. We are sitting down to legislate that water shall run up hill, that fire shall not burn; that the opposite of that which the great laws of nature declare, just as much with regard to finance and railroads, and business generally, as they do with regard to the elements about us, shall be done; that those great laws are to be ignored and treated as if they did not exist at all. Such an effort is perfectly hopeless. We cannot legislate the opposite of that which the

great laws of trade and finance have ordained. We must subordinate ourselves to them; or if we do not, we must put an extinguisher upon the business interests of the country.

The CHAIRMAN. The gentleman's time has expired.

Mr. BIDDLE obtained the floor.

Mr. EWING. I ask unanimous consent that the gentleman from Philadelphia (Mr. Cuyler) have his time extended.

The CHAIRMAN. Does the gentleman from Philadelphia (Mr. Biddle) yield the floor for that purpose?

Mr. BIDDLE. Certainly.

Mr. CUYLER. I am much obliged to gentlemen for their courtesy. I could pursue this strain of remark at great length; but it is not just to the Convention that I should do it. I want to see this report finished this afternoon. ["Go on."]

The CHAIRMAN. Is there any objection to the gentleman from Philadelphia proceeding with his remarks?

Mr. LILLY. I object.

The CHAIRMAN. Objection is made.

Mr. HUNSICKER. Then I move to strike out the word "canal," and the gentleman from Philadelphia can proceed upon that amendment.

The CHAIRMAN. That is not an amendment to the amendment, and the gentleman from Philadelphia furthest from the Chair (Mr. Biddle) is entitled to the floor, and, unless he yields, no amendment is in order.

Mr. CUYLER. I will yield. I have been listened to so kindly and so courteously by my brethren of the Convention, that I think it wrong to trespass further upon them. I have indicated the general lines of thought that I think ought to affect their minds. I will only say, in conclusion, that what I hope with regard to this matter is simply this: We will go on, I trust, with this bill and finish it this afternoon. Then I trust it will be printed in the form to which we shall have brought it, and that we shall be able to take it up hereafter with the knowledge we shall have derived meanwhile with regard to it, and with thorough reflection and consideration, shape it into a bill that will be largely beneficial to the citizens of the State.

I do not mean to say that there are not great evils necessarily attending great corporations in a country like ours. They do exist; and no truthful man could deny their existence; but still, after all, they are far less than they are often supposed to be through the sort of superstitious dread that exists with regard to them in the minds of so many gentlemen; for, after all, the corporation lives only on the breath of popular favor. You may make it never so powerful; you may pass acts of Assembly to increase its authority to the largest extent; you may enable it to accumulate wealth without limit, and yet, after all, every gentleman who has relations with corporations in this country will find it to be the fact that the very breath of the nostrils of a corporation is popular favor; that it cannot afford to live except in the observance of the great principles of justice and right and integrity in all its transactions; that if it will not put itself upon the higher moral ground, it will be compelled, by mere policy, to respect the rights of citizens, and uniformly to do that which is just. If it be true, generally, of them it is pre-eminently true that honesty is the best policy. It is their interest faithfully to observe that true-honored maxim which is so constantly verified in human experience, and if they do so their powers can never be so exercised as to imperil the public interest; if they do not, the law has already ample remedies. Mr. Chairman, there are many other matters, and among them the question of fast freight lines, which I would be glad to discuss, but at this late period in the consideration of this bill I forbear, and close with thanks to the gentlemen of the committee for the patience and courtesy with which they have listened to remarks so extended.

Mr. BIDDLE. Mr. Chairman: If I felt the assurance that this article would be concluded this afternoon, in the condition in which the few last sections now stand, I would not rise to say a single word; and if the assurance is now made to me that the committee will vote the section now under consideration, I will cheerfully give way; but unless that assurance is made, unless I know that those who are the opponents of this measure are willing to let it pass now, and allow the article to go upon second reading, I deem it my duty to say something about it.

The debate upon this section has been so discursive in its tone, that we really have been entirely led away from the real proposition now before the House. There is nothing in this section that has a tendency to strike down vested rights; there is nothing in this section that goes to in-

erfere improperly with the laws of supply and demand, with the laws of trade, which my colleague, Mr. Cuyler, very properly says are immutable, and which he who strives against, strives against only to his own detriment. What, then, is the real point under consideration?

Quite a number of these corporations were incorporated before the adoption of the amendment of 1857. That amendment provides, in terms, that the Legislature shall have the power to alter, revoke or annul any charter thereafter conferred by special or general law, whenever in their opinion it may be injurious to the Commonwealth, in such manner, however, that no injustice shall be done. It strikes me, that with the same reason might companies, incorporated after 1857, complain that their vested rights were struck at by the existing constitutional provision, as companies coming hereafter before the Legislature for special favors, or obtaining privileges under general legislation, can properly complain that the present article, if adopted as part of the fundamental law of the land, shall be made applicable to them.

No man recognizes more fully than I do the right of these great interests to be heard upon the floor of this House. I would go further and say that interests of such vast magnitude have the right to be represented here; and I have never objected to any gentleman, possessing peculiar means of knowing their wants and their wishes and of stating objections to what he considers unwise legislation, presenting his views as fully and as often as he desires. So far from objecting, I believe a very large, a very decided majority of this House always hears with pleasure from those who have special sources of information upon any subject whatever.

But, Mr. Chairman, that is not the question now before us, nor is the wisdom or the existing condition of the law at all a matter under consideration. Professional gentlemen may have different views in regard to the correctness of the decision known as the Dartmouth college case. That decision, in its true purview, in its real scope, was only dealing with a private charity founded by a private individual, who had a right to dictate the terms and limitations of his gift as he pleased. We may, therefore, believe, without at all desiring to strike at vested interests, that when the Supreme Court pronounced that any interference with the terms of that private bounty would be in violation of a contract, that every franchise granted by successive Legislatures, year after year, to these corporate bodies, did not necessarily partake of the same contractual character. It may have been supposed that such a deduction was pushing a just principle to an absurd conclusion. No man on this floor, however, quarrels with the law as it is. I state the case, I think, as it really occurred.

If the principle of the Dartmouth college case is so omnipotent, so universal in its application, as to bring within its protecting influence the franchises conferred upon these corporations, be it so; we so understand it; we so receive it; we desire not to legislate here otherwise; but it is for that very reason, and no man can look at this section without seeing it written transparently on its face, that we desire to say to these bodies for the future, "yes, we respect your contracts; true the people, by these successive grants, have really left little or nothing to confer upon anybody else, but if what you have already got exists in the shape of contract, keep it; we will not disturb the enjoyment of what has been so obtained. But do not come before us hereafter, do not ask to take away the little remnant of that which is left as valuable in the hands of the sovereign power, and while you stretch out one hand to receive a boon, with another present an obstacle to the enforcement of the Constitution as it is established." It is to correct this great anomaly that this section is found here, and we may as well admit now and for all time, that unless you put a section substantially like this in the article under consideration, you may as well tear it up, and erase it from your records, and proceed to the discussion of something else; because we have been told here—I do not say by way of threat, but by way of warning—as to several of the provisions found in this article, that the two great leading corporations in the State can each afford to pay five millions of dollars into the public treasury, provided we fasten what are called these trammels upon the condition and action of the corporations who are hereafter to receive their life at the hands of this Commonwealth, leaving, as we are told we must do, those others unaffected. I am not speaking rhetorically when I say this; I am merely repeating the very language——

Mr. CUYLER. No such language certainly fell from me. I never entertained any such thought.

Mr. BIDDLE. No, sir; the House know very well to what I refer. I am not speaking of what fell from your lips. I am repeating the very words that fell from the lips of a gentleman advocating (as undoubtedly he had a right to do) what he conceived to be the true policy that should be pursued by this Convention.

Now, Mr. Chairman, how far have we proceeded? Do I understand the advocates of these corporations—and I use the word in no unkind sense; I recognize, as I said in the beginning, their right to be heard and to be heard fully; I will call them the friends—do I understand the friends of these corporations to say that no change is needed in the Constitution by which they may be affected? That will hardly be said. That can hardly be admitted. Will gentlemen say to us, after the result of the labors of the last three or four days, that it is not a wise thing to prevent the absorption of competing lines, that it is not a wise thing to make these corporations answerable for what I still choose to call the consequential damages, resulting from injury by the construction of their works? Will gentlemen say that there is anything impolitic or improper in allowing stockholders, bondholders or others having a pecuniary interest to know who their fellows are in each corporation? Will gentlemen say that we have substantially invaded any sacred right of contract by anything which has been done here? I cannot see it in that light. But suppose it be so, the objection should be made to those sections, and not to the section now under discussion, which merely says: "You corporations, who boast and say, 'we cannot be touched; you are putting money in our pockets by what you are doing in regard to the future offspring of the Legislature;' you, too, shall come under the same general law whenever you place yourselves in the position of seekers of legislative favors." Where is the principle in this that strikes at the impairing of the obligation of contracts? Where is the injustice? Where is the black crape and pistol, in this, of the highwayman? Where is the robbery? Where is the thievishness? I do but repeat the terms that have been employed on the other side of this question in discussing the fundamental principle of justice and common sense contained in this article.

Mr. Chairman, I deny that there has been anything like an effort here, in any one single provision of this article, to attempt to extort, by the supposed superior force of the Commonwealth, any right which has been consecrated under the terms of a contract, and which now exists in the possession of any one of these corporations. Point it out, if it be so. Do not denounce by general rhetorical phrases; do not perorate on this subject. Lay your hands upon any one single clause by which anything like injustice is attempted to be done; and my word for it, if this House shall be convinced that in their previous action anything like wrong has been committed, they will at once strike the obnoxious section from this instrument. But I would say to this House, and I would say to the gentleman who spoke last, who knows how to advocate so ably the interests entrusted to his care, that superior astuteness will always be more than a match for what is called superior force. The world is not governed now by brute force; intelligence is a much more powerful element in its direction, and it is no figure of speech to say that "the pen is mighter than the sword." The pen which is employed year after year in the writing of the special provisions which each successive Legislature confers upon these corporations, and which have become so large that they are contained in a volume larger than the codes of many communities, bears mute but eloquent testimony to the truth of what I am saying. I will go as far with my friend as any one, in the attempt to remedy anything like an act of injustice where it is pointed out. I will go further than the exigency of this case requires.

We have had made, time and again, in the discussion of this article, references to the tonnage tax and to its repeal. I say now, although my action would probably have been misconstrued if I had been a member of the Legislature when that repeal was voted; I say, now, that I believe the repeal of the tonnage tax was an act of legislative wisdom, of legislative justice; that it ought to have been done; that the tax was acting unjustly and oppressively upon our own interests, and that the sooner it was got rid of, the better. And I am willing, moreover, to concede—because the gentleman who last spoke states it—that the company in whose favor the repeal was made has lived up to the terms of its engagement with the Commonwealth. Pray, what has that to do with the section under con-

sideration, except, as I shall attempt to show directly, to strengthen and confirm the reasoning in favor of its adoption?

The section now under consideration means nothing more nor less than this: Suppose that the gentleman who spoke last, (Mr. Cuyler,) and the gentleman who preceded him, (Mr. Gowen,) and other gentlemen who are specially interested and concerned in these companies, had themselves drawn up an article by which, recognizing the existence of certain evils in connection with them, they had attempted, as I am sure they would fairly have done, if the task had been committed to them, to remove them. Their plan would have been laid before this Convention for consideration. But I will go further; I will suppose that from the hands which framed it, it came forth so perfect that it required no single alteration or amendment. It is just about being adopted; some one gets up and says: "The Dartmouth college case instructs us that every franchise at present owned by any of these corporations is a solemn contract; most of these corporations date their charters back to a period long anterior to the year 1857; we know that as to all corporate bodies coming into existence after that date, the Legislature has the power to which I referred a little while ago, under constitutional sanction, to act upon those since incorporated. But there are many, and very great corporations, who say, and who say truly, your article will be inoperative as to them. Now, we recognize the anomaly; we recognize the practical absurdity, after these vast grants of power have already gone out from the Legislature, to attempt to fetter the limits of the few puny corporate children that may be brought into life hereafter. What is to be done by us?" Is it wrong, is it unfair, is it in the spirit of the highwayman, to say in answer to just such a question, "corporations already in existence, you who have already had conferred upon you a large share of the sovereignty of the State, if you desire to receive further legislative favors, if you shall ask hereafter an extension of that which is already very large, conform to, bring yourselves under the operation of the present existing Constitution. Liken yourselves to those who have been created since its adoption, and you shall then receive whatever may with propriety be granted to you. If you refuse to do this, the door of legislative beneficence shall be forever closed in your faces?" What more is done, in saying this, than was done by the act of 1861, when the tonnage tax was repealed? Was there not, by it, concession made in the future by the corporation, as an equivalent for the remedial legislation? As well might my learned colleague from Philadelphia (Mr. Cuyler) tell me that the act of 1861 was an act of injustice and a violation of contract, because when the Legislature, in its bounty, in its sense of justice, if you please, chose to repeal the tax which was pressing so hardly upon the Pennsylvania railraid company, they coupled it with conditions, excluding them, and properly, from the acceptance of the bounty unless they took it with the terms annexed to it. That is all this section says; that is all it means. If this be striking down a contract, then why does my friend tell us, not by way of boast, but by way of just pride and confidence in the integrity of the company with which he is so familiar, that from that day to this it has fairly lived up to the terms of its engagement? That is all the section means; and I put it to gentlemen of the Convention whether it would not be a striking absurdity when we have heard, day after day, what we have heard, when it has been harped upon by way of objection to every provision, no matter how salutary, that you can only reach the future, that the past is beyond your control, whether we would not be guilty of an act of most monstrous fatuity, while we have the power now in our own hands, by writing into this article the few lines contained in this section, to compel these companies, when they seek for future benefits, to bring themselves under precisely the same law, which we are bound to believe good, because we ordain it for all future corporations, were we to strike them out, or omit them now, because they may prove unpalatable to those who have already waxed great under the large lease of power already extended to them.

For these reasons, Mr. Chairman, I trust the House will adopt this eighteenth section.

The CHAIRMAN. The question is on the amendment of the gentleman from Tioga.

Mr. NILES. I withdraw my amendment.

The CHAIRMAN. The amendment is withdrawn. The question is on the section.

Mr. T. H. B. PATTERSON. Mr. Chairman: I did not desire to say a word again to this House on this article, but as I understood the remarks of the gentleman from Philadelphia (Mr. Gowen) to have referred to myself and to some statements made by me in a brief argument yesterday morning, I should like to ask that gentleman——

Mr. LILLY. I rise to a point of order. Is such a debate in order?

The CHAIRMAN. The gentleman will state his point of order.

Mr. LILLY. The point of order is that these questions bring up personalities that are out of order in this committee.

The CHAIRMAN. The gentleman from Allegheny will proceed in order.

Mr. T. H. B. PATTERSON. I am not out of order. I ask the gentleman from Philadelphia if, in his remarks made before dinner and his remarks made since dinner, he referred to anything said by me?

The CHAIRMAN. That question does not appear to the Chair to relate to the section; and as the point of order is raised the Chair must sustain it.

Mr. T. H. B. PATTERSON. I ask the gentleman in regard to his speech made on this section, whether it referred to my argument in the use of the language which he stated had been employed by a member on the floor of this House?

Mr. LILLY. All this is clearly out of order, and I object to getting into personalities.

Mr. T. H. B. PATTERSON. I ask the gentleman from Philadelphia, Mr. Gowen, if I may be pardoned for using his name, in order that it may be understood whom I mean, if he will allow himself to be interrogated?

Mr. GOWEN. If there is any parliamentary way by which I can get the floor when anybody else is speaking, I will answer any question that is put to me. [Laughter.]

The CHAIRMAN. Does the gentleman from Allegheny yield to the gentleman from Philadelphia?

Mr. T. H. B. PATTERSON. I do not yield except for the purpose of answering my question.

The CHAIRMAN. The gentleman from Allegheny is entitled to the floor and will proceed in order.

Mr. T. H. B. PATTERSON. I will yield for the purpose of an answer to my question.

The CHAIRMAN. The gentleman from Philadelphia.

Mr. GOWEN. What is the question? [Laughter.]

Mr. T. H. B. PATTERSON. I ask the gentleman from Philadelphia whether, in his remarks on this section, in referring to the statements of a member with respect to vested rights, and that we had no right to regard them, and with respect to the expediency that was to be consulted only and not a question of rights, he referred to my remarks.

Mr. GOWEN. I referred ——

Mr. LILLY. I insist that this is not in order.

The CHAIRMAN. The Chair over-rules the point of order of the gentleman from Carbon. The question is not out of order. It relates to the debate on this section.

Mr. GOWEN. I referred to what the gentleman now on the floor said yesterday. If he withdraws it, I have nothing more to say.

Mr. T. H. B. PATTERSON. I simply wish to state to the House what I did say, and not to be misrepresented.

The CHAIRMAN. If those remarks were not made on this section, the point of order would apply, and as the point of order has been raised, the gentleman from Allegheny will confine himself to the section.

Mr. T. H. B. PATTERSON. I will speak to this section. I said, in regard to the principle involved in this section, that I did not consider that it involved, or that any other section of this article involved, a question of vested rights; that so far as corporations had vested rights this Convention could not disturb them; that so far as they were public corporations, and had not vested rights, this Convention could do whatsoever to it seemed most expedient, and for the best welfare of the people of Pennsylvania; and if the gentleman from Philadelphia has any objection to make to that statement, I would desire him, when he comes to knock chips off or to have chips knocked off, to confine himself to the language used by gentlemen in debate on this floor. That is my view of the law, and I would further state that it is the only view of the law I ever presented on this floor. I would also say that I never made any speech in which I referred to the gentleman from Philadelphia, yesterday or the day before; and therefore, when he is so anxious to find some excuse for attacking other members on the floor of this House, he had better be careful

that the facts and the language will bear him out.

Now, Mr. Chairman, I have simply to say on this section that I wish the members of the Convention would consider that this section, if it means anything at all, means simply to make the subject matter of the sections which precede it the fundamental law of this State. Those sections which have been adopted have been considered, debated, discussed *pro* and *con* in this House fully. They have been adopted by a majority of this committee of the whole. If this committee of the whole, in adopting these provisions, after full discussion, have been acting the part of highwaymen and robbers and thieves, then the adoption of this section is simply sanctioning what they have already done. If they have been acting as deliberate delegates of the people of Pennsylvania, and have tried to adopt sections that simply amend what they understand to be the provisions of the fundamental law which are necessary to the well being and welfare of the people of Pennsylvania, then the vote upon this section simply means to ratify those sections which have been so adopted, and to say that in future all corporations now existing shall, if they desire any further legislation or further exercise of the power of the people of Pennsylvania, come in on the ground floor with the corporations and individuals of Pennsylvania who will be provided for in the future. And here I just wish to add that, in so doing, I cannot see how in the world the people of Pennsylvania are exercising any power further than that which is legitimate and just; and the delegates in voting in favor of this section cannot possibly disturb any vested rights whatever, but simply act out the principles they have already adopted, and vote to ratify them by this section.

With regard to the beautiful rhetoric and the beautiful appeals as to the benefits that have accrued to the people of Pennsylvania, from the corporations of Pennsylvania, we all admit that, and there is not a member on the floor of this house, and not a member of the Railroad Committee, who has any feeling of hostility to the corporations so learnedly advocated by the second gentleman preceding me, from Philadelphia, (Mr. Cuyler.) There is no question with regard to the great benefits that Pennsylvania has enjoyed from her railroads; nobody questions them; and therefore I cannot see the pertinency of such glowing and beautiful pictures to the question before the Convention at this time.

Furthermore, when the advocates on the other side of this question take the Dartmouth college case in all its bearings, and shake their vested rights in the face of this Convention, and say that our action heretofore has been futile, because it cannot affect the corporations of Pennsylvania or disturb vested rights, then I cannot understand why this appeal comes now to ask us to turn around on our action and reverse all that we have already done. I cannot understand why, if the sections we have adopted do not affect the existing corporations of Pennsylvania, the members of this committee of the whole should stultify themselves by voting a vote which virtually says that they have been mistaken, and that the provisions they have adopted, after full deliberation, were those of highwayemen and not those of delegates deliberating for the best interests of all the people of Pennsylvania, corporate and individual, without regard to class or distinction.

Mr. H. W. PALMER. I desire to renew the amendment of the gentleman from Tioga, which was withdrawn, to strike out the words "general or," in the third line.

The CHAIRMAN. The question is on the amendment of the gentleman from Luzerne.

Mr. H. W. PALMER. Mr. Chairman: The practical operation of this section is what I am endeavoring to understand. Suppose it be adopted, and suppose that the Legislature pass an act of Assembly having a general operation upon all railroad companies with respect to freight tariffs, or rights of way, or taxation, or any general subject which may affect them, and suppose that one railroad company accepts the law, and thus comes within the provisions of this article, and all the rest of the railroad companies decline to accept the law, and therefore are not obliged to submit to its operation. Then we would have the curious anomaly of a general act of Assembly apparently applying to all the citizens of the State which one corporation might obey and regard, and another corporation refuse to obey or regard. Now, members of the Legislature cannot run all around the State of Pennsylvania and ask their constituents whether they will accept the provisions of a general law or not. It will happen in the future, just as it has in the past, that it will become advantageous for the Legislature to pass many acts of As-

sembly which will be beneficial to the State, and also incidentally confer a corresponding benefit upon the corporations. Shall the Legislature retain that privilege or be restricted and hampered by the uncertainties that would attend the operation of this section.

Mr. SHARPE. May I ask the gentleman from Luzerne a question?

Mr. H. W. PALMER. Of course.

Mr. SHARPE. If a general law be passed will it not affect everybody, and will not every corporation in the State be *bound* to obey it?

Mr. H. W. PALMER. The gentleman from Franklin asks me whether every corporation will not be bound to obey a general law. As I read the section it provides that any beneficial legislation affecting railroad companies, whether it be general or whether it be special, shall not be taken advantage of by them, unless they accept the provisions of this article. Therefore, it seems to me that the railroad companies have the option to accept a general act or to refuse a general act, and therefore it is that I moved to strike out the word "general."

Mr. DODD. Mr. Chairman, I desire to call the gentleman's attention to the fact that we have already decided there shall be no special law in relation to railroad corporations. Now, if he strikes out all the general laws what will be left of the section?

Mr. H. W. PALMER. It does not make any difference what will be left; if the result of retaining the word "general" would be to make the section ridiculous, we had better leave it out. I am quite content to enforce the provisions of this section, against all companies seeking further special privileges from the State, but to pass general acts beneficial to all companies as well as the State, and then, as a penalty for obedience, strip them of privileges previously conferred, and upon the faith of which large investments have been made and valuable rights vested, seems to me inconsistent with the plainest principles of law and justice, and rather to be expected under an irresponsible despotism than in a government which professes to do equity to all her citizens.

Mr. BIGLER. Mr. Chairman: I ask the indulgence of the committee for a few remarks that will not be directly to the section pending. I wish to say a few words in the line of history, which will possibly be useful hereafter. Twenty-seven years ago the act was passed incorporating the Pennsylvania railroad company. I was a member of the Legislature at the time. I must confess to having been a member and take the consequences of it, whatever they may be. [Laughter.] I voted for that bill. I advocated it. Aye, sir, if you should ask me whether ever I had voted for a tax upon tonnage, I should answer no. My friend from Centre, (Mr. M'Allister,) whose absence I very much regret, alluded to the tax upon tonnage, and enunciated with great earnestness that he could not have voted for any such tax. My friend from the city (Mr. Biddle) has to-day alluded to the tonnage tax and to its adoption. Now it is found in this original charter of the Pennsylvania railroad company; but, for one, I should never have voted for a tax on tonnage, and I do not believe the idea ever entered the mind of any member of the Legislature.

What were the facts? The State had constructed a line of improvements from Harrisburg to Philadelphia, or, if you please, from Philadelphia to Pittsburg, and out of that construction had arisen a large debt, for which the people of the State were liable—every county in the Commonwealth. A proposition was made to construct a parallel line of improvements, and the impression arose very naturally, that it would greatly interfere with the value of the works which the State then owned, and that justice required that something ought to be done to protect that value. The people living in remote counties, distant from the line of this improvement, in the southern tier of counties, and in the northern tier of counties, would have received no benefits from the building of this new line, but there would remain to them the liability for the debt. It would be unjust to them to destroy this value without devising some means for protecting their interests. Then the inquiry arose, how can this be done? It was very natural to conclude that this proposed railroad company must pay something for this valuable grant. Something must enure to the State Treasury, and some protection must be given to the people, who would not be interested directly in this line, and how could that be done, and to what extent should it go?

I think I made the original proposition myself. It was to impose an annuity; so much per annum should the railroad company pay into the coffers of the Commonwealth, in consideration of the valuable franchises for which they were ask-

ing, and in view of the damage which, by its grant, would enure to the value of the State works. It was a matter of justice to the people of the whole State, but in the discussion of the question of requiring the railroad company to pay a settled annuity, it was said, with great force, that it would operate badly because it would strike the railroad enterprise in its infancy, when it was little able to bear the burden, with the same force with which it would strike it when it was matured, in operation, and in full strength. I was unable to answer the force of such an argument, and was led to the wide inquiry, what will this line which it is proposed to establish be able to do in competition with other through lines between the Atlantic and the Pacific; what share of business will it get; what value will it have; how much will it be able to pay, and how much ought it to pay? It seemed to be easier, by far, to raise some principle to arrive at this solution than to predetermine it. The whole of this measure of taxing tonnage was simply a means to measure and ascertain the aggregate sums which should be paid into the treasury annually for the valuable rights which we were about to grant. The idea of a specific charge upon tonnage was, in the first place, applied to one particular part of the season, when the canals were open and in operation, and it was subsequently modified to the form in which it was read to-day, by the gentleman from the city, (Mr. Cuyler;) but, so far as my knowledge goes, a charge per ton per mile was a means to ascertain the aggregate sum, which we all understood was to be paid out of the profits of the railroad company into the coffers of the State, as a matter of justice to those people living in the remote part of the State, who could receive no direct benefit from this new line, but who would be held responsible for their share of the public debt.

That is my recollection of all there is about this matter of tax upon tonnage, of which we have heard so often, not here simply, but all have heard of it as a matter of history. It seemed to become a settled conviction that the Legislature, at the time it incorporated the Pennsylvania railroad company, did actually impose a tax upon tonnage for some reason which nobody would ever be able to define. But I assure you it was for the purpose of determining that aggregate sum; that as the improvement progressed, as business increased, as population became denser, that aggregate sum would increase, and it answered the objection that was made to an annual charge. It did not strike the corporation in full force when it was inserted, but it increased with the increase of the company, and it was intended that the income of the State should increase just as the increased income of the company would allow.

That is matter of history, and with that I shall drop this subject, for I do not intend to discuss the merits of this question.

Mr. MACVEAGH. Mr. Chairman: I do not see how, consistently with the adoption of the preceding section, the committee of the whole can fail to adopt this section. There are matters contained in this section which do not meet my approval or the approbation, I believe, of every gentleman upon this floor; but if we are to construct an article in our new Constitution for the government of railroad and canal companies, I am utterly at a loss to perceive any ground upon which we could be asked to except from its operations, so far as it is in our power to bring them within it, existing corporations. Certainly, rules of this character, if wise and just toward new corporations, would also be wise and just toward existing corporations; and in the effort, therefore, to provide and perfect the article, notwithstanding my difference from it in some particulars, in the effort to make it as perfect as possible, for one, I certainly shall vote for this section.

Mr. HARRY WHITE. Mr. Chairman: I want to vote for this section, but I want to vote for it with a modification. The committee of the whole will observe, the reading of the article in the first part is "shall have any beneficial legislation by general or special law." I wish to modify the section, and I therefore move to amend the amendment, by striking out these words and inserting, "shall have any privileges or benefits from any general or special legislation, except on condition as shall be accepted."

The CHAIRMAN. That is not an amendment to the amendment.

Mr. HARRY WHITE. With all due deference to the Chair, I submit that it is. I move to add the words.

The CHAIRMAN. The trouble is the Chair decides the other way. [Laughter.]

Mr. HARRY WHITE. I submit, of course, but I want to modify the amendment of the gentleman from Luzerne (Mr. H. W. Palmer.)

The CHAIRMAN. The gentleman from Luzerne has the power to modify his amendment.

Mr. HARRY WHITE. I wish to move a modification of his amendment.

The CHAIRMAN. It is not in order at this time.

Mr. GOWEN. Mr. Chairman: I should like to call the attention of the committee of the whole to the fact that what we have already adopted may be divided into two classes of subjects, one of which might be called mere police regulation for railroads, and the other class affects the right to use certain corporate franchises. So far as the amendment to the Constitution simply applies to the regulation of railroad companies, that is, their right to charge fare, their right to discriminate, their liability to taxation, their right to make leases, their liability to furnish cars equally—all these things ought to apply to every railroad company, no matter how its charter may be protected by the Constitution of the United States.

But gentlemen lose sight of the fact that this article goes further. In at least two sections it declares it to be unlawful to do that which very many corporations were specifically chartered to do; and therefore, with reference to those two sections, it is manifestly unjust, either to take this corporate right away from a company, or else, if it is not surrendered, to threaten that company with extinction, with ostracism, as it were, and with being left out in the cold when any beneficial legislation is being given to other corpotions.

Let me call the attention of the committee to this. The first section provides for a free railroad law; there is nothing objectionable in that. The second, that there shall be a public office; there is nothing objectionable in that to any corporation. The third, that no property shall be exempt from taxation; there is nothing objectionable in that; and I admit that every corporation, no matter whether it is protected or not, should surrender that exemption.

Mr. MACVEAGH. May I make a suggestion to the gentleman?

Mr. GOWEN. Certainly.

Mr. MACVEAGH. I see the gravity of the distinction he makes. Would it suit his own judgment if he would suspend his remarks in the present limited number of the House and resume them when the Convention again meets? I do not believe we have a quorum here.

Mr. GOWEN. Yes, I think we have.

The CHAIRMAN. The Chair has ascertained that there is a quorum present.

Mr. GOWEN. The mattter is of importance and of very great importance. There are two general distinctions. The one is police regulation; the other is use of corporate franchises specifically granted for a particular purpose. Now, with reference to the first class, I have no objection, and nobody could have any objection, except in this respect, that where you say a railroad shall never hold or lease a competing road or a competing line, and then afterwards declare that no railroad company shall ever accept the benefit of any legislation without complete obedience to this article, the question that troubles me is, whether a company that already has leased a competing road or a competing canal and already has it, or has merged it, would not be obliged to give up that lease as a condition precedent to receiving any legislation. I hope gentlemen take the distinction. Let me mention the names of particular companies. The Reading railroad company has a perpetual lease of the Schuylkill navigation, which, in every respect, is a competing line; it commences right beside it and runs parallel with it throughout its entire extent, and ends at its terminus. Hereafter the Reading railroad company, although its charter was obtained in 1833, can never lease any competing line. I admit we are bound by that, and agree to be bound by it, but does it follow that we are to give up the leases that we already have, as a condition of accepting any beneficial legislation hereafter?

If it does, then there should be a proviso added to this section that contracts already made are not to be affected, because the right to make this contract was given since 1857. It is not by virtue of the antiquity of the chartered right to do the thing, that this property is held; but it is simply because the contract of merger, or the contract of lease, in itself, was such a contract as is protected by the Constitution of the United States, irrespective of the corporate age of either party to the contract. If gentlemen follow me to the legitimate conclusion of what I desire to call their attention to, it strikes me that the argument is irresistible that any lease of a competing road, or any merger of a competing road already made, would have to be surrendered by any corporation that would want to accept any legislation hereafter. If that is the intention of the Rail-

road Committee, it would not only work manifest injustice in some cases, but the remedy sought to be obtained would be absolutely impossible. Take a merger of a competing road. Where has the stock gone? You cannot tell who were the stockholders. The certificates are surrendered and cancelled, and new certificates in the new company have been issued and passed from hand to hand; no earmark has been put upon them. You can not single out from among the stockholders of the company into which another was merged, after the lapse of a week sometimes, the particular shares of stock that were issued as the representative of those shares in the merged company that were cancelled, and therefore you cannot apply the remedy; it would be impossible, leaving out of the question its injustice.

Therefore, if I am right in the scope of this article, it would compel every existing lease, and every existing merger, which is in violation of the terms of these provisions, to be surrendered or cancelled as the consideration of obtaining any legislation. But that which I have just been calling the attention of the committee to was simply a branch of the first clause. Now, I desire to call attention to the second; and that is, that this article prohibits the exercise of corporate franchises which are held by certain companies under contract, and which are the entire franchises that they possess, and that is the right of a railroad company to mine coal. There are in the State of Pennsylvania a number of railroad companies having charters that permitted them to buy coal lands and mine coal, and nearly all of those companies are protected by the Constitution of the United States. Even the Reading railroad company has a charter, which was obtained between 1840 and 1850, giving it an unlimited right to own coal lands and mine coal. The Delaware and Hudson charter certainly was granted before 1857. The rights of the Delaware, Lackawanna and Western, and nearly all the large coal companies that have made Luzerne county so prosperous by their expenditure of money, were acquired prior to 1857.

Now, the seventh section of this article provides that no railroad company shall hereafter engage in mining coal. Here are a number of railroad companies, chartered specifically for the purpose of mining coal, whose rights are protected by the Constitution; and why should they be taken away? I have not heard a single complaint here from the county of Luzerne against these large corporations engaged in mining anthracite coal. Everybody who has spoken on this floor admits that those rights are protected; and even the advocates of this section ask us simply to point out anything in which it is going to injure a large railroad company. If these rights are to be protected, let this section be guarded, by providing that these particular things to which I have referred shall not be forbidden, and that all leases or contracts heretofore made in good faith, and already executed, shall be protected. If that is done I have no objection to this article, none whatever, because, leaving those questions out and leaving the free railroad out, I take it, every other section that has been adopted in regard to the distribution of cars, the freight charges and discriminations, was part of the common law, and is binding on all railroad companies; and whether it was part of the common law and was binding on railroad companies or not, it is certainly clearly such a police regulation as the Legislature itself would have a right to impose upon any railroad company irrespective of the time at which it acquired its franchise.

The CHAIRMAN. The question is on the amendment of the gentleman from Luzerne (Mr. H. W. Palmer.)

Mr. TURRELL. Mr. Chairman: I have but one word to say. I have listened to the remarks of the gentleman who has just resumed his seat, and it seems to me that the argument which he raises here in relation to companies who have leased other works is specious and unsound. He asks for protection for them, and places them in a different category from companies who still own and run their own works under their direct charter. Now, it seems to me no question could arise of the kind he suggests. Why? These leases are generally for long periods of time; they are treated as a practical sale. The leasing company becomes, to all intents and purposes, the owner of those works, and they would have the same right to accept or refuse any such legislation as is here contemplated as they would under their original charters, or in their original capacity; and no question could arise, except, possibly, at the termination of such leases.

When the lease ended then a question might arise whether the lessor—the leasing company—could bind the other be-

yond the time of the lease. There is where the question might possibly arise, but not otherwise. The company who hold the lease are the owners, to all practical intents and purposes, and would so act in accepting or rejecting the benefits of any such legislation as is here contemplated. That is the way it strikes me.

The CHAIRMAN. The question is on the amendment of the gentleman from Luzerne, to strike out the words, "general or."

The amendment was rejected.

The CHAIRMAN. The question is on the section.

The section was agreed to, there being, on a division: Ayes, forty-six; nays, eighteen.

The CHAIRMAN. The next section will be read.

The CLERK read section nineteen, as follows:

SECTION 19. The existing powers and duties of the Auditor General, in regard to railroads, canals and other transportation companies, are hereby transferred to the Secretary of Internal Affairs, subject to such regulations and alterations as shall be provided by law; and in addition to the annual reports now required to be made, said Secretary may require special reports at any time upon any subject relating to the business of said companies from any officer or officers thereof; and it shall be his duty, on complaint made against said corporations by any citizen, person or company interested, of a violation by law, or any infraction of the rules of said corporation, injurious to the rights or interests of such complainant, to investigate said complaint; and if it shall appear that any violation has taken place, he shall proceed either against said corporation, or the officers thereof, or both; and if on complaint made, or of his own knowledge, it shall appear that any railroad or part thereof is so insufficiently or carelessly constructed, supported, guarded, protected, or so out of repair, as to imperil life or property, he shall at once notify such delinquent corporation of the same, and specify and direct the remedy to be applied, and it shall be the duty of such corporation to repair, support, make safe from, or remove said cause or peril, under such regulation, not inconsistent herewith, as shall be prescribed by the Legislature to carry this section into full effect.

The CHAIRMAN. The question is on agreeing to the section.

The section was adopted.

Mr. KAINE. I offer the following, to come in as a new section:

"Railroad companies shall have the right to connect their railroads by proper connections with the railroads of each other, and shall have the right to pass their cars, either empty or loaded, over each other's railroads free from discrimination in rates or charges, and without delay or hindrance in their movements."

The CHAIRMAN put the question on the amendment and declared that the noes appeared to have it.

Mr. KAINE. Before the vote is announced I desire to make a statement with regard to that section.

The CHAIRMAN. The gentleman from Fayette asks consent to make a statement.

Mr. COCHRAN. If the gentleman from Fayette will give way, in order to give him an opportunity to make the statement under favorable circumstances, I will move that the committee rise.

Mr. KAINE. Oh, no; I do not ask that. I would rather withdraw the section and I offer it on second reading.

I consider this section a very important one. It enables one railroad company to run its trains upon the lines of another. They have the right, and it has been decided by the Supreme Court that one railroad may tear up the connection that is made with another road, and thereby inflict great injury on the community. A case of that kind now exists in my own county, where a road connecting with another road, doing a large business, undertook to destroy the lease, as they said, and tore up the connection, and there has not been any connection now for three or four weeks, to the very great injury of the people. The amendment can do no harm. I showed it to the gentleman from Philadelphia, (Mr. Gowen,) and he said it was perfectly proper and right, and should be adopted.

The CHAIRMAN. The Chair will put the question on the amendment again.

The amendment was agreed to, there being, on a division: Ayes, forty-one; noes, eight.

The article, as reported, having been gone through with, the committee rose, and the President having resumed the chair, the Chairman (Mr. Broomall) reported that the committee of the whole, having had under consideration the article reported by the Committee on Rail-

roads and Canals, had directed him to report the same with amendments.

The amendments were read.

The article as proposed to be amended by the committee of the whole is as follows:

ARTICLE —.

OF RAILROADS AND CANALS.

SECTION 1. Any individual, company or corporation, organized for the purpose, shall have the right to construct a railroad or canal between any two points in this State. Any railroad may intersect and connect with any other railroad, and no discrimination shall be made in passenger and freight, tolls and tariffs on persons or property passing from one railroad to another, and no unnecessary delay interposed in the forwarding of such passengers and property to their destination. The Legislature shall, by general law, prescribing reasonable regulations, give full effect to these powers and rights.

SECTION 2. Every railroad or canal corporation, organized or doing business in this State, shall maintain an office therein for the transaction of its business, where transfers of its stocks shall be made, and books kept for the inspection by any stock or bondholder, or any other person having any pecuniary interest in such corporation, in which shall be recorded the amount of capital stock subscribed or paid in, and by whom, the names of the owners of its stock, and the amounts owned by them respectively, the transfers of said stock, and the names and places of residence of its officers.

SECTION 3. The property of railroad and canal corporations and other corporations of a similar character doing business in this State, and other companies now existing, or hereafter created, shall forever be subject to taxation; and the power to tax the same shall not be surrendered or suspended by any contract or grant to which the State shall be a party.

SECTION 4. No railroad, canal or other corporation, nor the lessees, purchasers or managers of any railroad or canal corporation, shall consolidate the stock, property or franchises of such corporation with, nor lease, purchase, or in any way control any other railroad or canal corporation, owning or having under its control a parallel or competing line; nor shall any of the officers of such railroad or canal corporation act as an officer of any other railroad or canal corporation owning or having the control of a parallel or competing line; and whether railroads or canals are parallel and competing lines shall always be decided by a jury in a trial, according to the course of the common law.

SECTION 5. No railroad, canal or other corporation doing business as a common carrier shall, either directly or indirectly, hold, guarantee, or endorse shares in the capital stock, bonds or other indebtedness of any other corporation, individuals or partnership except those doing the business of common carriers.

SECTION 6. No incorporated company doing the business of a common carrier, nor the officers or managers thereof, shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for other persons or corporations for transportation on the works of said company; nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining and manufacturing company may carry the products of its mines and manufactories on its railroad or canal not exceeding fifty miles in length.

SECTION 7. No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof, and such corporations shall carry the persons and goods of the people of this State on as favorable terms as those of other States brought into or through this State on the works owned or controlled by such corporation; and the charges for freight and fares for passengers shall, for equal distances in the same direction, be the same; and a higher charge shall never be made for a shorter distance than is made for a longer distance; and no special rates or drawback shall, either directly or indirectly, be allowed; but commutation tickets to passengers may be issued as heretofore, and reasonable extra rates within the limits of the charter, may be made in charges for any distance not exceeding fifty miles.

SECTION 8. All railroads and canals are declared public highways, and all individuals, partnerships and corporations shall have equal right to have persons and property transported thereon, except officers and partnerships or corporations composed in whole or in part of officers of each respective railroad or canal, who are hereby prohibited from engaging in

the business of forwarding or transporting on the lines thereof; and all regulations adopted by the companies owning, controling or managing such railroads or canals, having the effect of hindering or discriminating against individuals, partnerships or corporations, except as above excepted, in the transportation of property on such railroads and canals, shall be void; and no railroad corporation, nor any lessee or manager of the works thereof, shall make any preference in their own favor, or between individuals, partnerships and companies shipping and transporting thereon, in furnishing cars or motive power.

SECTION 9. No railroad, canal or transportation company shall issue any stock or bonds, except for money, labor or property actually received and applied to the purposes for which such corporation was created; and all stock dividends, and other fictitious increase of the capital stock or indebtedness of any such corporations, shall be void. The capital stock and corporate indebtedness of railroad, canal or other corporations, engaged in the business of common carriers or transporters, shall not be increased, except in pursuance of a general law, nor without the consent of a majority in value of the stockholders of such corporation first obtained at a meeting to be held after sixty days' notice given in pursuance of law. All laws heretofore enacted by which an increase of the capital stock, or of the bonds or other evidences of indebtedness of any railroad or canal corporation, has been authorized, are hereby declared void, except so far as may be necessary to maintain the obligation of contracts made and executed in accordance therewith.

SECTION 10. All municipal, railroad, canal and other corporations and individuals shall be liable for the payment of damages to property, resulting from the construction and enlargement of their works, as well to owners of property not actually taken as to those whose property is taken; and said damages shall be paid, or secured to be paid, before the injury is done.

SECTION 11. No street passenger railway shall be constructed within the limits of any city, borough or township without the consent of its local authorities.

SECTION 12. No railroad, canal or other transportation company in existence at the time of the adoption of this article, shall have any beneficial legislation by general or special laws, except on condition of complete acceptance of all the provisions of this article.

SECTION 13. The existing powers and duties of the Auditor General in regard to railroads, canals and other transportation companies are hereby transferred to the Secretary of Internal Affairs, subject to such regulations and alterations as shall be provided by law, and in addition to the annual reports now required to be made, said Secretary may require special reports, at any time, upon any subject relating to the business of said companies, from any officer or officers thereof; and it shall be his duty, on complaint mad against said corporations by any citizen, person or company interested, of a violation by law or any infraction of the ru of said corporation, injurious to the right or interests of such complainant, to investigate said complaint; and if it shall appear that any such violation has taken place, he shall proceed either against said corporation, or the officers thereof, or both; and if, on complaint made, or of his own knowledge, it shall appear that any railroad, or part thereof, is so insufficiently or carelessly constructed, supported, guarded, protected, or so out of repair as to imperil life or property, he shall at once notify such delinquent corporation of the same, and specify and direct the remedy to be applied, and it shall be the duty of such corporation to repair, support, make safe from, or remove said cause of peril under such regulation, not inconsistent herewith, as shall be prescribed by the Legislature to carry this section into full effect.

SECTION 14. Railroad companies shall have the right to connect their railroads, by proper connections, with the railroads of each other, and shall have the right to pass their cars, either empty or loaded, over each other's railroads, free from discrimination in rates or charges, and without delay or hindrance in their movements.

THE JUDICIARY REPORT.

Mr. S. A. PURVIANCE. I move you, sir, that the consideration of the report of the Judiciary Committee be assigned for Monday next at eleven o'clock.

The PRESIDENT. The motion is not in order without leave of the House.

Mr. S. A. PURVIANCE. I ask leave of the House that the report of the Judiciary Committee be fixed for Monday at eleven o'clock.

The PRESIDENT. The Chair will suggest that the making of special orders

only tends to entanglements. If it is the general understanding to take up that report at the hour named, it will then be taken up; but if an hour is now fixed, when that hour arrives we may be in committee of the whole on another subject, and thus embarrassment would be occasioned.

Mr. HARRY WHITE. Allow me to remark that the chairman of the committee, (Mr. Armstrong,) in going out, asked me, if the matter came up in his absence, to request the committee, if any hour was fixed, to fix it for Monday.

Mr. KAINE. That report is the first business in order at any rate. It has been a special order every day, but the article on railroads and canals had precedence by a vote of the Convention.

The PRESIDENT. It is not a special order for Monday next, and a special order at a particular hour always leads to entanglement, except in what are really and strictly political bodies, where all advantages are taken and where things are purposely entangled for the purpose of getting those advantages; but in a body like this, the making of special orders is a mistake.

Mr. DE FRANCE. I move that the Convention adjourn.

The motion was agreed to, and, at five o'clock and forty-one minutes P. M., the Convention adjourned to meet on Monday next at ten o'clock.

EIGHTY-SEVENTH DAY.

MONDAY, *April* 28, 1873.

The Convention met at ten o'clock A. M., Hon W. M. Meredith, President, in the chair.

Prayer by Rev. J. W. Curry.

The Journal of the proceedings of Friday last was read and approved.

THE JUDICIAL SYSTEM.

Mr. LILLY. I move that the Convention resolve itself into committee of the whole to consider the article reported by the Committee on the Judiciary.

The motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Harry White in the chair.

The CHAIRMAN. The committee of the whole have had referred to them the report of the Committee on the Judiciary, proposing an amendment to the Constitution of the State, in the form of an article on the Judiciary. The first section of the article will be read.

The CLERK read as follows:

OF THE JUDICIARY.

SECTION 1. The judicial power of the Commonwealth shall be vested in a Supreme Court, in a circuit court, in courts of oyer and terminer and general jail delivery, in a court of common pleas, orphans' court, and a court of quarter sessions for each county, in justices of the peace, and in such other courts not of record as the Legislature may determine, with civil jurisdiction not exceeding three hundred dollars, and with such criminal jurisdiction and powers as shall be conferred by law. No court of record other than those herein designated shall be established.

Mr. S. A. PURVIANCE. Mr. Chairman: I move to amend the first section, by striking out, in the second line, the words "in a circuit court." In moving this amendment it will be expected of me that I should make at least a few remarks in support of it. I have made the motion to strike out the words, "in a circuit court," not for any purpose of forestalling any proposition, such as gentlemen may have on the other side, but I make it for the purpose of shortening the deliberations of the committee on this first section, because it will be observed that if in the commencement of the discussion we turn our attention to the details of any system that may be proposed here for a circuit court, after discussing for days and perhaps for weeks the merits of some specified scheme, we should then be called upon to vote on a succession of schemes which might be presented as amendments to the scheme proposed by a majority of the committee, and thus occupy much time before attaining a vote on the main question, whether there shall be a circuit court at all.

In making this motion, Mr. Chairman, I do not mean to affect or limit the right of discussion of gentlemen on the other side of the question. I am aware of the fact that the chairman of the Committee on the Judiciary (Mr. Armstrong) has matured a scheme and that the distinguished gentleman from Philadelphia, on my left, (Mr. Woodward,) has also matured a scheme; and I here undertake to say, in all frankness, that if a circuit court is to be constructed, I believe those distinguished gentlemen have presented probably the very best plan that could be devised. But, sir, being as I am, wholly opposed to everything in the nature of a circuit court, I am constrained to oppose their scheme, and indisposed to accept any of them.

Mr. Chairman, a circuit court in Pennsylvania is unnecessary. It is asking us to inject into the jurisprudence of our Commonwealth, between the Supreme Court and the common pleas, an intermediate court; and what is that all for? I undertake to say that if you give increased judicial force to your district common pleas courts, you do not need anything like an intermediate court.

I am aware of the fact that gentlemen will say, and probably argue with great force, that this intermediate court is necessary for the relief of the judges of the Supreme Court, who, they will say, (and perhaps it is true to some extent,) are overworked. There are other plans that may be submitted for the relief of the Supreme Court that, in my judgment, will

not shift the burdens from the Supreme Court upon the shoulders of the gentlemen of the bar of the State and increase the expenses of litigation in the courts. I will say, with regard to the relief proposed to be given to the Supreme Court, there is a plan which I will submit briefly, not because I believe it is the best plan, but one which I think will answer all the purposes, afford relief to the Supreme Court, and at the same time bring about a decision of all the cases which may come before that tribunal in a single year, and that is this:

Instead of throwing this burden upon the people and upon the bar, and increasing the labors and the expenses of litigation, let your Supreme Court be divided. Let your State be divided into three districts, Eastern, Middle and Western; and let the judges of those districts sitting in banc try their causes, but not promulgate their opinions until they meet in review, say in the month of May, at the Middle district, at Harrisburg, sit in review there, and there decide their causes and promulgate their decisions.

I say that that would give us a remedy, and why? Because all the time that is now consumed by the Supreme Court, which is about six or seven months, is divided into three parts, eastern, middle and western. By requiring the three judges of each district to sit in banc and hear the causes, they will go through their list entirely, and then, at the Middle district, there would be the full force of the nine judges in giving efficiency to the law.

I am opposed to this circuit court, not only for the reason that I believe it is unnecessary, but because I believe it encumbers the machinery of the administration of justice, and how? It provides, in the first place, that you limit the jurisdiction of the Supreme Court; that no case, unless it is a case exceeding two thousand dollars, shall be taken to the Supreme Court directly from the common pleas. All between five hundred dollars and two thousand dollars can go into the appellate jurisdiction of the circuit court, and then, when there, there may be a case that may be gotten into the Supreme Court; but how? Why, sir, by the members of the bar in this State crawling at the feet of the circuit judges, because, in the first place, if the circuit court is unanimous in their opinion, that is conclusive, unless a member of the bar who desires to have a review of his case will go from judge to judge until he passes over the whole eight, supplicating them for a certificate of review in the Supreme Court.

Now, sir, in the first place, look at that. If the circuit judges are unanimous in their decision, it is not likely that there can be a break made in that phalanx. If they are not unanimous, then a party is allowed to go into the court of review; but if they are unanimous, I ask, would there ever be a case taken from the circuit court to the Supreme Court. No high-minded and honorable men of the bar would enter the closet of the judges of the circuit court, and consult them one by one as to whether he should have a rehearing in the Supreme Court or not; and yet, sir, he would be bound to do that; and if bound to do that, what is the amount of labor he will have to go through. He will first have to sit alongside of his Honor Judge Woodward, if he were one of the circuit judges, and go over his case from beginning to end; he would have to point out to his Honor Judge Woodward the point upon which he thought injustice had been done him; and after he had passed from his Honor Judge Woodward, he would have to sit down alongside of his Honor Judge Armstrong, for instance; there he would have to go over the same labor, and so with the whole eight judges, and perhaps, at the end of all that trouble, he is denied the poor pittance of having a trial in the Supreme Court. Now, sir, what is the present system? Any gentleman of the bar can sit down in his office without supplicating anybody, and under an act of Assembly regulating the matter, he can draw up his *præcipe* for a writ of error in the Supreme Court.

Again, sir, with regard to that circuit court, what is it, in my judgment, but a court of delay? It has an original jurisdiction according to this report, and that original jurisdiction is in all cases which exceed in value $500; and it further provides that all cases brought into the court of common pleas, which might have been brought within the jurisdiction of the circuit court, may be certified into the circuit court, and that one of the circuit judges shall once in every year come into each county, if the business requires it.

Now, sir, look at it. Here are forty, fifty or sixty causes brought in the county on claim notes or claims of certain kinds, in many of which there is no just defence, and for the purpose of delay merely they are certified into the circuit

court; and thus in one county, a county of the size of Lycoming, there may be forty or fifty causes certified there. A judge comes there once a year and tries causes for one week. He tries, perhaps, three, four or five causes; the rest remain; they go over, and some of them do not have a trial for four or five years. That is the circuit court as provided for in its original jurisdiction.

As to the circuit provided for in the amendment offered by his Honor Judge Woodward, that provides a different mode, that takes away this original jurisdiction, and in that respect I have to say that I believe it is better than the report of the chairman. In many other respects, however, the scheme presented by the chairman, I think, has the preference.

Now, Mr. Chairman, one or two more words, and I have done. To be sure, it is all based on the idea that the Supreme Court is overworked, and you therefore shut out of the right of review a class of cases, generally speaking, involving only five hundred dollars, because under no circumstances can a five hundred dollar case ever get to the Supreme Court, unless it is through the agency provided for in the report, which is, consulting and courting the circuit judges one by one, unless there should be a divided bench; and here allow me to say, that in the litigation of this State, according to my observation, almost one-half of the cases have been cases involving no more than the sum of five hundred dollars. Now, why should we leave such cases out, why should we deny to such a litigant the right of review, when perhaps all he has in the world is involved, and favor the man who may have a two thousand dollar suit or a ten thousand dollar suit with the right of review?

These, sir, are some of the objections—many others might be made; and I have made this motion for the reason mentioned. I trust the gentleman on the other side will not think it was made out of any discourtesy. I made it because, when we come to the vote upon this motion, it will settle the question as to whether we are to have a circuit court or not; and then, that question being settled, it will relieve us from the labor of doubly traveling over the ground on amendments to the section specifying different schemes for such a court.

Having said thus much, I will not trouble the committee any longer.

Mr. WOODWARD. I move to amend the amendment by striking out the section of the committee, and substituting a section which I send to the Chair.

The CHAIRMAN. The gentleman from Philadelphia cannot so amend the amendment. Does the Chair understand correctly his proposition to be to strike out the whole section?

Mr. WOODWARD. Mr. Chairman: I move to strike out the section which has been read, and substitute the section I want read.

The CHAIRMAN. The Chair will remind the gentleman from Philadelphia that his amendment in that shape is not in order. The amendment of the gentleman from Allegheny is to strike out particular words. The amendment of the gentleman from Philadelphia is to strike out the whole section and insert.

Mr. WOODWARD. I was told last night that there was an arrangement by which this whole subject would be ignored. I did not know that it was to be so completely carried out thus early.

The CHAIRMAN. Does the gentleman from Philadelphia mean to reflect on the Chair? There has been no arrangement between the Chair and other gentlemen. The gentleman is mistaken if he means any such thing.

Mr. WOODWARD. I took the floor directly when the Clerk commenced reading the section, with a view of offering my amendment, the President of the Convention having told me a few minutes before that that was my best form to come at it, but it seems I cannot move it.

The CHAIRMAN. The Chair recognized the gentleman who he supposed claimed the floor first. The gentleman from Lycoming, the chairman of the Committee on the Judiciary, has been claiming the floor, and is now entitled to the floor.

Mr. WOODWARD. Very well.

Mr. ARMSTRONG. Mr. Chairman: I have no comment whatever to make which shall reflect in the least degree upon any course which any gentleman in this Convention chooses to take as to the mode of directing its debates. I had supposed that this report would meet with the ordinary courtesies which are usually accorded to committees who have taken the pains to consider at length, and with great care, a specific subject submitted to their deliberation. It would be very unwise in members of this Convention to allow themselves to be influenced by any other considerations than those which ap-

pertain to a just and fair view of the proposition which is embraced in this report. I claim that it is entitled to some consideration, if from no other fact, because it has occupied the attention of the Judiciary Committee for months, and is the result of their deliberate conviction. I do not know why the gentleman from Philadelphia(Mr. Woodward) should have undertaken, so early in this debate, to say that this is the report of the gentleman from Lycoming, or of the chairman of the committee. He is greatly in error, and I totally disclaim any further interest in this report than that which appertains to every citizen of this Commonwealth interested in perfecting the judicial system of the State. So far as the Committee on the Judiciary is concerned, the best evidence that their report has been most carefully considered is the fact that it has developed some diversity of opinion. But these diversities do not extend much beyond a very few and simple propositions, and the dissenting reports which have been submitted may, all of them, be reduced to this very small compass. They amount to this: *First.* That the committee have reported that the judges of the Supreme Court ought to be appointed by the Governor, by and with the consent of two-thirds of the Senate. That is a fair question, open to the consideration of this Convention and to be decided in its deliberate judgment. *Second.* The next point of dissent embraces the question of whether or not there shall be an intermediate court. That, I apprehend, is the question upon which the largest debate and perhaps a wider diversity of opinion will be found than upon any other matter of the report. There is, I believe, one purpose of the committee in which, so far as I know, the entire Convention concurs; that is, that the Supreme Court shall not be left in the condition in which it now is, to struggle with a burden too heavy to be borne. With a unanimity which, in view of the facts, is not surprising, the Committee on the Judiciary agree that the Supreme Court, as a matter of absolute necessity, and imperatively urgent, must have some relief. The precise mode in which that relief is to be attained is a question of fair consideration. The gentleman from Philadelphia (Mr. Woodward) has a scheme which, although it did not meet the approval of the Committee on the Judiciary, is entitled to the highest consideration of the Convention.

Mr. WOODWARD. It is not likely to get it.

Mr. ARMSTRONG. The gentleman says that it is not likely to get it. If he means by that that it is not likely to be adopted, I agree with him; but that it is entitled to respectful consideration at the hands of the Convention, all members of the Convention, in the Committee of the Judiciary and out of it, agree.

Other schemes have been presented, all of which propose the one purpose, which is to relieve the Supreme Court, and which is the primary purpose of the intermediate court as recommended by the committee. It is not a matter of any great importance by what name it may be called, whether it be a superior court, or a circuit court, or an appellate court, or whether it be called a branch of the Supreme Court. By whatever name it may be designated, the purpose of it is to devise a practical and thorough relief to the Supreme Court, whilst we are careful to deny to no suitor the right to be heard in the court of last resort, if there be in his case anything which, after hearing in the intermediate court, shall present any question upon which competent judicial minds can reasonably doubt. And even this limitation upon the right of appeal to the highest court of the State is fixed at a point which is liberal and cannot be oppressive, and which, in the judgment of many men of good judgment, is more liberal than is expedient. I know very well that the name "circuit court" has some savor of disapprobation in this State, for the reason that many years ago a circuit court by name was established by law, which proved to be a failure, and which, in my judgment very properly, was abolished—a scheme which, I think, never ought to have been adopted, and which, from its essential organization, never could be a success. After a few years of patient trial, it failed; and being abolished, it has left in the minds of the profession a sense of distrust of any scheme which bears the name of circuit court.

Now, I wish to call the attention of the Convention to this distinction. The circuit court recommended by the committee has two distinct and separate functions. At this point I will digress to state that it had been my purpose to review, at some greater length, this entire scheme, as it has been called, or as it is more appropriately called, this report of the committee; but as the amendment now pending raises the single question whether or not there shall be an intermediate court, I prefer to limit myself within the strict

line of debate, and confine myself to that question alone. Other questions will arise in the course of the debate, as various amendments may be suggested, which will claim deliberate consideration.

The circuit court proposed is distinctly divided into two branches as thoroughly distinct and separate as the Supreme Court and court of common pleas. The one proposes a circuit court of appellate jurisdiction, which is in aid only of the Supreme Court. The other proposes to invest the same court with certain defined original jurisdiction. Each of these propositions stands alone; and they may stand or fall together; they may both be adopted, or either may be adopted, or neither; and all these questions are completely within the discretion and judgment of the Convention.

Let me now, first, call the attention of the committee to the court of appellate jurisdiction, and I beg the Convention to bear this distinction distinctly in mind during the discussion. If the circuit court of original jurisdiction does not commend itself to their approval, strike it out, for it is so distinctly separate that, by a single amendment in the second section and by the omission of the ninth and tenth sections, it is wholly eliminated from the report, unless where, by reason of the omission, an occasional verbal amendment may be necessary.

I address myself, then, to the consideration of the circuit court of appellate jurisdiction. Is there a necessity for it? I have taken some pains to procure a statement in reference to the present condition of the Supreme Court, but have not thought it worth while to go back beyond five years. The same difficulty in disposing of the business, and a gradual increase in the number of *remanets*, has been apparent for years in the Supreme Court, long before 1869; but for the purposes of this discussion, I felt that to be far enough. In 1869, in the Western district, the whole number of cases was two hundred and sixty-five, of which there were sixty-four *remanets;* in the Middle district in the same year there were one hundred and forty-one cases, and ten *remanets;* in the Eastern district, one hundred and sixty-two cases and fifty-four *remanets*. Thus, for the year 1869 there were five hundred and sixty-eight cases, of which four hundred and forty were disposed of, and one hundred and twenty-eight *remanets*, or twenty-two and five-tenths per centum of the entire number of cases.

In 1870, in the Western district, the total number of cases was two hundred and sixty-eight and eighty-one *remanets;* in the Middle district, one hundred and twenty-six cases and sixteen *remanets;* in the Eastern district, three hundred and thirty-three cases and ninety-six *remanets*. The total number of cases for the year was seven hundred and twenty-seven, of which five hundred and thirty-four were disposed of, leaving one hundred and ninety-three *remanets*, or twenty-six and five-tenths per cent. of the whole number of cases.

In 1871, there were, in the Western district, two hundred and ninety-nine cases and sixty-six *remanets;* in the Middle district, one hundred and twenty-one cases and nine *remanets;* in the Eastern district, three hundred and sixty-two cases and one hundred and twenty-nine *remanets;* total, seven hundred and eighty-two cases; five hundred and seventy-eight disposed of and two hundred and four *remanets*, or twenty-seven and thirty-seven one-hundredths per centum of the whole.

In 1872, there were, in the Western district, two hundred and forty-nine cases and fifty-nine *remanets;* in the Middle district, ninety-six cases and two *remanets;* and in the Eastern district, four hundred and thirty-three cases and one hundred and seventy-four *remanets*. The total number of cases was seven hundred and seventy-eight, of which five hundred and forty-seven were disposed of, and two hundred and thirty-one *remanets*, or twenty-nine and seventy one-hundredths per cent. of the entire number.

In 1873, the argument list of the Eastern district contained five hundred and nine cases, of which two hundred and fifty were disposed of, leaving two hundred and fifty-nine *remanets*, or fifty and eighty-seven hundredths per cent. of the whole. In the Western district the court is still in session, and the Middle district will not be heard till May, so that the total number of cases and *remanets* in the State for this year cannot now be accurately ascertained, but there can be no doubt the ratio continues to increase, and it is said that in the Western district it is quite possible, and even probable, that the *remanets* alone will engage the court for its entire session.

Now look at these figures: In 1869 the percentage of *remanets* was twenty-two per cent.; I leave out the fraction; in 1870, twenty-six per cent.; in 1871, twenty-

seven per cent.; in 1872, twenty-nine per cent., and in 1873, as far as can now be ascertained, fifty per cent., but this year, as I have stated, is imperfect. For convenience I append these statements in tabular form:

STATEMENT OF CASES AND REMANETS IN SUPREME COURT.

	1869.		1870.		1871.		1872.		1873.	
	Cases.	Rem.	Cases.	Rem.	Cases.	Rem.	Cases.	Rem.	Cases.	Rem.
Western district...	265	64	268	81	299	66	249	55	.....	.....
Middle district.....	141	10	126	16	121	9	96	2	.....	.....
Eastern district.....	162	54	333	96	362	129	433	174	509	259
Total.....	568	128	727	193	782	204	778	231	.....	.....
Disposed of.....	440	.....	534	.....	578	.....	547	.....	250	.....
Per cent.....	.....	22.5	.....	26.5	.....	27.37	.....	29.70	.....	50.87

The Supreme Court of Pennsylvania, from all the comparisons I have been able to make, is working more industriously and doing more work than the court of appeals of the State of New York or any of our sister States. It was stated, without contradiction, in the debates of the Convention in the State of New York, that for the year 1862, the cases in their court of appeals were five hundred, and that the most that that court was able to dispose of in any one year, including motions and calendar causes, was three hundred and twenty-eight; so that, by this comparison, and others to which I might refer, the work, the industry and the efficiency of the Supreme Court of Pennsylvania compares favorably with that of any court in any part of the land. The cases disposed of by our Supreme Court in 1869, were four hundred and forty; in 1870, five hundred and thirty-four; in 1871, five hundred and seventy-eight; and in 1872, five hundred and forty-seven.

The judges of that court are overworked in body and in mind, and it is a marvel of persistent energy and endurance that they perform their work to the extent and as well as they do.

I appeal to the intelligent judgment of every member of this Convention, can this state of things continue with fairness and justice to the judicial administrationof the State? Is there not a continuing ratio of increase? Do not the *remanets* increase, year by year, by a rapidly increasing percentage? The Supreme Court themselves have declared, without the least hesitation, upon all occasions, publicly and privately, (for I have heard it stated from the bench of the Supreme Court over and over again,) that the court is entirely swamped; and the slightest consideration of these figures shows that it is so, and they further show that it is not the fault of the Supreme Court. They work as many days and as industriously, as persistently, and as efficiently as any court in the country anywhere.

Now, how is the Supreme Court to be relieved? Various modes have been suggested. I do not know what has prompted the gentleman from Philadelphia (Mr. Woodward) to suggest, I will not say unkindly, but with a manner almost offensive, that this measure is the scheme of the chairman. I utterly disclaim it in any other sense than that I assisted to make it and cordially approve it. I say again, I have no further interest in this question than any other lawyer on this floor; I may say than any other citizen of the State. If any gentleman here can suggest a better means of relief it will meet with my cordial approbation. I will vote for any plan that, in the judgment of this Convention, will efficiently relieve the Supreme Court from the necessities which press upon it, and which are crowding this part of the judiciary at the present time into such a condition that they are becoming helpless in the presence of their work. Why, sir, it is extraordinary that gentlemen should attempt to defeat a great project like this by the suggestion that it is or is not the suggestion of any man. I present it here as the deliberate conviction of the committee, and it is a reflection upon every member of that committee to say that it is submitted here, not as the report of the committee, but the report of the chairman.

Enough of these personalities. I never seek such controversies, and I never shrink

from them; but if the ground of this debate is to be changed from a fair and just consideration of this proposition upon its merits to a matter of mere personal assault, "lay on, Macduff."

Now, Mr. Chairman, what does this report propose? I cannot say that the gentleman from Allegheny (Mr. S. A. Purviance) has presented it in its fullness or made any effort to do so, and I will not say that he has presented it unfairly; but I will say that he has failed to present to this Convention, or to answer the strong points which, in my judgment, commend it to the approbation of the Convention. The circuit court as proposed to be organized by the report is an independent court. It is proposed that it shall be composed of eight judges, who, with one judge from the Supreme Court, shall constitute the circuit court of appellate jurisdiction. The Supreme Court judge sits only as its Chief Justice when convened in banc, and can in no case exercise any part of its proposed original jurisdiction.

At this point I may say, further, that if the original jurisdiction is taken from this court, then I should think the number too large, for five would be ample to do all the appellate business of that court, and such an amendment ought then to prevail. But that does not touch the merits of the proposition, which is, shall there be a circuit court, or in other words, an intermediate court? If this intermediate court were proposed as a court which must necessarily take within its grasp all the legal cases of the State before any of them could reach the Supreme Court, I should unhesitatingly oppose it, because such a scheme would be unwise, would be dilatory—expensive and useless as to a vast number of cases; but the committee have thought that it would be reasonable to fix a limitation beyond which the circuit court shall not have jurisdiction, and beyond which cases shall go, as they now go, into the Supreme Court by direct appeal.

This intermediate court, then, cannot affect in the least the right of any litigant to take his case directly into the Supreme Court whenever the subject matter of the controversy exceeds $2,000, and that amount is to be ascertained as may be directed by law. The committee did not think it was wise to fix the limitations here in detail, for these can be better done by the Legislature and can thus be changed when necessities arise.

The CHAIRMAN. The gentleman's time has expired.

Mr. H. W. PALMER. I ask that the gentleman have unanimous consent to proceed.

The CHAIRMAN. If there be no objection the gentleman from Lycoming will proceed. The Chair hears no objection, and the gentleman will proceed.

Mr. ARMSTRONG. I am obliged to the committee for its courtesy.

Mr. BIDDLE. I hope, Mr. Chairman, that the chairman of the committee will be allowed the amplest time. This is a most important subject, and I trust he is not to be restricted in any way in opening this subject.

The CHAIRMAN. The gentleman from Lycoming will proceed. There is no limit now upon his time.

Mr. LILLY. I desire, with his permission, to say, as I have been objecting heretofore, that I do not object now.

Mr. ARMSTRONG. I trust, Mr. Chairman, that I shall not encroach too far upon the courtesy of the committee. I do not feel that, as touching the present amendment, it would be appropriate for me to cover the entire ground of this report, because as the amendment has been moved it brings up a single question; and when other amendments shall be moved, as, for instance, to strike out that part from the section which proposes the appointment of the Supreme Court judges, it will bring up that particular part for discussion, and I do not object to that mode of discussing the report. The amendment now moved brings up a single question, and I do not propose to transcend parliamentary rules. I will endeavor, with the permission of the Convention, as the various questions arise, to present the view of the committee as I understand it.

To return to the discussion of the intermediate court. Various schemes have been suggested. One of them is to increase the number of judges of the Supreme Court to eight, or even ten has been suggested, and to divide that court into two branches, one to sit east and one west, and that when these judges are unanimous separately, their judgment shall stand as the judgment of the court, but when they divide they shall all come together, and the whole ten shall decide. Without entering now into a detailed discussion of it, I cannot believe that a double-headed court of that kind would be a judicious thing to establish in the State of Pennsylvania as a court of last resort. Another proposition was to establish an intermediate court, to consist of the judges of the several courts of com-

mon pleas within specific districts, to assemble in banc for the revision of the cases within such district.

Then there was the scheme of the gentleman from Philadelphia, on my right, (Mr. Woodward.) I do not mean nor desire to forestall his own statement of his plan, but, very briefly stated, it is this: That the State shall be divided into a convenient number of circuits, not exceeding twelve; that in each one of those districts a circuit judge shall be appointed—for his scheme contemplates the appointment of all judges, from the highest to the lowest—that all cases tried within the district shall be passed in review by the circuit court thus established, consisting of the circuit judge and not less than two of the common pleas judges, the quorum being three of any particular district, who shall pass contested cases in review, ordering a new trial if they please or affirming the case, and then it comes through that court into the Supreme Court. The committee could not approve of that plan. I confine myself at this time to a very brief discussion of it, simply desiring to present it in its skeleton, because the gentleman and others who favor these various schemes will doubtless present them for themselves, and fully. The scheme of the gentleman from Philadelphia (Mr. Woodward) proposes that in any given district, composed, if you please, of five judges—there might be more—a circuit court with the right of appeal and review shall consist of the circuit judge and not less than two of the common pleas judges.

No judge may pass upon a cause decided by himself; but he may sit with the court as an "assessor." The court is itself in constant rotation. Judges A and B may sit in the circuit court at this term, and Judges C and D may sit at the next; it lacks stability; there is no certainty in its decision, even within itself. But the evil becomes greatly aggravated, when you consider that there are many such districts; and the gentleman himself proposes twelve. Then you have substantially twelve separate distinct intermediate courts, all making their own decisions in their own way, diverse and different from one another, and none of them of authority anywhere beyond its own district, and not of much authority there, for the judges within each district will consider that one is as able to decide as another, and it might frequently happen that a case which was decided by two judges, a majority of a quorum in the same circuit, might be reversed by three or four judges the very next term, and in the same circuit, and thus no certainty could be had within itself, and its decisions could command no respect beyond it, further than a well considered opinion, new from a judge of the court of common pleas of recognized ability, is entitled to respectful consideration, not as authority, but as the opinion of a lawyer entitled to respect.

Another suggestion urged upon the committee is that the Supreme Court need no relief; and this is suggested by my friend from Delaware, whom I do not now see in his seat, (Mr. Broomall;) and he thinks that all the relief the Supreme Court needs is to write shorter opinions, to sit a little longer, to work themselves a little harder, and with a little more discretion and good judgment; the cases will be finished and all things will be lovely.

No one of these plans commended themselves to the judgment of the committee. Their report proposes an intermediate appellate court, which, perhaps, unhappily we have called a circuit court, but it is a court which is independent of all other courts, for I take it that a court to be efficient, a court to make such decisions as will stand the test of time, must not only be independent of the people, but the judges must be independent of each other; and no plan, in the judgment of the committee, can be wise and judicious which makes one judge dependent upon another for the mutual sustaining of decisions.

See how it would operate. You have one judge of good ability and judgment reversed to-day by his brethren. That man may be out of the court to-day, and in it to-morrow, and it would be contrary to all human judgment and human experience of human frailty if there be not a remembrance in many cases treasured in the heart and, to a greater or less extent, carried by one and another of the judges into the decisions of the court. Men who think strongly do not easily surrender their opinions, and the judges of the Supreme Court afford some striking illustrations of the frailties to which even these high judges succumb. Wherever the system has been tried, as in Ohio and elsewhere, it has proved a failure. It must sooner or later breed animosities, heartburnings and bitterness. I do believe it would disturb the harmony of the relations of the common pleas judges, and in

time work great injury in the administration of the law. Animosities and dissensions thus engendered would not be openly proclaimed, but they would smoulder a hidden fire, but half concealed, in the breast of many a judge. Resentments not avowed, would make themselves felt under the safe cover of judicial decisions. Nor would such a result necessarily imply corruption. Prejudices from slight causes often unconsciously bias the judgment, and where deep feeling is excited from any cause, there are but few indeed who are able, even when it is consciously present, to resist its influence. A sense of wrong by one judge, who believes he has been unfairly or improperly, for any reason, reversed, comes to the review of the decisions of the judges who reversed him with a mind not prepared to consider their rulings with fairness and impartiality. The Supreme Court is not wholly an exception to these suggestions, and in inferior courts all circumstances combine to aggravate the evil. I go no further. I do not say that it would lead to direct and conscious bias and unfair or corrupt judicial decisions against his brethren of the bench; but I say it would be a cause of constant irritation; it would be a source from which would spring dissension and distrust into the heart of the judiciary itself, which never ought to be allowed, if it can possibly be avoided.

So careful has the Committee on the Judiciary been to exclude any possible influence of this kind that, in constituting the circuit court with original jurisdiction, they have expressly declared that no judge in it shall sit in review of any of his own judgments, but that they shall all go by direct appeal to the Supreme Court. I believe it is a sound and wise basis upon which an intermediate court can be organized. We therefore say that if there is to be an intermediate court established in the State, let it be one that shall be independent of the people, independent of all other courts, and its judges independent of each other. Cases decided in the intermediate court, we have said, shall not be published by authority of the State as authoritative decisions, for the reason that we desire to hold the judicial system of Pennsylvania to the open avowal that there shall nothing go out with the sanction of the State as the approved judgment of the law, except that which has passed in review and been established by the Supreme Court; that hereafter our courts shall be relieved from that which has brought discredit upon our judicial system, the reversal of one decision after another until it has become a settled necessity and practice in our reports to index the "cases considered and over-ruled." We wish to break up that practice, and to this end forbid any decision by the Supreme Court by less than a majority of the whole court, and by affording time, not only to hear, but to consider and adjudge with deliberation, we propose to increase the number of the judges to seven, and to relieve them in the hearing of cases by providing a means to diminish the number of cases which will reach that court, and yet without impairing the rights of the humblest suitor of the courts.

Now, this court of appellate jurisdiction we believe will accomplish both these ends, and the judges will be elective by the people. And here I call the attention of the committee of the whole further to the fact that we propose only that the Supreme Court shall be appointed, that the circuit court and all judges below the Supreme Court shall be elected by the people. The reasons which influenced the Committee on the Judiciary were an honest desire, if possible, to lift the Supreme Court, which is the final arbiter of all the law of the State, out of all possible reach of political influence. The Committee on the Judiciary have felt, unanimously, the necessity of reaching this end if it can be attained—and in this purpose I believe every delegate will concur—for such a purpose cannot fail to commend itself to his best judgment. It is evident that the Convention intends that the Senate of the State shall be so composed that it shall not be a merely partisan body, and the Committee on Judiciary believe that when thus composed and requiring the approval of two-thirds, thus excluding any mere partisan appointment, that it would be more fair and a safer mode than to leave the election of the judges of the Supreme Court to the people. But of that hereafter; "sufficient unto the day is the evil thereof." When that question comes up in its proper place before this Convention, it will be fully discussed.

To return to the question of the circuit court—cases which involve a larger value than $2,000 would, in all human probability, be submitted to the Supreme Court in any event. They would go there wholly irrespective of the decisions of any inferior court; and hence to compel such cases to go first through the circuit

court would be dilatory, expensive and useless, and would be therefore injurious, as I believe, to the best interests of the people and the prompt administration of justice. But if gentlemen wish to fix the limit below $2,000, and think the Judiciary Committee have fixed the amount too high, if in the judgment of this Convention it would be a better and a fairer limit to say that the amount should be $1,000, let it be so done.

The idea that the Committee on the Judiciary desired to arrive at was to name a limitation below which no court but the Supreme Court should have jurisdiction. In the judgment of the Committee on the Judiciary $2,000 was a fair limitation. We thought it expedient to say that all cases below $2,000 must reach the Supreme Court through the circuit court; and the reason is not from any invidious distinction between the rights of one man and another, but because there is an absolute necessity to fix some limitation, or the administration of all justice would fall into disrepute. So far has this necessity pressed upon the minds of many members of this Convention, and of some of the judges of the State, that they have proposed to limit the right of appeal in all cases to $500 and upwards, and would not allow any appeal to be taken beyond the common pleas unless the amount exceeded $500; and one distinguished judge of the Commonwealth, in his intense desire to relieve the Supreme Court, suggested to me that the limitation ought to be $1,000, and that no case less than $1,000 ought ever to go to the Supreme Court. I stated to these gentlemen, as I have said to many others who have discussed this question with me, that it was the sense of the Committee on the Judiciary that no man's case, much or little, rich or poor, should be debarred from the consideration of the Supreme Court, if there was anything in his case which deserved the consideration of that court.

At this point the gentleman from Allegheny (Mr. S. A. Purviance) undertakes to arraign the suggestions of the Committee on the Judiciary, and to say that this is an invidious distinction, that five hundred dollars debars a man from the Supreme Court. Not at all. It is a misconception of the report. The gentleman tries to caricature the scheme by saying that one suitor or another must apply to his friend Judge Woodward, or to his friend Judge A or B or C, that he must apply to them *seriatim*, one after the other, and beg of them to give him a writ that will take his case to the Supreme Court. It is manifest to the good judgment of this Convention that no such scheme as that is in the contemplation of the committee. When the gentleman so stated the case, he ignored the fact that all human intelligence and all human action must be subjected to the test of human judgment and discretion. Not one in ten thousand cases could occur in which such a course as the gentleman suggests would be a necessity. When application is made to the Supreme Court for special *allocatur* in criminal cases, is it done in the manner which the gentleman from Allegheny has characterized, as going from one to another to beseech a favor? Why, sir, it is submitted to the judges in the exercise of their best judgment, and counsel go before the court, stating that in such and such a matter there was error committed, and asking for an opportunity to appeal to the Supreme Court; and all such matters as my friend suggests are regulated by rule of court or by law.

Mr. S. A. PURVIANCE. If the judges of the circuit court did not volunteer to give a member of the bar a certificate to let him take his case to the Supreme Court, would not the member of the bar, if he desired to have that certificate, be under the necessity of explaining to the judges the reason why he desired that certificate?

Mr. ARMSTRONG. Undoubtedly he would, within the rules of court. But the gentleman now states the proposition with propriety. When he was addressing the committee of the whole before, he addressed it in a manner which made it a mere caricature of the proposition.

Mr. S. A. PURVIANCE. Oh, no! I had no such intention.

Mr. ARMSTRONG. Besides, it would be made in open court, either at the time of the decision or at a subsequent time, and all regulated by the rules of court.

But, now, what is the plan? We say that between $500 and $2,000 the right of appeal to the Supreme Court shall be absolute and untrammelled; that below $2,000 the suitor must of necessity go first into the circuit court, to the end of relieving the extreme pressure upon the Supreme Court; we say that between $500 and $2,000, the right of a suitor to appeal is absolute and untrammelled; but below $500 we have guarded the right of the parties with jealous care. We have

said that if the judgment of the circuit court be not unanimous, there shall be a right to appeal, because if the judgment be not unanimous it indicates of itself, and of record, that there is a question in the case which ought to go further. When the judges of the circuit court have not agreed, the right of the party aggrieved to carry his case to the Supreme Court is without condition, down to the lowest possible amount that can be carried by appeal to any court. But if a case has been tried in the court of common pleas, and if its judgment has been affirmed, unanimously in the circuit court of appellate jurisdiction, and the amount does not exceed $500, we say that case has gone far enough, unless there be such a question that one of the judges will certify that it ought to go to the Supreme Court. The committee will note that the judge must *certify* that there is a question which ought to be submitted to the Supreme Court. This is to put him upon his honor and his reputation, and to ensure carefulness. If a writ of error in such case were simply *to be allowed*, no special responsibility would attach to the allowance of the writ. In the one case frivolous appeals might be taken; in the mode proposed it would be practically impossible.

But it may be asked, what is the necessity or propriety of this? I answer: It very often happens (and my friend, Judge Woodward, will affirm it, I am sure,) that a judge of an appellate court will say, "I doubt upon this question; I am not clear. I am willing, however, to decide this case; I am willing, for the present, to affirm it, but I am not clear that it is the law." In such case they would simply affirm this judgment, but Judge A or B or C is of opinion that this case should go to the Supreme Court; or if my friend from Allegheny will have it so, if they do not voluntarily suggest it, a motion in court for the allowance of an appeal would be always allowable, regulated by rule or by law in some manner to be designated, and they suggest to the court that there is a question here and there, and ask a certificate, but if no judge can so certify, then I ask upon what rule of common sense, as applied to the administration of law, shall a man be permitted to appeal. Where a judgment is given by the court of common pleas in a case not exceeding in value five hundred dollars, and unanimously affirmed in the circuit court, with five judges sitting—for there must be five—and they must all unite to bar a further appeal, what harm can result? If they do unanimously agree that there is nothing in this case, why ought it to go further? I say it would be an abuse of judicial facilities—a detriment and a wrong to the rights of other suitors; it would but foster useless litigation; it would be tending to create and keep alive a litigious spirit, which is often abused to the deep oppression of the poor, and which ought to be crushed, not by a disregard of the rights of a suitor, but by saying to all men that they must exercise these rights within fair and just limitations, and with proper regard to the rights of others.

Another advantage of such intermediate appellate court will be that it may become the court of review in criminal cases, to such extent as may be conferred by law.

Under our present system criminal cases can be carried to the Supreme Court only by special *allocatur*. The rights of personal liberty, and life, and reputation, are thus placed in subordinate relation to the courts as compared with purely civil rights. And, I suppose, it is partly because the court of errors is already overborne by a crushing weight of business which leaves no place for this other, but not less important, jurisdiction. If the Supreme Court is to stand alone and unaided, no relief in the way of criminal review can be properly attached to that court beyond its present duties. With the establishment of the proposed intermediate court of review criminal appeals, under reasonable and proper restrictions, but far more liberal than exist at present, might be safely and ought to be vested in that court. It is demanded no less by enlightened public policy than by the higher sense of justice which pervades the public mind. It ought no longer to be that there shall be unobstructed public highway to the court of appeals for the value of a herring, but a devious and difficult path to an appellate court where life, and liberty, and reputation, which is dearer than both, are brought to the arbitrament of the law.

Every consideration of this subject forces the conviction still deeper upon my mind that it is a plan eminently wise and just, and the only one which has yet been proposed which meets the necessities of the case without the risk of countervailing dangers.

Thus, sir, I have endeavored, imperfectly I know, to present some of the reasons which have determined the judgment of the committee in submitting the

plan embodied in their report. Can any man suggest a better? I know very well that other schemes have been suggested. Let them come before this committee in the fullness of their detail without limitation of argument. I wish my friend, Judge Woodward, may have the full extent of every possible courtesy extended to him to explain his scheme. I cannot agree with it. I do not agree that it is well to organize any court that is not determinate as to the persons who shall hold it, and whose judgments are such that they must necessarily be always liable to be reversed by a majority of the same court sitting at a different time.

Now, as to the circuit court of original jurisdiction, and I beg gentlemen's attention to the fact, which I reiterate, because I desire there shall be no possible misunderstanding upon this point. The committee have thought that the organization of a separate court for appellate purposes was an absolute necessity. We have also thought, and have so suggested, that it would be wise to superadd to this appellate jurisdiction an additional original jurisdiction within proper and reasonable limitations, to be fixed in some degree by the Constitution itself, but to be more distinctly defined by law. Is there a necessity for it? Lay aside any mere prejudice which may attach to the fact that a circuit court of a different organization has been tried and failed; and let me here say that the circuit court which was established and abolished, and again re-established, and again abolished, in the early history of the State, was first organized for the city of Philadelphia as a *nisi prius* court, and in 1827 its jurisdiction was extended to the counties as a "circuit court," to be held by the judges of the Supreme Court. After a trial of some nine years it was abolished, and the wonder is that it survived the hostility of its own judges so long.

But without entering into the history of these things in detail, that *nisi prius* court (for it was nothing more than a *nisi prius* court for the counties, although it was called a circuit court;) was held by the judges of the Supreme Court, when it was impossible for them to avoid it, as a *nisi prius* court for the counties, and was, except in location, the same as the *nisi prius* in Philadelphia, it met the bitter and persistent hostility of the judges. They were required to go out from Philadelphia, where, at that early day, all the Supreme Court writs were returnable; they were compelled to ride the circuit, to go time after time without means of rapid transit, without accommodations at hotels, with the utmost personal discomfort; and the judges, from the beginning to the end, denounced the court and sought by all means to break it down, and they succeeded. Cases were gotten into it for the mere purpose of delay, and were from time to time continued upon the slightest pretexts. As the judges were not required to go upon the circuit oftener than once a year, a continuance for a term was a continuance for a year, and so it led to delay which finally became intolerable, and the court was rightly abolished, for no court can survive persistent mal-administration, through the hostility of its own judges. Now, what do we propose? First, we have said that the circuit court of original jurisdiction shall sit *at least once* a year. We did not undertake to require in the Constitution that it shall sit oftener, but we say it shall sit at least once a year, and hold such other terms as the law may provide. To meet this contingency it is provided that the Legislature may increase the number of the judges of the circuit court if it should commend itself to the favor of the profession and the people, and may require them to hold court in counties once, twice, thrice, or as often in a year as may be by law directed. These matters of detail are left to the judgment of the Legislature. But still the question recurs, is it a judicious and proper thing to give an original jurisdiction to that court at all?

At this point I may speak of that which I think has been misapprehended in the minds of many. It is said that the report proposes to give the judges a jurisdiction throughout the State; that therefore a suitor who desires to bring his action in one county may issue his writ and bring a defendant from any other county. This is a total misconception, which I think has not extensively prevailed, but I have reason to know that it does prevail to some extent. The circuit courts of original jurisdiction are strictly confined by the Constitution to the several counties; and it is no more than simply bringing another judge into the county to try a particular class of cases which may be designated by law. One of the circuit court judges comes from any part of the State where he may chance to reside. He comes, for the time, into the place of the court of common pleas of the county, before the same jury, with the same prothonotary, with the same records, the same judgments and

judgment dockets; and he simply takes his seat as a circuit court judge in the same place and for the same purposes as a judge of the court of common pleas within the limited jurisdiction conferred by law.

Is there necessity for this? Let me call the attention of the committee to the fact that we have already, in the article on the Legislature, determined that questions of contested elections for the Legislature shall be tried by the judges of the court of common pleas of the respective counties. Did not every member of this Convention feel that he was compelled to choose between the evil of deciding those questions in the Legislature or submitting them to the arbitrament of the court of common pleas? Is that an appropriate court for such a trial? It may be the least of two evils, but is there not a better way? When there are contested elections in the Legislature it invariably leads to a highly excited condition of the public mind. It involves political considerations and induces a high degree of excitement. Any judge, however pure may be his purpose, however great may be his learning, and however upright his intention, will be subjected to unjust aspersions, which will impair his judicial influence, by the very necessity of deciding a cause in which popular clamor finds its widest field and in which his judgment, however righteous, is liable to be traduced, and in which he will be assailed for partisan considerations and unfairness, let that judgment be what it may.

I ask any gentleman of this Convention, is it wise to submit to the decision of the courts of common pleas a question which will thus effectually and certainly give occasion to assail the integrity of the court in popular estimation? Mark you, I do not say there would be any lack of judicial integrity, but in some instances it might be so; and almost invariably the popular estimation of such a decision would be that it had been influenced by political consideration. It was stated in the debate on that question on this floor, that in the contested elections tried in the city of Philapelphia, and in other places, the judgment of the court could be predicted beforehand, by the consideration merely of the judge's political affinity. Is it wise to cast upon the court of common pleas the decision of questions that thus involve a suspicion of integrity? I think not, and I think it would be wise to provide, when the circuit court is established, that questions of contested election to the Legislature shall be submitted to the circuit court as one of the questions which they shall determine. Relieve the common pleas from the decision of questions which, no matter how they may decide them, will impair the confidence of the public in the integrity of their decision. If there were no other original jurisdiction conferred upon the circuit court, except only that which settles contest of elections, I should think it an ample consideration and justification for the original jurisdiction of that court.

But there are other considerations. We elect judges under the present Constitution, by necessity, every ten years. Their term of office is ten years, and I suppose it would be safe to say (although I have been unable to gather any statistics upon the subject) that one-third of the judges of this State are changed at every election, certainly a fourth. Now, when a new judge comes upon the bench he is presumed to be, and ordinarily is, a man of extensive practice, or ought to be, and has been engaged in a number of cases which he is forbidden by law to try. What is to be done with them? They go upon a list of special cases, to be tried by a judge whom the president judge may invite, and who may but is not obliged to come. He may exercise that discretion in the best manner he can exercise it and the most fairly, and he is open still to a suspicion, often expressed, that in cases of large amount, or involving large public interests or considerations, or perhaps engaging his own personal interest or feelings to a large degree, he has brought into his district, for the special purpose, a judge whom he knows to entertain particular views on particular questions. I say it is an evil of itself of great magnitude, to expose a judge to such false imputations, and shut him up to the necessity of action when such imputations impend. And in addition to these considerations, special cases linger from year to year upon special lists until a case put down upon a special list remains untried for years, and it is often exceeding difficult to get a trial at all.

Judges, like other men, are subjected to personal and local influences, and to personal and local prejudice. They cannot, if they would, exclude from their consideration those local influences which oftentimes warp the judgment of an entire community; yet there may be no legal reason to object to the judge trying such causes, and he is not at liberty to decline,

however much he might desire to do so. In such cases I believe that it would be an infinite relief to the judges themselves of the court of common pleas if they could certify, under some regulation of law, cases of that kind to be tried in a court where the judge is not only wholly removed from local influence and prejudice, but wholly free from the suspicion of it. It would tend not only to relieve the judges from cases which they do not wish to try, but which, in their conscienciousness and integrity, they ought not to try. I believe it would much advantage the administration of the law in such cases to place them under the jurisdiction of a judge who comes free from all such influences and prejudices, and who can try such causes not only with absolute justice and fairness, but free from the suspicion of unreasonable bias, and with universal confidence of the people in the integrity of his decision. Thus will it at once relieve the judges of the common pleas of a class of cases they would most gladly relinquish—and satisfy the judgment of the people. But it goes still further. Every man knows that there are judges scattered throughout this Commonwealth in different places who do not come up to the high standard which invites the confidence of the people and the profession.

There are judges throughout this State—and no State more abounds in them—of known integrity, of personal worth in the highest degree, and of unquestioned legal learning and fitness for their position, and before whom causes are tried with rare and distinguished ability, and to whose judgment the profession and the people bow with the most entire confidence, but it is equally true that there are districts in this State where the judges do not measure up to this high standard of judicial excellence. In such cases there is a practical denial of justice to the people, and I would not weigh for a moment a question of the mere personal dignity o the judges of the court of common leas against the greater and paramount interests of the people. But the dignity of the judges of the common pleas is not assailed and is not diminished. The jurisdiction of their courts is left in its full integrity; the relief sought is incidental and supplementary, and no good judge need fear any diminution of the dignity and consequence which properly attaches to himself and to his office—and as an adjunct and assistant to his court, I believe it will be found to be highly convenient and advantageous—and that the court of common pleas and the circuit court would work in entire harmony.

What cases or class of cases should be embraced in such jurisdiction is a question of mere detail, which may be in some measure determined by the Constitution, or left wholly to the discretion of the Legislature. If it be not already sufficiently defined, or if it be too extended, let it be curtailed and limited by appropriate amendment. But to the jurisdiction of whatever classes of cases this court may be extended, let it be by no invidious discriminations, but by such general and universal rule that it shall equally pervade the entire State. There are cases which it is not for the public interest that local judges should try. Let them be classified and designated by law, and the jurisdiction vested in the circuit court—such are contested election cases, and cases which the common pleas judges are now by law disqualified from trying; such are the majority of those cases in which change of venue is asked, and if unfortunately in any district there be a question as to the ability or fitness of a particular judge, the suitors ought to have a right to say, "there is a court where I can avoid what I apprehend from the decisions of such a local judge." If it be a judge of the distinguished ability to which I have referred, no cases of any consequence would go into the circuit court, because the suitor would properly feel that his case can as well be tried in the common pleas as elsewhere; and there would be no necessity, nor would there be any inclination, to go out of the common pleas, unless for substantial and sufficient reasons. But when those reasons do exist, when judges are found scattered, as they are—and I am glad to say they are few in number—throughout this State who do not command the confidence of the profession, I say in such cases there ought to be a mode by which suitors can find relief from the inexorable necessity of trying their causes before judges in whom they have not confidence.

But it is said that this would be an inviduous distinction; that the judges of the common pleas do not like it. I believe that the latter remark is true. But I have talked with a number of judges of courts of common pleas upon this question, and I do not think of one single exception in which they have not said, after a full consideration of the circuit court of *appellate* jurisdiction, that that far they

were content; that they had no objections to urge against a circuit court of appellate jurisdiction; but they did say, and I believe also without exception—at least none occurs to me now—that it was not a good thing to invest the circuit court with *original* jurisdiction; and their argument was all alike.

They did not suggest considerations of public policy or whether or not the great interests of the State require this modification; whether it would be an addition to the judicial power of the State which would be of general advantage to the people and the law; but they said: "You will diminish the influence of the common pleas; you reduce us to inferior courts; you take away our dignity; you destroy us in the estimation of the people," and similar suggestions of merely personal consideration. I beg to say that, in my judgment, that is a total misapprehension of the case. It does not diminish their consequence, and if it did; if the committee are right in their judgment of its general advantage to the public, such considerations would be of little importance. But it does do one thing which I believe is eminently wise and which could be introduced into the administration of the law of this State with great advantage; it would admonish every judge of a court of common pleas, "administer the functions of your office with fidelity, with ability, with learning, with justice, without fear and without favor, for there is a place within your district to try cases, if in such regards you fail, and it is a court not within your control." It is an admonition to these courts standing forever in their presence, reminding them that justice is blind and her scales should hang with an even beam. I believe if this measure went no further than a declaration to the courts of common pleas that there was a co-ordinate jurisdiction, within easy reach of suitors, it would be of great advantage in bringing up the administration of the law to a much higher level.

I do not wish to be misunderstood upon this question, and I desire to say—what I now say almost apologetically, and I would not say it except that it has been once or twice suggested to me—"What grievance have you? Have you anything to complain of in your particular district?" I take great pleasure in this Convention and in this most public manner in saying that I have the most entire confidence in the integrity of the judge who presides in our court. I believe he is a man whose ability will rank favorably with that of other judges of the State. I have no personal grievance. I have nothing personal to myself. God forbid that I should stand in this Convention to urge upon my fellow-members here the adoption of any scheme which had so narrow and contemptible a basis as that which should rest upon merely personal considerations.

Sir, I urge this measure because, after months of the most deliberate consideration, and as the best result of my judgment upon this subject, it approves itself to me as one which supplements the administration of the law in this State with great advantage.

Let me say, sir, that the administration of the law in Pennsylvania has been a growth from the beginning. It never was a connected, detailed, devised system, but it has grown with our growth and strengthened with our strength. I believe that to-day the judicial system of Pennsylvania is the best of any State in the Union. Starting back to its original foundation, the English courts, a system of courts which could not be maintained in this country for a moment, we may easily trace through them the origin of our own; but it is not worth while to enter into any detail of what those courts are at this time. When the courts of Pennsylvania were originally organized they were of the simplest possible kind. As early as 1722, by a general law, they were vested with all the powers which were exercised in England by the court of king's bench, by the court of common pleas, and by the court of exchequer, which embraced the common law jurisdiction of all England.

But Pennsylvania has, from time to time, changed her judicial system, and added to it from time to time, as new necessities for change developed; and we stand now far in advance of where our fathers stood, but not attempting to disturb the foundations of our judicial system. That system stands entrenched in the public confidence. It is an excellent system, well devised, and which has stood the test of a century of judicial administration. We cannot, if we would, adopt that scheme of districts which prevails in New York, nor can New York change her system to ours, because the jurisprudence and judicial organization of the various States have grown upon

their original foundations, and the traditions of the law and the practice, the prejudices and the affections of the people fence them about with impregnable defences. New York adheres to her scheme, with all its defects, because she could not upheave the entire system. Maryland does the same. Massachusetts and the New England States do the same; and Pennsylvania does the same. She adheres to her foundations, but she builds upon them; and hence it is that the committee has been averse to any plan which looked to a change of the fundamental system of our courts. We leave the judges of the court of common pleas just where they are, with their commissions undisturbed, with their jurisdiction and powers just where they are, for we have desired to avoid radical changes and have sought only to supplement our system with that which we believed would be of an advantage in the general administration of the law, and which has became a paramount necessity of our situation.

Now, Mr. Chairman, as I have proposed in this debate to limit myself to the single question of the circuit court, let me draw the attention of the committee to the simple question which is now pending. It is a motion to strike out from the report the words "in a circuit court." This brings up the whole general question, but it does not involve the question of the original jurisdiction of the circuit court. This is a question of subsequent consideration. It brings up only the question whether an intermediate court, I care not by what name it be called, is a desirable thing to supplement the present appellate jurisdiction of the State. The committee were strongly persuaded that it is, and that it will assist the administration of the law in the court of last resort.

One other thing, which had escaped my attention, I will call briefly to the attention of the committee. In the scheme which we have proposed, we have said that when the circuit court shall sit in appellate jurisdiction, a judge of the Supreme Court, to be designated by the Supreme Court itself, shall sit as chief justice of the appellate circuit court when sitting in banc. The purpose of that is to bind the two appellate courts of the State into greater harmony; and upon this point I will say that, so far as I have conversed with the judges of the Supreme Court, they approve the scheme, except in that particular. They say it will not do to divide the Supreme Court, that we ought not to take from it even one single judge. My answer has been, "we propose to increase your number, so that we may take from the Supreme Court one judge without detriment to your decision, and the judge thus taken from the Supreme Court to sit as chief justice of the circuit court will add dignity to that court, give popular confidence to its administration and its decisions, and keep the two appellate courts of the State in close accord, in harmony, and unity of decision. It is not a sufficient answer to these advantages to express an apprehension that so small a reduction of its force as the withdrawal of one judge from a Supreme Court of seven would seriously impair its efficiency."

In voting upon this question, I beg the Convention to remember that they are not voting upon the question of the original jurisdiction. To vote this amendment as proposed, namely, to strike out the words, "in a circuit court," would strike down, at this early stage of the discussion, the scheme of the committee without distinction of jurisdiction, and without a sufficient consideration of that which attaches itself to the court as an appellate court only. I suggest to gentlemen to let it stand as it is until we reach those sections which distinguish between the appellate and original jurisdiction, and then, if the original jurisdiction does not commend itself to the judgment of the Convention, let it be stricken out; but I do say that in my judgment the appellate jurisdiction is the most advantageous and important suggestion which this committee has been able to make. In my judgment, it is worth all the other sections together. The others are minor and unimportant compared with this.

If we do not relieve the Supreme Court we shall go on step by step until the *remanets* of the State will accumulate to that degree that we shall be compelled, as they were in the State of New York, to organize, by a change of the Constitution, a commission of appeal, who shall consider and decide the *remanets* of the State, and who there are now going on year by year to decide them, and which, when decided, are certified to the court of appeals and become the judgment of that court, although none of its judges have participated in making the decisions, a misfortune imposed upon them by inexorable necessity; and a like necessity already casts its dark shadow upon the judicial administration of our State. It is to the State of New York an admitted and much deplored evil. It is a misfortune which must overtake us if we be not wise to be

warned by their experience. It has introduced into their adjudicated law a series of decisions which the court of last resort had no lot nor part in making, and which must be open to the revision of the court of appeals when similar questions arise—and to end in long lists of cases "over-ruled or doubted"—for no set of judges acting distinctly and separately one from another can bring their minds to run in the same channel—and if opinions of the commissioners differ from their own, they will be in the direct line of cases over-ruled.

Now, Mr. Chairman, I have said all that I design to say at this time on the question of the circuit court. I do press it upon the attention of the committee as the most important suggestion which we have been able to make. There is nothing in the appellate jurisdiction which renders it in the least degree dangerous, and there are many considerations of the utmost importance which commend it to the favorable consideration of the committee. Let the question of the superadded original jurisdiction stand until it comes up as a distinct proposition upon its own distinctive merits, to stand or fall upon them alone. But do not let us, by adopting this amendment to strike out the circuit court from the first section, deprive ourselves of the right to consider with care and full deliberation the several projects to be submitted for organizing an intermediate court of appellate jurisdiction.

Mr. MEREDITH. Mr. Chairman: We have had presented to us, as might have been expected, several plans for the reorganization of the judiciary. It is not my intention at present to go into any of them. I wish to hear and to be enlightened by the discussion. I think that every gentleman who has presented a plan ought to be allowed a full and fair opportunity to explain it and to commend it. I would, therefore, suggest to the gentleman from Allegheny, who has made this motion to amend, if he is within the sound of my voice, and if not, I hope some gentleman will send to him and let him know, to withdraw his amendment, and allow the gentleman from the city (Mr. Woodward) to offer his amendment. The gentleman from Allegheny can then offer his motion to strike out "circuit courts" as an amendment to that amendment. In that way the gentleman from the city will have the same opportunity which the chairman of the committee has had, and which I am sure the chairman would desire to give him, to explain his views on the subject; and I think, not only from his general ability, but from the positions which he has held, that the Convention is entitled to the benefit of hearing his views at large. I hope, therefore, that the gentleman from Allegheny will accept this suggestion and withdraw his amendment, with the view of allowing the gentleman from the city to move his, and then the gentleman from Allegheny can renew his amendment as an amendmend to that amendment.

Mr. S. A. PURVIANCE. With that understanding I have no objection at all.

The CHAIRMAN. The gentleman from Allegheny, at the suggestion of the gentleman from Philadelphia, withdraws his amendment.

Mr. S. A. PURVIANCE. It will be understood that I shall have the floor to renew it.

Mr. WOODWARD. I move to amend the first section, now under consideration, by striking it out and inserting the section which I send to the Chair.

The CLERK read the words proposed to be inserted by Mr. Woodward's amendment, as follows:

"The judicial power of this Commonwealth shall be vested in a Supreme Court, in circuit courts, in courts of common pleas and district courts, in courts of oyer and terminer and general jail delivery, in courts of quarter sessions of the peace, in orphans' courts, in justices of the peace, and in such other courts as the Legislature may from time to time establish.

Mr. S. A. PURVIANCE. I now renew my motion.

The CHAIRMAN. The delegate from Allegheny renews his motion to amend, by striking out the words "in circuit courts," in the second line of the amendment of the delegate from Philadelphia.

Mr. WOODWARD. Mr. Chairman: I never came to the performance of a public duty under greater disadvantages than attend me this morning. I am here from a sick bed, and I would not be here but for this subject.

I wish to state now to this committee that there are but two great points in this discussion about which I feel any solicitude. I do not think I shall be able to touch more than one of them in what I am going to say, and therefore I shall ask the indulgence of the committee on some future occasion to discuss the other. Those two points are, first the circuit court, and, second, the election or appointment of

judges. Gentlemen who have done me the honor to look through the sections which I have submitted will see that I propose to abolish the election of the judiciary in Pennsylvania, utterly and totally; and if abolished by this Convention it will remain abolished forever. On that subject I desire to be heard at large, but I do not propose to enter into it this morning because there is enough more before us to engage our attention now, and because I have not the strength to go into that question this morning.

Dismissing, therefore, that subject for the present, but intending to return to it hereafter, all I am going to submit now has reference, as my friend, the chairman, has said, to the very question that is raised by the motion of the gentleman from Allegheny (Mr. S. A. Purviance) to strike out the words, "in circuit courts," from the amendment which I have offered. I regret, Mr. Chairman, and I have regretted before this discussion came on, that I introduced this term "circuit court" into my minority report. If I had it to do over I would not use that word, but I would call the intermediate court an appellate court. I think, sir, I am indebted to yourself for that suggestion, the value of which I appreciate; but it did not come in time. If any gentleman will make the motion in case my suggestions find favor, which I am told by the chairman I have no right to expect, but if, contrary to his prophecy, they should find favor with the majority in this body, I shall not object to substituting the word "appellate" for the words "circuit" court. It is more descriptive of my own idea, and it will take away somewhat of the odium, and, perhaps, just odium, which attaches to the name "circuit court" in Pennsylvania. I did not think of the suggestion at the time; but I make this observation to show how little I care for the word "circuit," which the gentleman from Allegheny moves to strike out.

One other word on this preliminary matter. As the motion stood before the President kindly secured a different arrangement, I had nothing to say. I would have voted for the motion of the gentleman from Allegheny, to strike out the words "in a circuit court" from the first section of the chairman's report, for this reason, that the only circuit court that that report contemplates is s circuit court that I am not in favor of. The motion to strike out that circuit court commended itself to me, and as the question then stood, I was prepared to vote for the amendment. But through the kindness of the President the record has been changed, and now my amendment to the report of the chairman is before the body, and the gentleman from Allegheny moves his amendment without the slightest prejudice to my amendment; so that the whole subject is fairly before the body now on this report. It could not be before the body in any other shape. That is the value of the suggestion of the President, in which my friend from Allegheny cheerfully acquiesced; and so we have the record now in the shape I proposed to put it in this morning.

I bear most cheerful testimony to the ability and fidelity with which the chairman of the Judiciary Committee has devoted himself to this subject. I believe that no chairman of any committee of this body has been more attentive to the subject committed to him than my friend has been, and there are very many things in his report which commend themselves to me, and which I cordially support. But among the shining qualities of the chairman, there is not to be reckoned that which I know not how to denominate other than as receptiveness. He lacks receptiveness. Nobody doubts his wisdom; but he seems to doubt the wisdom and virtue of everybody else, for he is not ready to receive suggestions. He is excellent at originating; but if anybody can find a better term to express my idea than a lack of receptiveness, I will adopt it. That is the only fault I have to find with the chairman. I believe that no man could perform his duties more faithfully and concientiously. I doubt whether any man could perform his duties with more ability. But, sir, when he speaks disparagingly of what other gentlemen have submitted, in contrast with what the majority of that committee have, I point you to the record that a majority of that committee have put upon our Journal the evidence that they do not concur with the chairman, and that we have really got no report of the committee, as such, before us. There is not much in the report of the chairman to which everybody assents; some assent to one thing and some to another.

I am amongst those who assent to many things in the report; but to call that a report of the committee, as contradistinguished from the voluntary and illegitimate productions of other gentlemen of the committee, is a little damaging *in limine;* it is a little arrogant; it is not according to the record; and I hope the committee of the whole, while they do give

to the chairman the credit that I cheerfully accord to him, of great candor and great ability in the preparation of his report, will not give it any special and conclusive force, on account of its being the report of the committee. Before this discussion is ended, I think it will be satisfactorily demonstrated that it is not the report of the committee, and I was not out of the way when I said it was the report of the chairman. My own report is not the report of the committee; I never claimed that it was; I have not called it such.

Now, I believe I am prepared to address myself to the first of the questions which I suggested. I entirely concur with the chairman that the time has come for introducing into the judiciary of Pennsylvania an intermediate court, whether you call it a circuit court, or an appellate court, or any other name you please—an intermediate court between the courts of common pleas and the Supreme Court. I believe just as firmly that you will kill the merit of that intermediate court if you make it a court of original jurisdiction, as the chairman does; and I was pleased with the emphasis with which he begged of the Convention to abandon his suggestion of an original jurisdiction. [Laughter.] I do not know of anything he said in the speech that was more emphatic than that the Convention should amend the report by removing this objectionable feature out of it. I concur with him in that, and hope the Convention will exscind that feature of this report, and one or two others, and then I shall be willing most heartily to vote for it.

Mr. ARMSTRONG. Mr. Chairman——

The CHAIRMAN. Does the gentleman from Philadelphia allow himself to be interrupted?

Mr. WOODWARD. Yes, sir.

Mr. ARMSTRONG. I supposed I had made it clear to most gentlemen of ordinary comprehension, that I did not ask this committee to abolish the original jurisdiction, but that I asked them to consider it.

Mr. WOODWARD. My understanding is very much at fault, then, for I did understand the gentleman to express himself as very desirous that his fabric should not be damaged by the taking out of this brick. This I have to say, sir, that the people of Pennsylvania once had the experience of a circuit court of original jurisdiction, and I am mistaken if they ever consent to put another such yoke on their necks. I am just as sure that they will not do it as I am sure that it should not be asked of them, and I have labored most faithfully with my friend, the chairman, all winter, to convince him of that proposition, but not successfully. Why, sir, I am old enough in the profession to know something of the record of the old circuit court. It was held by one of the judges of the Supreme Court. Cases were removed into it, and there they hung until they were dry and dead, suspended, like Mahomet's coffin, between the heavens and the earth, unfit for either, until, at length, clients, counsel and everybody else died out.

I remember a pilgrimage that Judge Kennedy made once to Susquehanna county to clear the docket of some old land cases that had been pending in the circuit court of that county for years. I saw Judge Kennedy as he passed through Wilkes-Barre on that errand, and thus he cleared out the last of the circuit courts in northern Pennsylvania.

We had some such experience in Luzerne county, and I do not wonder that the Pittsburg bar and the Northampton bar and the bar of Luzerne and the bars of other counties rise up in alarm at the suggestion of the chairman to restore the circuit court of original jurisdiction. I do not wonder at that; it is the most natural thing in the world; and when my venerable friend (Mr. MacConnell) presented the proceedings of the bar meeting of Allegheny county, (and they on your minutes,) I was careful to observe that the attention of the lawyers of Allegheny county was drawn to this circuit court which the chairman proposed.

Mr. EWING. Will the gentleman allow me?

Mr. WOODWARD. Certainly.

Mr. EWING. I have to say that the expressions of the bar there were directed specially and almost exclusively to the question of the intermediate court. It was the intermediate court that they condemned.

Mr. WOODWARD. The only scheme of a circuit court before them at the time was the scheme of the chairman. The other scheme was not then printed, and not then before the body. They condemned that, and I am not surprised at it. The feature that alarmed them, I have no doubt, was this feature of original jurisdiction. We have never had a circuit court of purely appellate jurisdiction. This is a novelty; and, therefore, when we use the words "circuit court" to describe a new thing, we use a word that

has become odious to describe a thing that is not odious.

Now, Mr. Chairman, is it necessary to have an intermediate court, to be called a circuit court, or an appellate court, or any other name you please? The chairman of the Judiciary Committee has impressed me strongly with what he has said on the necessity of that; but before I allude to the necessity of such a court as a mode of relieving the Supreme court, let me say that if there was no necessity for relieving the Supreme court, if the Supreme court were full abreast with their crowded business and could keep it in hand, under perfect control, there would, nevertheless, be need for an intermediate court. I do not suppose this saying will be well received by the House, but I beg them to reflect upon it.

We have in Pennsylvania a population greatly superior to that of the thirteen States of this Confederacy when this Federal government was established; we are a nation, and we are growing as no other nation on earth is. Well, then, look at our physical resources, our coal, our iron, our lumber, our oil, and our manufactories, our commerce, our railroad interests, our shipping interests; the commerce of this city giving signs of new life and likely to regain to its ancient prestige. Why, sir, at the organization of this government the collector of the port of Philadelphia had to give bonds in a larger amount than the collector of the port of New York; the East India trade was so much more valuable in this city than it was in the city of New York. Now, sir, I hope to live, old man as I am, to see something like a return of that commercial prosperity to the city of Philadelphia. I see signs of it in the air now; I hear sounds which indicate it. But here we are in Pennsylvania, possessing all the physical resources of Great Britain, and Mr. Webster was struck with that fact many years ago. There is nothing that has made Great Britian great that we do not possess in Pennsylvania. We possess some things that Great Britain does not possess.

Mr. Chairman, when my learned and distinguished friend from Allegheny county deprecates a circuit court on account of the inconveniences of it, let me remind him that the people of this State of great resources, of great prospects and great hopes, have just as good a right to an administration of the common law in all its forms and modes of application as the people of great Britain, or as the people of the State of New York, and yet if you contrast their opportunities for litigation with those of Great Britain and New York, you find them infinitely inferior. In England—to say nothing about the local courts, the military courts, the ecclesiastical courts, and the special courts—they have the exchequer, the common pleas, the queen's bench, the exchequer chamber and the House of Lords, and the liberties of the Englishman are secured only by right of litigation through the whole series of courts, and the rights of property in the Englishman are secured only by this ample machinery of courts. In the State of New York they have their local county courts, their Supreme Court, their court of errors and appeals. They used to have the Senate, corresponding to the House of Lords, but that has been abolished as a judicial body. They have there three opportunities to discuss a legal proposition that arises in the business of their citizens, involving their rights, their liberty and their property. Why should not the people of Pennsylvania have that right?

The gentleman from Allegheny talks as if the people of Pennsylvania were to be cut off with the least possible amount of service in litigation. It was the saying of Judge Gibson that all free people are litigious. It is a sign of freedom for men to stand up for their rights, and to litigate questions that involve those rights. And, sir, what is the condition of the people of Pennsylvania on that subject now? You have, first, your court of common pleas; and when the proper time comes I will show you that most of those courts of common pleas, as well as the Supreme Court, are overwhelmed with business, hurrying through it with race-horse speed; then a writ of error is taken from the judgment of that court to the Supreme Court, and that court, as my friend says, literally swamped with business, counsel heard impatiently, perhaps imperfectly, because all lawyers are not equally competent to present their client's case. The law is sometimes at the bottom of a deep well, and one man draws with a big bucket and another with a very small bucket, and sometimes one draws a bucket with nothing in it. He does not go to the bottom.

The CHAIRMAN. The time of the gentleman has expired.

["Go on." "Go on."]

Mr. DARLINGTON. I move that the gentleman be allowed to proceed.

The CHAIRMAN. If there be no objec-

tion the gentleman from Philadelphia will be allowed to proceed. The Chair hears none.

Mr. WOODWARD. Thus it often happens, sir, that no satisfactory result is reached. I have spent two weeks, ten hours a day, diligently employed in studying a single case, to find out what it was, that had been argued by counsel after a fashion. What does the Supreme Court do with such cases? It turns it over to one of the judges, and he studies it, more or less, according to his other engagements, according to the state of his health, his domestic affairs, and other circumstances. And what have you got? You have got an opinion of a judge of the common pleas *calamo currente*, and you have got the opinion of a single judge of the Supreme Court, under the greatest possible disadvantage; and that the gentleman thinks ought to satisfy the people of Pennsylvania upon their questions of property, be they what they may. That is all the people get under our existing system; that is all they can get; and it is all that the gentleman from Allegheny thinks they ought to have.

Now, I differ, *toto coelo*, from that gentleman and everybody else who thinks so. On the contrary, I think the people of Pennsylvania ought to have the largest measure of justice that they can have. They ought to have as much as their ancestors in England had and have, and without which they could not exist. They ought to have at least as much as their friends and neighbors in New York have. And therefore I say that if there was no necessity for relieving the Supreme Court of its over-worked mass of business, there is a crying necessity for an intermediate court of some kind.

The great questions that arise in this trading community, in this industrious community, in this most productive community, deserve a far more thorough and complete investigation and consideration than they can possibly get under any existing system. They deserve it; they must have it, and they will have it. The Legislature might have given it to them. It did not need this reform Convention for that purpose; but the Legislature was otherwise occupied, and now the hopes of the people are in this Convention, and I do not want gentlemen to dismiss this subject with a flippant objection to circuit courts. I want them to apply their minds to the wants of the people of Pennsylvania, and devise a measure of litigation that will secure their vast and rapidly increasing interests upon the same substantial basis upon which their brethren of England and New York have secured them.

That is why, Mr. Chairman, I have submitted this amendment. There is need of an intermediate court quite independently of the necessity of relieving the Supreme Court.

Now, as to the Supreme Court, the mode of relief, so far as it is proposed by the chairman of the Committee on Judiciary, or by anybody else, consisting in an increase of the judges of the Supreme Court, does not commend itself to my judgment at all. Who does not know that seven judges cannot try any more cases than five judges? It is not an increase of the number of judges of the Supreme Court that is needed to relieve the court. You do not diminish the volume of business any by increasing the number of judges. Then my friend, the chairman of the Committee on Judiciary, who has given the winter most faithfully to this subject, proposes to make the Supreme judges seven, and to take one away for circuit court purposes, thus reducing them to six, making an even number on the Supreme bench. That would be an inadmissable number. Whatever number may be selected, it ought to be an odd number, and not an even one. In no case ought there ever to sit an even number of judges in a court of errors. I believe there is no writer, from Paley down, who has not said this, and I believe there is no reflecting man who will not see the reason of it. If I may be permitted to speak of my own experience, I will say, from fifteen years experience, that when our court was reduced to four we were almost certain to be locked; for while two gentlemen may surrender to three, two gentlemen will not surrender to two, or three gentlemen to three. Therefore, when the chairman proposes to make the Supreme Court seven, and then takes off one of them, and reduces the court to six, he brings up a difficulty which, in practice, will be found to be very serious, while the increase of judges will not at all relieve them, which is the great object in view.

How can they be relieved? If what the gentleman from Allegheny says be true they do not need any relief, and I have heard other gentlemen speak as if there was no occasion for it. My friend from Lycoming (Mr. Armstrong) has shown you some statistics from 1869 up to the present time, showing the accumulation of *remanets* in all the districts of the

Supreme Court. Never was that accumulation as rapid as it is now. I cut from the *Ledger*, the other day—the *Ledger* sometimes discusses these subjects with judicial fairness; I do not know who writes the articles—a communication on this subject, which I want to incorporate with my remarks in the report, if there is any made:

"The sessions of the Supreme Court for 1873, in which the Philadelphia cases can be heard, finished on Saturday last, save five days more at the end of March, which are promised if the country list is by that time disposed of. The appellate tribunal of this Commonwealth is legally closed for all cases arising in Philadelphia until the fifth of January, 1874. It is worth while to look at what has been done, what remains undone, and search out a remedy for the mischiefs which will be seen are attendant on the present method of administering justice by its means. The sessions for Philadelphia cases continue for six weeks, the first two weeks of January and all of February. On the argument list for this year were two hundred and eighty-two cases. Of these forty-five have been heard, one of these having been twice argued; the remaining two hundred and thirty-seven must go over until next year, their number then to be swelled by more, arising during the present year. This impossibility of speeding justice is no fault of the judges. They have but six days in each of the six weeks, with barely time for the necessary consultations. There were on this year's list three exceptionally long cases, the Girard bank's appeal, Boker's appeal and Edward's appeal, which together occupied the court two weeks, but deducting these from the five cases heard, would give forty-two cases heard for thirty-six working days, an average of one and one-sixth case per day. With this as an average, had the Girard bank cases not been on the list fourteen more cases might have been reached, which would have given fifty-seven out of the whole two hundred and eighty-two cases, or about one-fifth of the whole number.

"No argument is wanted to prove the defective arrangement of a court which can hear but a fifth part of its business. A delay of justice is a denial of justice. Various remedies have been proposed; an increase in the number of judges; but this would not do any good, as five judges take no more time to hear a cause than ten would, and in a court of last resort, all or a majority of its members must decide. A longer session for the Philadelphia list has been suggested; but this is impossible. The court goes to Pittsburg in October. After sitting there for two months its list is still unfinished. The month of December gives the judges barely time to consider and prepare their opinions on the cases they hear in October and November. The last two weeks of February and the month of March are given to county cases from the eastern part of the State. April is not enough again to decide on what they hear in the preceding three months, and May and June are used for Harrisburg and the Middle district. So that, leaving out of consideration all equity and *nisi prius* business, the former of which is daily growing in magnitude and importance, the time of the court is fully occupied.

"But two methods, or rather two forms of the same method, have been suggested, which are likely to bring about the desired reform. They are, either the limitation of the right of appeal from the lower courts to cases involving an amount larger than is involved in the majority of cases which now come up, or the establishment of an intermediate tribunal to which appeals from the lower courts may lie, under the same conditions as they now do, but from which no appeal to the Supreme Court could be had in a cause not involving a large amount. The adoption of either of these plans would have the effect of disencumbering the dockets of the Supreme Court of a vast amount of petty litigation, which ought properly to be delegated to subordinate tribunals, and at the same time would give to the lower courts a greater dignity and importance in the community, as being in the greater number of instances, the court of last resort. It is quite clear that one of these two plans will have to be adopted if the Supreme Court is to preserve its usefulness and the rights of suitors to a speedy and final determination of their causes is to be protected."

The purport of that article is that the Supreme Court, in this district, is able to perform but one-fifth of its duties, decide but one-fifth of its cases. In the other districts the inability may not be quite so striking, but the last time that I was in Pittsburg, where the gentleman who made this motion lives, the bar told me that the Supreme Court that was then in session had not yet reached their current list, that their whole term would be occupied with the *remanets* of the former year, and that the cases of that immediate year

were not likely to be touched. If the Supreme Court can only do one-fifth of its proper business, which is what the article I have read proves is the average in this city, is there not need for the relief of a court which, with its best industry—because I entirely concur with the chairman of the Judiciary Committee that the judges are faithful workers—is there not need of relief for a court which cannot perform more than one-fifth of its duties in a State of law and of property and of intelligent freemen? The delay of justice is the denial of justice. The bill of rights says that every man shall have justice without sale, delay or denial; but here is a blockade of justice. I know important cases in this State; I know one very important case, that was suspended in the Supreme Court by a writ of error, and was not reached this late term and is suspended there still. Another case. A client of mine brought suit upon a mortgage upon a lease-hold in Schuylkill county, because you know that under a special act of Assembly, in the mining counties a lease-hold estate may be mortgaged. He had a mortgage for some $30,000 and he sued it out, and after all the delays to which he was subjected in the common pleas, of course he got a judgment. Then came a writ of error and it was hung up in the Supreme Court. Meanwhile they were mining out the coal. The bail given under that writ of error was $200. I went into court and asked the court to increase the bail on the ground that our mortgage was $30,000, and they were mining out the coal as fast as they could; that the delay in the Supreme Court was indefinite, and that by the time judgment was affirmed, as of course it would be affirmed when the case was reached, our coal would be gone, and all that we should have would be this recognizance of $200. I found my motion, a while afterward, had been dismissed. I asked upon what grounds, and was told by the clerk, "upon no grounds whatever, no reason assigned." The clerk evidently had a little feeling about it, and the court respected his feelings so far as not to alter the recognizance which he had taken, and it stood at $200 and it stands there now. Our judgment was affirmed in due time, when the coal was gone, and the $30,000 were gone too.

But if I were to go into particulars, if I were to imitate Mr. Greeley and tell "all I know" on this subject, I should occupy more time than I mean to do. It must be clear to everybody's mind, except perhaps members of this Convention, that there ought to be some relief of the Supreme Court in the amount of its business. It is indispensable that there shall be such relief independently of the other considerations which I have suggested. If we are going to live here in Pennsylvania and not be brought into riotous insurrection we must have some relief of the Supreme Court, and we shall never get it by putting on two additional judges; we shall never get it by that palliative.

How will you get it? Only by establishing an intermediate court, sir; an intermediate court to stop this vast amount of litigation that, while it ought to have a hearing, and a full and patient and able hearing, ought never to go to the Supreme Court. If gentlemen will look through my amendment, they will observe that the circuit court which I propose is composed of five judges. The chairman of the Committee on the Judiciary inaccurately represented it as composed of two common pleas judges. He means by that that three judges may be a quorum, which is true of the Supreme Court. Three judges may be a quorum in that court which consists of five judges. My amendment contemplates a court of five judges. How many judges are there in the Supreme Court? Five! When my case is therefore stopped by the circuit court and finally decided, it has been considered by five competent law judges. That is all it gets if it goes to the Supreme Court, and I have therefore no right to complain. I shall have just as good a chance in the circuit court as I have now in the Supreme Court, because we are to presume that the five law judges who constitute the circuit court will be just as competent, and possibly they may be more competent, than the judges of the Supreme Court, especially when we consider how that court is overworked.

How is that court to be constituted? By one circuit court judge appointed in each circuit, and by the common pleas judges who are within that circuit. Among the many advantages of this plan is economy; for you will find, when you come to contrast the details of our two plans, that mine is very much the cheapest. It will cost the people much less money; there are fewer judges. But the great merit of it is that it will put the judges of the common pleas all into training. The chairman of the Committee on the Judiciary has told you that every judge of the common pleas to whom he has submitted his plan condemns it, and condemns it on the ground that it tends to degrade them.

Well, sir, a system that tends to degrade a judge must be a bad one. Our efforts should be continually to stimulate the judge to better and better performances, to an upward rather than a downward direction. My plan will do that. It brings these five common pleas judges of the circuit into experience as appellate judges, thus preparing them for the Supreme bench, and thus adding dignity and power to their office. It is exercising them in the law in a different manner from that which they get in the narrow sphere in which they preside in the county; it is enlarging, improving and elevating the minds of our common pleas judiciary.

My plan proposes a system of circuits that shall have at least five judges in every circuit. In most circuits there would be more than five, but there shall be at least five judges in every circuit, composed of the newly appointed judge and the common pleas judges. Work up the material that you have at hand. If it is not good material—and I agree entirely with what the chairman has said about some judges in Pennsylvania—improve it, educate it. There is no law school on earth so good as the bench. I have known the most incompetent lawyers make very good judges after a few years experience on the bench. It is the best law school there is in the country. I do not believe in idle judges. I believe that judges ought to be worked full up to their capacity; and one of the great merits of my plan, as compared with that of the chairman, is that while his tends to degrade the judges of the common pleas in their own judgment—and they are correct in that—mine tends to elevate and improve and educate them. And if any gentleman can show that at present some of our common pleas judges will be very unsuitable men to sit in the court of appeals, of course every system must have time to develop and work out its results. But I submit to you, gentlemen, if the plan I propose is not an educational plan in itself, is not calculated to make the common pleas judges better, wiser men in judicial life than they are likely to become in their courts of quarter sessions, shut up to a local bar, and knowing nothing about what is going on in the outer world. It seems to me that there cannot be two opinions on this subject, and that it is among the desirable things of the day that we should educate up the inferior magistracy of the State, prepare them for the higher judicial stations.

Indeed, sir, if anybody adverts to what I submitted early in the winter, before it went through the discussions of the committee, he will see that I proposed what I have stricken out of my present plan, a sort of civil service in the judiciary by which the judges should be worked up from the lower to the higher grades of office. The Governor was to appoint the judges of the Supreme Court from the circuit courts, was to appoint the judges of the circuit courts from the common pleas, was to appoint the probate judges from the profession and the common pleas judges from the profession, of men of certain qualities. My idea was and is, that we ought to take from the body of our citizens, honest, competent lawyers, and consecrate them, body and soul, for life, to the duties of the judiciary. We ought to have a judiciary that all mankind would know was devoted, not to partisan politics, not to speculative schemes here and there, but to the study and administration of the law.

If this Convention would allow me to plan a judicial establishment for Pennsylvania, which, my experience with the committee has satisfied me I am the last man they would allow to do it [laughter] that is exactly what I would do; I would make the judicial office as honorable as the military office or the naval office of the country is. I would shut up the Governor to the selection of the best men for the lowest judgeships, by and with the advice and consent of the Senate; and then I would compel him to take the best men of those for the higher grades upward. I would increase the salaries as they went up. I would increase their terms as they went up. I would make the highest judicial position an object of just ambition for the inferior judges. I would make it a cause for removal from office and impeachment for one of those judges to engage in speculations, to engage in politics, to engage in anything except the worship of the Almighty and the administration of the law.

That is what I would do; and that is one reason why the chairman and the committee will not trust me. [Laughter.] They do not stomach such a judiciary as I would give them.

Well, then, getting down from what I consider to be the true plane for judges, I have produced what you have seen here. This is the best I can do under the restraints of the committee.

The language which I propose, and I beg leave to call the attention of gentle-

men to the very words of it, makes the circuit court a court of appeals alone, and expressly denies to it any original jurisdiction.

"The circuit court, in each circuit, shall consist of the said circuit judge as its presiding officer, and of all the law judges within the circuit; the said circuit court shall have no original jurisdiction, but only an appellate jurisdiction."

Now, instead of constitutional machinery to determine which judges shall hold the court, I leave that to the judges themselves. I say that where there are more than five judges in the circuit they may agree among themselves who shall hold the court in banc, rotate themselves, just as they please. If there is any old fellow that does not choose to sit in such a court, let them excuse him and let him confine himself to the quarter sessions and common pleas; but if there is a young man in that circuit, who is awake to the duties of his office and the possibilities of his own nature, let him go into this business of reviewing the decisions of the other judges and accustom himself to looking at a law suit from another side.

Why, Mr. Chairman, it is astonishing how different a law suit looks from the different standpoints from which you contemplate it. I have looked at some law suits from the bar; I have looked at some law suits from the bench of the common pleas; I have looked at some law suits from the bench of the Supreme Court, and again from the bar; and I tell you, sir, that the impressions produced upon the mind are exceedingly different, according to the angle of observation. I think that a judge of the common pleas, who has been many years shut up to the duties of his court, would be greatly benefitted by being put into a court of appeals and hearing an argument upon appeal cases, as in a court of errors. I think he would return to his county court greatly improved, greatly benefited, better prepared to discharge his appropriate local duties, than if he had not had had this experience. It is not going to cost the people anything to give him this experience. I do not propose an increase of salary to the amount of one dollar, but only an increase of the number of judges, by the appointment of circuit judges, and possibly a few more common pleas judges. That is the only increase of judges I propose, and that I compensate the people for by abolishing the associate judges, of whom we have two in every county now.

What is the objection to this? The only objection I have heard all winter from the chairman I have heard this morning in his speech, that these judges are going to combine with each other to reverse one another's decisions, and affirm one another's decisions, because of the griefs they have experienced. I heard that objection from the learned chairman early in the winter. I mentioned it to Judge Thompson, without saying from whence it came; and, said Judge Thompson: "That objection must have come from a man who had never been a judge." "Yes," said I, "that is true; no man that has ever been a judge would put forward such an argument as that."

Mr. Chairman, there is no danger of that kind. It was called once log-rolling. It was not called log-rolling by the learned chairman this morning in his speech; but it is well defined by that word "log-rolling." There is no danger of that, sir. The danger is that judges will watch judges more closely than they watch anybody else; they will watch the judges who sit with them in those courts of appeal more closely than they will judges who do not sit with them. There is no such thing as combination among judges. The case has not been heard of in Pennsylvania. Why, sir, the difficulties are all of another sort. Judges draw apart more readily than they draw together. I could mention some very striking instances of that, in which the fair face of the law has been somewhat marred by the personal disputes of judges on the same bench, and when the judgment of a judge of the Supreme Court at *nisi prius* comes before the court in banc, I tell you there is no judgment that is so criticised as that. Judge's log-rolling. Combination among judges to pervert the law for the sake of saving each other's feelings! It is a new idea and as preposterous as it is new. I never heard the idea before. I never heard it from anybody but the "learned Theban" on my left. [Laughter.]

Mr. ARMSTRONG. I would say to my friend:

> "There are more
> Things in heaven and earth, Horatio,
> Than are dreamt of in your philosophy."

Mr. WOODWARD. I admit there are many things that I have yet to learn. I have learned some things that I never expected to learn; but this thing I never heard from anybody else in my life. I have read the judicial annals of Pennsylvania with some care; I know something about the judicial traditions of Pennsylvania; and I never heard of such a com-

bination among gentleman in my life. I have heard of distractions and alienations and dissents all my life; but I never heard of combinations among judges to pervert the law, and yet that is the weightiest objeciton that is brought against my plan.

Now, you will observe that I do not allow the judge who decided the cause to act in the court of errors and appeals on the review of that case. He may sit, but if he does he must sit as an assessor simply, and he takes no part in the decision. It will often happen that it will be a great convenience to the court to have the judge who tried the cause at hand, and I thought it best to allow him to sit, but to sit as an assessor, and not take part in the decision. Then the case that has been tried in the common pleas comes before this court of appeals, composed of five judges, without any of the embarrassments of a writ of error, because on a writ of error you all know, at least all of you who are lawyers, that you can assign error only upon that which is on the record, and that only is on the record which is there under bills of exceptions; and therefore the core of the case, the real question in the case, and that which the parties feel to be the question, often does not get considered at all; but in this intermediate court the whole case goes up by way of appeal; there are no bills of exceptions; there is no writ of error; it is simply a review of the decision of the judge in the common pleas, as it might be and always is before himself on a motion for a new trial. Instead of arguing that motion before the judge himself it is argued before this bench of five judges, one of whom is the circuit judge and the other four of whom are common pleas judges.

Well, there is a second chance for the people of Pennsylvania to vindicate their rights of property in the multitudinous cases and questions that are arising and are going to arise in the development of this vast State. Do we not need it? Do the people not deserve it? When the case has been decided by that court, after full argument, a competent court, just as competent potentially as the Supreme Court, when it has been decided by it, then the question comes up, shall the decision be final, or are there such questions in this case as deserve to be further litigated, further reviewed in a superior court. That is a question which belongs to the court to decide.

My friend from Allegheny, (Mr. S. A. Purviance,) commenting upon that provision of both the chairman's and my plan, for a circuit court that makes the right to a writ of error depend upon the judgment of the court of appeals, fancied counsel going around from judge to judge, and worrying and beseeching him to certify that this is a case fit to go up. Mr. Chairman, I would suppose that a gentleman talking in that way never was inside of a court-house, that he did not know how judicial business was conducted. If you should adopt this plan and establish this intermediate court, and make the right to a writ of error to depend on the judgment of this court, that part of their judgment would be pronounced from the bench as every other part of their judgment would be pronounced, in the face of the public, in open day; there would be no private solicitation about it.

"But one judge may certify it up." Yes, one judge may; but how? Under such rules, of course, as the court shall prescribe. The court will regulate their practice in this regard by a rule of court, and you may be sure that personal solicitation, hunting up judges at their residence, and beseeching and begging them in the way the gentleman from Allegheny mentioned, is exactly what a rule of court will exclude. That will never happen. That is one of the chimeras similar to the one that the learned chairman has conjured up about log-rolling; it will never happen.

But, sir, here comes a difference between the chairman and me. He would make the decision of this court final in all cases not involving more than $500. My plan does not refer itself to the amount at all, but refers itself simply to the judges who hear the case, and if no one of those judges sees anything in the case worthy of review, then I say their judgment is to be conclusive. If any one of them does see anything in the case worthy of review, then a writ of error takes it up to the Supreme Court. I like that greatly better than fixing an amount, and I will tell you why. In the first place, any amount that you can fix is invidious. Poverty has disadvantages enough without our marking it in the fundamental law of our State. I do not want to say to the poor men who cannot have a $500 law suit, that they are not to have just as good chance of litigation as the rich corporations and rich millionaires among us. I do not want to say that in the fundamental law. It is ungracious. There is nothing in me that does not instinctively rebel against such a suggestion.

Then I need not tell the learned lawyers, by whom I am surrounded, that a case of the smallest pecuniary magnitude may involve the most important principles. I argued a case the other day in the Supreme Court, from Lehigh county, that originated before a justice of the peace about a tax of twenty-five cents a ton on ore, hauled over a township road, and the judges of the Supreme Court thought it was so important that they ordered a re-argument. It was argued last year, and they ordered it to a re-argument before a full bench this year, and it was re-argued before a full bench this year, and you have seen in the legal papers a furious dissenting opinion of Judge Agnew, the opinion of the court being delivered by Judge Sharswood, and at the bottom of that case there was only a few dollars and cents.

Now, according to my learned friend here, such a case as that is unworthy to go to the Supreme Court. According to my plan, such a case as that has just as good right to go to the Supreme Court as a case involving millions. I would not discriminate between the rich and the poor. The large amount and the small amount is a law suit. The gentleman says justice is blind. Concurring in almost all he says, I cannot concur in that. It was the heathen mythology that taught us justice was blind; but in our christian day justice is wide awake. It looks all around a case, sees everything that is upon the record, hears everything that anybody can suggest in court to aid it. Justice is neither deaf nor blind with us. The heathen idea was that she must be blindfolded, and they put up in the Pantheon that image of Justice; but I do not see how a blind judge can hold the scales even. I never have been able to understand how any man can understand that the scales are even if he is blindfolded. No, sir; the better thought is that the judge is to know nothing of the case except from the record, but is to look at all there is upon the record. He is to know nothing of the parties except from the evidence; whether they are rich or poor, black or white, male or female, is a matter of utter unconcern to him. He sits there, not to administer the law to persons, but every law suit is an impersonality before the just judge. The simple question with him is, what is the law of the land as applicable to the facts of this case, and I say that that question may be just as difficult and just as important in a case of one hundred dollars as in a case of one hundred thousand dollars.

Why, sir, the county of Susquehanna has more school houses than any county in the Commonwealth, in proportion to her population, and according to the census has fewer people in it who cannot read and write, and it has more post offices I think than any county in the State of equal size; it is the most intelligent county in Pennsylvania, speaking of the population by the mass. We sat some years ago in the Supreme Court, and heard, I think, six cases from Susquehanna county in one day, and at night when I went home with the paper books, I added up the amount in controversy in those six cases, and it amounted to exactly $130. [Laughter.] We had better have paid the $130 than to have been put to the study of those cases, because every one of them involved some difficult legal question which had been litigated up there among those intelligent Yankees, and brought down here and litigated in the Supreme Court. Now, would you shut it out? No, I would not shut out from my judicial establishment the legal questions of such little causes.

Mr. FELL. I am afraid they are a little close up there.

Mr. WOODWARD. They are pretty close; they are pretty keen, and I tell you that all intelligent people are litigious. It is those people who are sunk in ignorance and misery who do not look after their rights. The moment a community begins to rise you will find the individuals in it all watching their rights, and if one man has got two feet of ground within his fences that belong to his neighbor, that neighbor is not going to rest; he will have a law suit about it, and then to say that that law suit, which may involve questions that go to the very foundations of our institutions, shall not be litigated because it does not involve $2,000 or $1,000, or some other large sum, is, I think, a proof that justice is blind.

Mr. KAINE. Will the gentleman yield to a motion that the committee rise?

Mr. WOODWARD. Yes, sir.

Mr. KAINE. Mr. Chairman: I move that the committee of the whole now rise, report progress, and ask leave to sit again.

The motion was agreed to. The committee rose, and the President having resumed the chair, the Chairman, Mr. Harry White, reported that the committee of the whole had had under consideration the

article reported by the Committee on the Judiciary, and had instructed him to report progress and ask leave to sit again.

Leave was granted the committee of the whole to sit again this afternoon.

Mr. SIMPSON. I move that the House take a recess until three o'clock.

The motion was agreed to, and the House took a recess until three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

LEAVE OF ABSENCE.

On motion of Mr. Darlington, leave of absence for a few days was granted to Mr. Henry W. Smith.

THE JUDICIAL SYSTEM.

Mr. HEMPHILL. I move that the Convention resolve itself into committee of the whole, for the further consideration of the article reported by the Committee on the Judiciary.

The motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Harry White in the chair.

The CHAIRMAN. The question before the committee is on the amendment to the amendment, offered by the delegate from Allegheny, (Mr. S. A. Purviance,) upon which the delegate from Philadelphia (Mr. Woodward) has the floor. The delegate from Philadelphia does not seem to be present.

Mr. KAINE. I supposed that Judge Woodward had about concluded his remarks when I made the motion that the committee rise, report progress, and ask leave to sit again. I desire to say something upon the immediate question now before the committee, the question arising upon the motion made by the gentleman from Allegheny (Mr. S. A. Purviance.)

Judge Woodward, in his remarks, complained of the chairman of the Committee on the Judiciary for a want of receptiveness, as he called it. There seem to have been several members of the committee who might be charged with the same fault. I found myself, as a member of that committee, unable to agree with my friend, the chairman, or with Judge Woodward, upon the subject of circuit courts. I was opposed to incorporating anything of that kind in the Constitution from the first meeting of the committe until the last. I thought it could not accomplish that which its friends desired, or which they supposed. [At this point Mr. Woodward entered the Hall.] If the gentleman from Philadelphia, now in his seat, desires to occupy the floor, I will give way for him.

Mr. WOODWARD. No, sir; go on.

The CHAIRMAN. The delegate from Philadelphia declines to take the floor. The gentleman from Fayette will proceed.

Mr. KAINE. I would prefer the judicial system of Pennsylvania as it is, rather than to incorporate into it anything of this kind. I think we want but little in the Constitution on that subject different from what we now have. With three exceptions, the section we have now before us is an exact transcript of the first section of the fifth article of the Constitution. Judge Woodward has put into it the words, "in circuit courts," and also "and district courts," and has left out the register's court.

The CHAIRMAN. The Chair will remind the delegate from Fayette of the propriety of speaking of members in a parlimentary way.

Mr. KAINE. There are so many gentlemen from Philadelphia that it is difficult to designate them. There are some twenty-one, I believe, or perhaps more, from Philadelphia, and it is very difficult to designate them without calling them by name. If they had numbers, I could designate them in that way. [Laughter.] But, sir, I will try to keep myself within the rules of parliamentary law on that subject.

The first section of the fifth article of the Constitution, as it stands, gives to the Legislature power to establish all kind of courts that may be necessary for the entire State. But it seems to be thought necessary now that there should be some constitutional provision, and this section provides for circuit courts and district courts, to both of which I am opposed. I am opposed, at any rate, to putting them into a clause of the Constitution. I am opposed to circuit courts from the beginning to the end. District courts can be established by the Legislature under the Constitution without putting it in an article. As the article now stands, it is imperative to have registers' courts; I have no objection to leaving that out.

I do not believe that the circuit courts, on the plan proposed by the chairman of the Committee on the Judiciary, or the plan proposed by the gentleman from Philadelphia who spoke this forenoon,

will accomplish what is desired. I do not think it would much relieve the Supreme Court. Besides, it would be cumbersome; it would hinder and delay the transaction of the legal business of the Commonwealth, and I think would not be satisfactory to the people. The circuit court, as first established in this State at the formation of the government, under the Constitution of 1790, when the Supreme Court consisted of three judges, was held by all three of the judges. As early, perhaps, as 1806 it was changed by an act of Assembly, and one judge of the Supreme Court was authorized to hold the circuit court. In 1810, perhaps, another act was passed on the subject, declaring that three judges were to constitute that court, but that one might hold it. That was again changed in 1827; and so it remained until the act establishing the court was repealed.

The plan proposed by his Honor, Judge Woodward, is nothing more than the present system as practiced in the State of Ohio. It only differs in this, that in Ohio the circuit court is composed of the common pleas judges of the district belonging to that district, and it is presided over by a judge of the Supreme Court.

His Honor, Judge Woodward, proposes to establish a circuit court to be held by the judges of the court of common pleas residing in the district, and in that district to elect a circuit judge to preside over it. Therein alone it differs. It differs from the plan of the chairman of the committee in this, that it proposes to elect a new set of judges of the circuit court entirely, and has them presided over by a judge of the Supreme Court, in the last particular conforming to the system in the State of Ohio. I have been in Ohio; I have had something to do with their courts there; and that system has not been satisfactory to that people, and this is one of the reasons for which they are assembling a Convention for the purpose of amending their Constitution.

I would prefer an enlargement of the Supreme Court, an increase of the number of judges, and a division of that court into two branches, one to be a Supreme Court proper, the other to be called a Supreme Court of Appeal; the Supreme Court to have jurisdiction of all common law writs; the Supreme Court of Appeal to have jurisdiction in all cases of appeal and in all cases in equity, with a power of revision of the cases decided in the court of appeal by a full court in banc.

I think his Honor, Judge Woodward, was mistaken this morning when he said that in England a man had a right to go through the court of queen's bench and the common pleas to the exchequer and exchequer chamber. That is not my notion of the practice in England. They have the court of queen's bench, they have the court of common pleas, and they have the court of exchequer, the two first presided over by a chief justice and four judges, and then the court of exchequer presided over by a chief baron and four other barons, thus having, in all, fifteen judges. From either of those courts there was an appeal to the court of exchequer chamber, which was composed of the whole fifteen judges in banc, that heard and determined all appeals that came from either of these courts. From the court of exchequer chamber there was an appeal to the House of Lords. A commission was established in England, perhaps as early as 1865 or 1866, to examine into all questions of legal proceedings in England, in Wales and in Scotland. They have published volumes of statistics upon that subject, and they have made two or three reports. In 1870 or 1871 they reported that all these three or four separate courts should be abolished, and that all the judges, with as many more as were necessary, should constitute one court, and that that court should be divided into separate courts for taking charge of particular classes of cases under a general order or under an act of Parliament. I have that report in my hands, kindly furnished me by the gentleman from Philadelphia, who sits on my right (Mr. Cuyler.)

"We are of opinion," the commissioners say, "we are of opinion that the defects above adverted to cannot be completely remedied by any mere transfer or blending of jurisdiction between the courts as at present constituted; and that the first step towards meeting and surmounting the evils complained of will be the consolidation of all the superior courts of law and equity, together with the courts of probate, divorce and admiralty, into one court, to be called "Her Majesty's Supreme Court," in which court shall be vested all the jurisdiction which is now exercised by each and all of the courts so consolidated.

"This consolidation would at once put an end to all conflicts of jurisdiction. No suitor could be defeated because he commenced his suit in the wrong court,

and sending the suitor from equity to law, or from law to equity, to begin his suit over again in order to obtain redress, will be no longer possible.

"The Supreme Court, thus constituted, would, of course, be divided into as many chambers or divisions as the nature and extent or the convenient dispatch of business might require."

Whether that plan has been carried out by act of Parliament I do not know. Mr. Cuyler, who has been in England during the last season, perhaps can tell.

Mr. BIDDLE. It has not been.

Mr. CUYLER. It has not been carried out. It is under consideration; it has not been acted on as yet.

Mr. KAINE. Now, sir, I would establish for this State one Supreme Court, with a sufficient number of judges to transact all the business. His Honor, Judge Woodward, thinks that five is all the number of judges required for the Supreme Court, and he says that five judges can listen just as well as seven. So they can, and one can listen just as well as five. But is that the cause of the delay, or much of the delay, in the Supreme Court? No, sir. The difficulty is for want of more hands to labor, more men to write opinions. Why, sir, I know of a little case that was argued in the Supreme Court in Pittsburg. It was a *remander* which was argued there last fall during the sitting of the Supreme Court in the Western district. The opinion was to have been written and delivered here, but it was not, because the judge to whom it was given had not time to write it. How many more cases there may be in the same situation I do not know. It is a vast amount of labor, it requires a vast amount of time and attention, to write the opinions of the Supreme Court; and, as my friend from Delaware (Mr. Bromall) remarked in his minority report, the judges write essays upon law. But if the Supreme Court consisted of eight judges five would constitute the number which, in the opinion of the gentleman from Philadelphia, (Mr. Woodward,) is best suited for the Supreme Court, and they could hold the Supreme Court proper, while three judges could be assigned as a separate branch of that court, as is proposed to be done in England, to decide such cases as might be assigned to them by a rule of court or by an act of Assembly. That, I think, would remedy the difficulty. Under that plan you could certainly get along with the business of the Supreme Court in Pennsylvania, at least for twenty years to come, until this Constitution will require amendment.

I would constitute the courts of common pleas by districts, and I would make population the basis, as nearly as possible. I would not divide a county; I would put two or three, or more, counties together, if necessary; but where a county was large enough for a district I would make it a district. I would give each district two judges, or three judges; and I would require those judges to hold courts alternately, as they do in England, and as our Supreme judges did under the old circuit court system. Under the act of 1806 the judges of the Supreme Court were required to hold their circuit courts alternately. I would require these judges to hold a court in each county in their district alternately, and I would require them once a year, if not oftener, to hold a court in banc in each county, for the hearing of all important questions of new trials, motions in arrest of judgment, reserved points, important appeals, and everything of that kind; and I certainly think, sir, that after a man had had his case tried in that way, tried before a court below, before a competent bench, and then heard on a reserved question before three judges holding court in banc, and decided, he would be satisfied, and he would go no further.

Mr. RUSSELL. If the delegate from Fayette will allow a question, I ask him, is not that practically the system which he says is a failure in the State of Ohio?

Mr. KAINE. Not at all. I am not giving this court any appellate jurisdiction. This is a court of original jurisdiction, and all that I do is to call in three judges, so that when a judge is not satisfied with the way in which a case is presented he can say, "I will reserve this for the court in banc," or where a motion for a new trial has been made, "I will reserve that for the court in banc." These are the kind of questions I would have this court to decide, not do as they do in Ohio, where the circuit court is a court of appeals.

Mr. BOYD. Will the gentleman from Fayette say whether he means that the judge who tried the cause below shall be one of the three to decide it in the court in banc?

Mr. KAINE. He may or he may not.

Mr. BOYD. Which do you mean—both? [Laughter.]

Mr. KAINE. I would allow him to be one of the three.

Mr. BOYD. I never would.

Mr. KAINE. I would. I have great faith in the judiciary. I have some faith in judges. I am of the same opinion upon that subject with the chairman of the Committee on the Judiciary (Mr. Armstrong.) I am not afraid of that judge bilking about. I am not afraid of a judge sticking to an opinion when he is satisfied that he is wrong, or sticking to an opinion whether he is right or wrong. I believe that the judges are honest men, and I am entirely satisfied that a judge who has decided a question is placed side by side with his neighboring judges, or with those who are associated with him in the district, and they show him wherein he has been wrong in his ruling on a point, he will unite with them in reversing that ruling.

The CHAIRMAN. The gentleman's time has expired.

Mr. ARMSTRONG. I ask unanimous consent for the gentleman from Fayette to proceed.

The CHAIRMAN. No objection is made, and the gentlemen from Fayette will proceed.

Mr. KAINE. I am not afraid to trust the judges. That is not the trouble. That is not the clamor that has come up from portions of the State upon this subject. It is more judicial force that is needed. We want more judges. When people want more labor done, they get more men to do it, and the only way that our courts can be relieved is by having more judges, both in the Supreme Court and in the courts of common pleas. What would be the operation of one of these circuit courts, for instance that proposed by his Honor, Judge Woodward, a court of appeal? A man is put to the trouble of trying his case in a court of common pleas, which, if it is an important case, every lawyer knows, requires a great deal of labor to be well tried, not only upon the part of the client, but upon the part of the counsel. It is gone through in the common pleas and goes up to the court of appeals, and there he has to prepare—I do not know what. I do not know what the gentleman's plan is on that subject. I suppose it is the same labor as we have now in taking cases to the Supreme Court. I suppose all the testimony is to be printed; all the papers given in evidence in the case are to be printed if it is put on bills of exception as in other cases. I do not know how they can arrange the circuit court in any other way (and it is not to be supposed that they will) but to have a review of the testimony and the facts.

Some gentleman says, "certainly," what would they have? How likely would they be to reach the merits of a case if they would just take the rough notes of the testimony as taken by the court below? There is no way in the world for a judge to come to a right conclusion in a case so well as to have heard the witnesses testify before him in open court. It is the only true way of trying a case upon a question of fact. Then, after the case is decided in the circuit court, what then? One of the judges is not satisfied with the decision and he gives a certificate to that effect, and the case goes to the Supreme Court. Another set of books are to be made up, and all this trouble is to be gone over again.

Let there be an end to this somewhere, I think two trials, a trial in a court below, before a jury, and then a review, if necessary, upon the law and the evidence before this court of common pleas in banc, or a writ of error to the Supreme Court, ought to be an end to it. Let there be an appeal to the court of appeals, if the case is easy, and one which would be easily understood, but do not let us inject into our new Constitution, as these circuit courts would, an entirely new idea, an entirely new principle. Comparatively very few cases that are heard in the courts of common pleas, throughout this Commonwealth, go to the Supreme Court, at any rate; not one in fifty, so far as my knowledge extends, in the section of the State in which I live, goes to the Supreme Court. It is not so important a matter after all. The Supreme Court is very important, it is true, on great questions, but nothing is so important as a perfectly fair and honest trial of a man's case in the court below.

I am therefore in favor of the amendment as proposed by the gentleman from Allegheny (Mr. S. A. Purviance.) I am in favor of striking out the words "circuit courts" in this section, leaving the article as it is in the old Constitution, with the exception of striking out the register's court. When the other sections of this report come up for consideration, I propose to offer as amendments the plan that I have suggested both for the Supreme Court and the court of common pleas; and upon those amendments, when offered, I may have something further to say.

Mr. WOODWARD. Mr. Chairman: I hope the Convention will excuse me for occupying more of their time than I first intended to do; but this is a large subject and cannot be explained in restricted debate. When we took a recess, I was calling the attention of the committee of the whole, somewhat in detail, to some of the provisions that I suggested for the circuit court. The Legislature is to divide the State into convenient districts not exceeding twelve. While I was drafting that amendment I tried the question, in an informal way, and made pencil marks of the result, supposing the amendment adopted and the question before the Legislature. I found that the State could be divided into twelve districts, with very nearly the same population in each district after you get out of the city of Philadelphia. It is, of course, impossible to divide the city of Philadelphia; it must be one circuit. The population of Philadelphia, without fractions, is six hundred and seventy-four thousand. That, of course, is exceptional and must be a circuit by itself.

I made Philadelphia the first circuit. The second, Allegheny county, contains a population of two hundred and sixty-two thousand, without fractions; the third circuit, two hundred and sixty-one thousand; the fourth circuit, two hundred and twenty-eight thousand; the fifth circuit, two hundred and sixteen thousand; the sixth circuit, two hundred and seventy-six thousand; the seventh circuit, two hundred and twenty-five thousand; the eighth circuit, two hundred and seventy-one thousand; the ninth circuit, two hundred and six thousand; the tenth circuit, two hundred and sixteen thousand; the eleventh circuit, two hundred and eighty-seven thousand; the twelfth circuit, one hundred and seventy-three thousand.

This the Legislature would doubtless improve upon, when they came to district the State, and I think I could improve upon it myself; but hurriedly done as it was, you see how the population of Pennsylvania can be brought into circuits of about the same population. The probability is that the judicial business of these several circuits would be found, on examination, to be nearly equal.

Into each of these circuits I propose to put a competent, learned law judge, to be called the circuit judge; and now, Mr. Chairman and gentlemen, I wish to call your attention to some incidental advantages resulting out of that arrangement, having such a judge in these circuits as a sort of extra power. You have seen the artillery wagons always carrying an extra wheel on their carriages, to guard against accidents. That is this idea. You furnish each one of these two hundred and sixty-two, two hundred and sixty three, or two hundred and sixty-four thousand people, with an extra judge to do up all the unfinished jobs of that circuit which the local judge is unable to accomplish. I know, and every practising lawyer knows, how much inconvenience comes from the necessity for special courts. The judge is interested in a case of importance, or he is related to one of the parties, or he is sick, or he is absent, or there is a death in his family—there is something which disqualifies him from holding a particular court and trying a particular cause. A judge from another district, full of business himself in his own district, must be waited for to go into the county to try that cause, and hence a special court. Now, I propose to furnish the people in every circuit with a judge to go and hold that court whenever the proper judge, for any reason, is unable to hold the court. He will be an assistant to each judge in his proper circuit.

Then these appellate circuit courts are to be held in every county of the circuit, which will bring them directly home to the people of every county, because doubtless they will be held in turn in every county of the circuit, and all the common pleas judges of that circuit will arrange among themselves that four of their number shall sit with the circuit judge to hold the court in each county. There will be none of that inconvenience to which gentlemen allude, of taking cases away from home. It brings the circuit court directly home; and the gentleman from Fayette (Mr. Kaine) will excuse me for saying that I do not understand this to be the Ohio plan, but on the contrary there is a sub-circuit in the Ohio plan which is entirely absent from this, and there is a judge of the Supreme Court detailed to hold the circuit court in the Ohio plan, which differs entirely from my plan, because I propose to make this circuit court independent of the Supreme Court. In this way the State can be divided into, perhaps, ten or eleven, certainly twelve, circuits of porportionate population, contiguous counties, of about the same amount of business, and the people furnished with a judge who will obvi-

ate all the difficulties and inconveniences that come from special courts.

Then there is the change of venue. You know how often the Legislature has been asked to change the venue of cases.

Mr. KAINE. I would call the gentleman's attention to the language of the Constitution of Ohio on that subject. They do not call them circuit courts in Ohio. I will read from the Ohio Constitution:

"The judicial power of the State shall be vested in a Supreme Court, in district courts, courts of common pleas, courts of probate, justices of the peace, &c. * * *

"District courts shall be composed of the judges of the court of common pleas of the respective districts and one of the judges of the Supreme Court, any three of whom shall be a quorum, and shall be held in each county therein at least once in each year."

Mr. WOODWARD. Now go on and read about the sub-districts.

Mr. KAINE. If the gentleman will give me the time, I will read:

"But if it shall be found inexpedient to hold such courts annually in each county of any district, the General Assembly may, for such district, provide that such court shall hold at least three annual sessions therein, in not less than three places: *Provided*, That the General Assembly may by law authorize the judges of each district to fix the time of holding the courts therein."

That is all there is; nothing else.

Mr. WOODWARD. I have a copy of the Constitution of Ohio, unfortunately not here, in which there is a provision for a sub-circuit, splitting the circuits up into sub-circuits, and I say it is not in this proposition at all.

That I may not be diverted from an exposition of my plan, I will go on and say that dividing the State, as I have said, into not exceeding twelve circuits or districts, whatever you choose to call them, you provide a judge for that people to finish up and do those jobs, so to speak, that the local judges, for many reasons, are disqualified from doing; and you get rid thus of all change of venue of cases of all special courts, and give better satisfaction to parties by bringing in an impartial judge, who is not connected with the parties or with the general business of the county, to try a particular cause.

I have seen great inconvenience resulting in causes of great public interest in small counties, where the judge himself, the jury, and everybody concerned, had taken sides in a case that had been the subject of public discussion throughout that county for a long time. Then counsel feel the necessity for change of venue. They go to the Legislature and get a special act of Assembly for that purpose. Now, in my plan, the circuit court, to whom this appeal that has been made to the Legislature would be addressed, on its being shown that there was good cause for a change of venue, would direct that cause to be tried in the adjoining county, or a remote county, some other county in the circuit. The circuit judge would preside there and try the cause before an impartial jury in that county, and thus the incidental advantage of this circuit system would dispense with all the expense, trouble and delay that now attend the change of venues and the special courts that we have.

It has already been said that this circuit court shall have no *original*, but only an *appellate* jurisdiction. There is a class of criminal cases which now, under an act of Assembly, are removed into the Supreme Court at great disadvantage. Homicide cases may be removed into the Supreme Court by the allowance of a writ of error by a judge of the Supreme Court, and my friend from Allegheny will be shocked to know that there the personal application that he spoke of this morning is made to a judge of the Supreme Court. How? By following him to his home, teasing him and annoying him in the most unjudicial manner? That seems to be the scarecrow in the mind of my friend from Allegheny county. Not at all. The very first thing the Supreme Court did when that act of Assembly was passed was to make a rule on the subject. The record must be brought in; it must be presented in open court: the chief justice says to one of his brethren: "You take this and examine it and see whether there is any occasion for a writ of error;" a transaction just as public as any other in that court. That judge, appointed by the Chief Justice, reports to the Chief Justice that, in his opinion, there is no ground for a writ of error, or that there is ground for a writ of error; and if the Chief Justice is satisfied with his report, a writ of error is awarded. That is the way the thing is done now, under our act of Assembly, which gives the Supreme Court appellate jurisdiction in homicide cases.

Why cannot that be done with this circuit court? Why cannot the record of a

murder case be carried to the circuit court, submitted in open court, as other business is submitted, referred to a judge, examined, passed upon, and the writ of error or appeal allowed or disallowed; Then when it is allowed, and the record has been brought up, and the case has been reviewed, do you not see that the Supreme Court is relieved of all that labor? Now, it is impossible to conceive of a more important duty than you impose upon the Supreme Court when you require them to review the record of a murder case.

I could tell you of some cases of that sort. It is a most responsible duty. Here is the life of a human being suspended upon their judgment. They did not try the case; they did not hear the witnesses; they did not see the parties; they have no such means of judging of the case as the judge who presided; and yet they are obliged to decide whether that man shall be hanged or a new trial shall be awarded to him. It is a most responsible and difficult duty, and one which the judges of the Supreme Court come to with the greatest care and solicitude, for it involves the life of a fellow-being. Sir, I would relieve the Supreme Court of that duty. Heaven knows they have enough to do without passing upon these capital cases; and these circuit court judges, nearer home, in full possession of all the evidence in the case, are just as competent to pass upon such a question as the judges of the Supreme Court, and will be much better situated for doing it, and the Supreme Court will be relieved. It seems to me that is one of the incidental advantages of these circuit courts which is very considerable, and I wish gentlemen would lay it to heart and consider if it is not worthy of adoption.

But under my suggestion trifling criminal cases are not to go up. It is only those which are tried in the oyer and terminer; and those grave offences which are tried in oyer and terminer, many of them involve questions that are just as well worthy of review as capital cases. It is the higher crimes alone which, under our act of Assembly, are tried in the oyer and terminer. Under my amendment the cases from the oyer and terminer alone are to go up to the circuit court, and the Supreme Court will, to that extent, be relieved. Then, if the circuit court, upon a review of the case, criminal or civil, consider that there ought to be a new trial, nothing is more common than to say: "Why there is no use in trying this cause over again in that county; everybody has taken sides, one side or the other." Then say the circuit court: "Let the record be certified to another county;" and if the judge of this county is busy and does not want to be bothered with other people's business, the proper judge, the circuit judge, is at hand to go there and try the cause, civil or criminal.

These, gentlemen, are incidental advantages that are to result from a circuit court of appellate jurisdiction, no original jurisdiction being exercised except by the circuit judge, and that in the civil cases, according to the necessities of the cases as they arise. I submit it for your consideration:

"The circuit judge, besides performing the duties of president of the circuit court, may hold special courts, criminal or civil, in any county of his circuit, under such regulations as may be prescribed by law; and all motions for new trial or in arrest of judgment in criminal cases tried in the court of oyer and terminer shall be removable by way of appeal into the circuit court, under such regulations as may be prescribed by law; and the judgment of the circuit court in such cases shall be conclusive and final."

Taking away from the Supreme Court all that litigation that comes from the court of oyer and terminer.

Mr. Chairman, such are the features of the plan which I have taken the liberty to suggest for this circuit court. I am of opinion, upon a review of the whole ground, that there is no other way to relieve the Supreme Court than by a circuit court, such as my friend, the chairman, proposes, or such as I have had the honor to submit myself. I know that difficulties may be suggested, such as the gentleman from Fayette (Mr. Kaine) has suggested, and other gentlemen will suggest. It is impossible to strike out any plan that shall be perfect. It is a great deal easier to find fault with what another does than to do the thing better yourself. "I can easier teach twenty what were good to be done," says Portia, "than be one of the twenty to follow mine own teaching." It is always easier in this world to pull down than it is to build up. The prayer, "Thy Kingdom come," is a much more difficult one for a certain class of minds than "let Carthage be destroyed." If we come to the consideration of this subject in this spirit, "I will not vote for any proposition that I can find any fault with; I will not

vote for any general plan which anybody can say is defective in any particular;" there is an end of reform; there is an end of relief. You will never get such a plan. We are none of us angels. We are all fallible men.

In my plan I have put down as little as possible, in order that the Legislature from time to time might supply its deficiencies, might correct its bad workings, might improve it. It is a system that admits of being improved. If it is found upon experiment that it does not relieve the Supreme Court, as the gentleman from Fayette thinks it will not, let something else be devised. But will you sit down in sullen silence and leave the Supreme Court of Pennsylvania swamped, as my friend said this morning, without an attempt to relieve it, because, forsooth, there is nobody in this Convention who can strike out a plan that nobody else in this Convention can find any fault with? I have no hope of ever seeing a plan suggested that nobody can criticise.

Little as I like the plan of my friend on my left, (Mr. Armstrong,) much as I prefer my own—not because it is my own, but for the reasons I have been giving—yet I say that if the Convention will not adopt my plan, for heaven's sake, adopt his; try it. I do not believe it will work well; I do not believe a circuit court, with original jurisdiction, is wise and well for the people of Pennsylvania; but I may be mistaken in that, and rather than not to bring to the people of Pennsylvania some relief from the present denial of justice that results out of an overworked Supreme Court, I say take the plan of the chairman of the committee.

It is in vain to go to the commissioners on the English judiciary, who are feeling their way for an improvement. They have adopted nothing; they have accomplished nothing. It is in vain to point us to them. They are provided already with an amount of judicial machinery that very far exceeds what we shall have when you have adopted the circuit court of my friend the chairman or my own; exceeds it in expense, exceeds it in its personality, exceeds it in its judicial capacities and exceeds it in the opportunities of litigation to suitors. I know that the *jurisdiction* of those English courts is attempted to be divided by law. Revenue cases originate in the court of exchequer; common law cases in the court of queen's bench; general litigation in the courts of common pleas; equity cases in a court of chancery, and there are continual disputes as to which court the suitor should have gone; but he has a series of those courts, and there is the exchequer chamber over them all, and there is the House of Lords over the exchequer chamber, thus affording to suitors the largest liberty in litigating those vastly important questions which do from time to time arise in every great community like that of Great Britain, and which are swelling up here in this great community of ours in Pennsylvania.

I am astonished when gentlemen of the experience and wisdom of my friend from Fayette can contemplete the existence of this necessity for some additional judicial provision, and then sit down in apathy and indifference to the proposition that has been made, because, forsooth, it is not deemed perfect. That is not the spirit in which we are to effect a reform in this great subject. We are to come to it with a conviction deeply inwrought upon all our minds that the time has come for relieving the Supreme Court of its overwork, and providing the people of Pennsylvania with a mode of litigating those important questions that are arising in our country more thoroughly, more learnedly, more satisfactorily than can be done under our present organization. If any gentleman can propose a better plan than the learned chairman or my humble self have proposed, let him bring it forward, and I pledge my word and honor that I will support any plan that seems likely to accomplish the objects in view better than the plans which we have submitted.

Mr. Chairman, the immediate question before the committee on my motion is to strike out the first section of the chairman's plan and insert mine. Having said about all that I care to say on the circuit court, I wish to say a few words on that precise question. The gentleman from Fayette noticed the fact that I had followed the present Constitution, except as to the circuit courts. I have done so. My first section is the first section of the fifth article of the present Constitution, with the addition of the circuit courts. The first section in the report of the chairman which, by favor, is called the report of the committee, has some objectionable provisions. I will call your attention to one of them:

"No court of record other than those herein designated shall be established."

I wish gentlemen would remember that the chairman proposes to tie up the pow-

er of the Legislature from ever establishing in Pennsylvania any other court than those which are specified in this introductory article. In my amendment I provide that the judicial power shall be exercised by these courts, which are familiar to everybody, and by "such other courts as the Legislature may, from time to time, establish." That is our present fundamental law, and I hold it of great importance that we maintain that provision. That is a reason, and a very strong, cogent reason, in my judgment, why my amendment ought to prevail over the section of the honorable chairman; for, sir, observe, there have been several crises in the history of Pennsylvania, already, when other courts of record than those that are enumerated here have been indispensable to the peace and welfare of the people. In some portions of this State there would have been popular insurrection if the Nicholson court had not been established at the time that it was, to settle some of the titles of John Nicholson. It did not amount to much, to be sure; but it tided over the passions of the people, gave time for those bad passions to cool, and settled a great popular excitement, by the construction of a court and the appointment of Judge Anthony to hold it, who was a very genial and conciliatory gentleman. There was an instance where this power to establish other courts than those which are mentioned in the article, was most indispensable to the peace and welfare of Pennsylvania.

The great Connecticut dispute between Connecticut and Pennsylvania as to the seventeen townships, involving the Pennymite war and the shedding of a good deal of blood, was finally settled by a commission. They were called commissioners it is true, but they were as truly a court, and a court of record, as any we had in Pennsylvania. Three learned and competent men were appointed to go on and examine the claims of those Yankees, who had settled down on Pennsylvania soil, and to certify to them their titles, and to compensate the Pennsylvania claimant by certifying to the Treasury of the Commonwealth what he was entitled to receive, and thus a civil war was absolutely terminated by this temporary provision of a temporary court. I might allude to other instances in our history.

Now, sir, what is going to happen in the future? Is any man here wise enough to forecast the future, and to tell me that the Legislature of Pennsylvania shall never, under any circumstances, establish any other courts than those which the learned chairman has chosen to enumerate? Nobody has a higher opinion of the wisdom of my friend than I have, but I do not feel willing to trust him for the future. I do not know what complications may arise. I do not know what whisky insurrection, I do not know what rebellious and popular disturbances and tumults may spring up, which may defy all the existing courts. I would leave to the Legislature the power to meet those emergencies. It is not likely to be abused. If anybody says the power was abused in the establishment of the criminal sessions in the city of Philadelphia, it did not last long. The criminal sessions wore out its welcome and disappeared from the face of the earth, which was well enough. But the power is not likely to be abused; perhaps not likely to be exercised; and if never exercised, it will do no harm in the Constitution.

Mr. HAZZARD. Allow me to ask the gentleman a question. Is there not as much human nature in judges as in other people?

Mr. WOODWARD. Yes, sir, I believe that to be true.

Mr. HAZZARD. Will not those judges who come up from the common pleas to hold the circuit courts, come there with a pride of opinion and bias in favor of the decision below?

Mr. WOODWARD. Granted.

Mr. HAZZARD. Then I do not want them to compose the court.

Mr. WOODWARD. They are not to take any part in the judgment of the circuit court.

Mr. HAZZARD. But I understood the gentleman to say a short time ago that they were very convenient men to have to consult. It seems to me they are the very persons who ought not to be consulted.

Mr. WOODWARD. You need not consult them if you do not want to do so.

Mr. HAZZARD. They had better not be there, and then they cannot be consulted.

Mr. WOODWARD. If you do not want to be informed about the course of the trial in the court below, you need not consult them. They are to take no part in the decision of the cause by my amendment. They are there only for the convenience of the other judges, and if they do not choose to use them, I do not see that there is any harm done. But, sir, if they were to take part in the decision of the cause,

if they were to be consulted, were to sit in judgment and decide on their own cases, I want to know what better it is now in the *nisi prius* in this city? Here a judge of the Supreme Court holds a court of *nisi prius;* he hears bills in equity; he tries jury causes; he hears these learned counsel; he decides. They appeal, take a writ of error of course, take it across to the other room, and there they find this very judge on the bench to review his own decision.

Mr. CUYLER. It is a great defect in our existing system.

Mr. WOODWARD. Undoubtly it is; but that answers the gentleman from Washington (Mr. Hazzard.) He has not found a mare's nest in this thing. It is as old as the *nisi prius* is, and it is as old as the English law is, because that I believe is the practice in England; the judges sit in the review of their own cases. There is, therefore, nothing in any respect in the suggestion of the gentleman, because, according to my plan, they are not to sit as judges; but if they were, it is quite according to the English pattern, and according to our experience in this State. There is nothing, therefore, in that suggestion.

Mr. HAZZARD. If the gentleman will allow me, there is a gentleman on the floor of this House who has practiced in Ohio, where these judges come up to the circuit court, and he says one of the reasons why they are now calling for a Constitutional Convention in Ohio, is to get rid of this very thing, and his experience there was that he had to fight that judge from the common pleas court more than the opposing attorney and all the court besides.

Mr. WOODWARD. Well, Mr. Chairman, I did not take my inspiration from Ohio. I have not copied the Constitution of Ohio. I have not submitted the plan that they have in Ohio, and I do not propose that the judge who tried the cause shall sit in review of it. If those are not answers to the suggestions of my friend from Washington, I do not know how my friend from Washington can be answered.

I was speaking of the necessity of leaving the Constitution in the particulars to which I have alluded as it stands now. I believe it would be unwisdom to take away from the Legislature of the future the power to establish a temporary court, and that a court of record, in emergencies which may recur, I hope they may not, but they may recur, and it is the part of wisdom, I think, (at least our forefathers thought so,) to provide somewhere in the Constitution for those emergencies when they do arise, and not leave ourselves with our hands tied at the very moment when we ought to have the power to relieve ourselves from the existing danger and difficulty.

Now, Mr. Chairman, thanking the committee for the patience and attention with which they have listened to me in these desultory and somewhat broken-up remarks, and stipulating only that at some future stage of this discussion, when we get into the other amendments, they will give me a few minutes of their valuable time while I discuss an elective judiciary, I am going to leave this subject. When we come to the appropriate part of this report, I am going to maintain the ground against all comers that the judges in Pennsylvania, for all time to come, should be selected and put upon the bench by some other means than popular elections, and I am going to demonstrate that if in 1850 it was safe to elect a judiciary, it is not safe to elect a judiciary in 1873. We are not the people now that we were in 1850; the ballot in Pennsylvania is not what it was in 1850; voting is a different business entirely in Pennsylvania from what it was in 1850. To commit the vast interests of these four millions of people as they stand connected, and necessarily connected with the judicial establishment of Pennsylvania, to the changes and the chances and the corruptions of popular elections, shocks the sensibilities of every man who considers this subject thoroughly and does not dismiss it with some flippant answer that does not touch the foundations upon which the subject rests. I do not enter upon it now, but I am going to ask your attention to some thoughts on this subject at the proper time.

Mr. Chairman, before I sit down I wish to repeat what has been better said by my friend, the chairman, that the time has come for this reform. We are a State of vast interests. You may contemplate Pennsylvania from any side and any standpoint you choose; when you reflect upon the millions of capital that are employed here in active industry, upon the rapid development that is going on on every hand, and especially upon the increase of our population, I know not unto what Pennsylvania is destined to grow; but the immense interests, present and future, of this great State need nothing this side of the providence of God so much as they do a well regulated judiciary. If

we cannot get ourselves up to this great argument, we will leave the people of Pennsylvania as they are left now, without the possibility of getting their causes decided, or, when they are decided, decided in the most unsatisfactory manner. I cannot persuade myself, and I never shall believe until I hear the votes in this body, that a majority of this Convention is going to dismiss this subject without some *bona fide* effort to relieve the people from the danger and the difficulty of an incompetent judiciary in respect to interests so large and varied as we possess.

Mr. GOWEN. Mr. Chairman: It seems to be admitted that the first great thing to be accomplished by this body is to relieve the Supreme Court—this we all admit; and all of us who have had any experience before that tribunal well know and willingly testify that it is the hardest worked judicial body in the United States. Two plans have been suggested; one to limit the number of cases that shall be taken to the Supreme Court, with reference to the amount that they involve. That is very objectionable. It is objectionable because every man, no matter how small the amount of money involved in his litigation, has, or ought to have, the right to an appeal, if he wants to take it, to the highest judicial tribunal of the State; and we all know that there are a vast number of cases, especially municipal cases and tax cases, in which you cannot properly raise the legal question before the court except where the amount involved in the particular case is a very small one; you may have an aggregate annual taxation of over a million of dollars, and each man may pay but five or six dollars, and his only remedy is to bring an action of trespass against the tax-collector who attempts to enforce it in order to raise the question of the validity of a tax which, in the aggregate, may amount to millions of dollars, and yet, so far as the individual that objects is interested, it may be but very few dollars.

The other remedy, and the one which I take it the majority of this committee is in favor of enforcing, is this, that there shall be created some kind of an intermediate tribunal, if I may use a homely expression a judicial cullender, as it were, through which all the litigation shall be strained, so that the dregs may remain, and that which is valuable may go up. There is no doubt that the proposed circuit court would accomplish the desired end. The objection to the circuit court, as I take it, (and we have heard a great deal about this inside and outside of the Convention since it was first suggested,) will come to a great extent from the judges of the common pleas. The judges of the common pleas will believe that they are belittled, as it were, by having a second court interposed between them and the present supreme judicial tribunal. Gentleman will remember that Mr. Thackeray, in one of his inimitable works, tells us that when the king of Portugal goes out to hunt, a nobleman accompanies him who takes the gun from the king and hands it to the huntsman; the huntsman loads the gun and hands it back to the nobleman, and the nobleman hands it to the king. The king would not, of course, commit such an indiscretion as to take the gun from the huntsman directly, without the intervention of some one who had a patent of nobility. I am afraid that some of our common pleas judges would think they should have the right to hand the case directly to the Supreme Court, and that to interpose any intermediate judge between them and the Supreme Court would be considered as somewhat derogatory to their dignity.

Let us see, then, if this really is the objection, whether there may not be some method whereby this objection can be met and the same benefit brought about. We have now, as the chairman of the Judiciary Committee tells us, fifty-six common pleas judges. It seems to be pretty well understood that district courts are to be abolished, and that the entire judicial system, so far as original jurisdiction is concerned, is to be vested primarily in the courts of common pleas, and that the only way to provide for the growing wants of the community will be, not to create new courts and call them district courts, but to create additional judges of the present courts of common pleas, so that the number of the judges may be so great that they may divide their labors, and one court of common pleas may have three or four judicial tribunals sitting at the same time in different rooms. If that is the case, it will take at least seventy-five, and probably one hundred, common pleas judges throughout the State of Pennsylvania to do the business as it now exists, because in many parts of this State—I know it to be so where I have had experience—the dockets are eight or ten years behind hand. In the county of Schuylkill you can hardly try a case until it is ten or fifteen years old. If you make out a trial list

to-day, you may have at the bottom of the list some cases only two or three years old, but you invariably will have one or two cases at the head of the list which are from ten to fifteen years old, and these old cases will occupy the entire week of the court, and suitors are so much delayed that the administration of justice is a perfect mockery.

Now, if we are to have seventy-five or one hundred common pleas judges, why not district the State without the intervention of a circuit court? Let us suppose, if we have seventy-five judges, that we have fifteen districts in the State, and make all the common pleas judges in each district sit together once a month or once every two months for the purpose of acting as this sieve through which all cases shall go up to the Supreme Court. I would not constitute it a separate court, so that an appeal or writ of error should be taken to it, but almost every case that is tried before a jury could be heard before this court in banc, on a motion for a new trial, and a very simple system could be adopted by which cases that do not come before a jury could be certified into this tribunal for argument. This tribunal would be composed entirely of judges of the courts of common pleas; there would be no surrender of dignity on their part, but the judges of contiguous counties could meet once a month, if necessary, and hear all these cases.

The effect of it would be this, and this is the manner in which it would relieve the Supreme Court; for I desire to say here that I am not in favor of preventing a case going to the Supreme Court on account of the small amount of money that may be involved in the litigation, neither am I in favor of preventing a case going to the Supreme Court because five judges of a lower court are unanimous in opinion that it should not go there. Let the suitor take it if he wants to. But the creation of this intermediate tribunal will prevent the suitors themselves from going there, and in one other manner also will it relieve the Supreme Court. In the first place, I suppose it is due to the infirmity of human nature that every individual suitor who has a case decided against him thinks the judge has committed a grave error, and he wants to get the better of that judge if he can; there is only one man against him; he thinks that one man is mortal and has committed an error. If, however, before he takes his case to the Supreme Court, his counsel has to argue the legal points involved, say on a motion for a new trial, before five judges, four of whom come from other districts, (and here I desire to say that if you choose you can exclude the judge who tried the case, from sitting with the other judges in banc,) if he has to argue it before five other judges, and those five other judges affirm the decision of the judge who originally tried the case, the suitor will hesitate very much before expending any more money to go up to the Supreme Court, because it is to be hoped that in most parts of Pennsylvania this tribunal of five judges, gathered together from the adjacent districts, will make a court equally as competent as the Supreme Court, and thus a moral influence on the suitor will be exercised which would prevent him taking a bad case into the Supreme Court; but if all cases did go into the Supreme Court they would go in such a shape as to make the labors of the Supreme Court infinitely easier than they now are. Every case would go there having had a critical examination by five judges, and accompanied by an opinion in which all the cases bearing upon the subject are collected, and containing an unbiassed judicial decision upon the question, and I think that such an opinion, with a collection of authorities and the judicial decision of this intermediate tribunal, would be of more service to the Supreme Court than all the paper-books that could be written in the case, and the labor of the court, it seems to me, would be much easier if every case of importance had to go through such an intermediate tribunal.

In the district court of the city of Philadelphia it is well known that all motions for new trials are heard by the court in banc. A case is tried on Monday or Tuesday before one judge; there is a motion for a new trial made; and on Saturday that motion is argued before the district court in banc. You have three, or four, or five judges, never less than three, sitting there. The suitor, who probably would have rushed right into the Supreme Court if no one but the judge who tried the case had decided against him, hesitates about doing so when two other judges concur in the legal opinion that has primarily been delivered; and the effect that has been found in the city of Philadelphia, I take it, will be found to exist all over the State; and if this intermediary tribunal could be established it would relieve the Supreme Court without the adoption of that arbitrary system

which has been invoked by some, and which declares that no case shall go there unless the amount involved in the decision is over five hundred dollars.

Mr. EWING. Will the gentleman allow me to make a suggestion to him?

Mr. GOWEN. Yes, sir.

Mr. EWING. What proportion of the cases in the Supreme Court are from the counties of Philadelphia and Allegheny?

Mr. GOWEN. Indeed I am not able to state.

Mr. EWING. I presume considerably over one-half; two-thirds, in time. They have all that already in these two counties.

Mr. GOWEN. They have not got it in the form of a tribunal composed of five or six judges from other districts, sitting together as a court in banc.

I am not so enamored of this suggestion of mine that I shall even make a motion to amend any section in order to bring it before the committee. I have simply thrown it out as a suggestion, believing that it would remove that feeling which is said to exist in the minds of the present judges of the courts of common pleas, that it is a reflection upon their dignity to create an intermediate tribunal, because, according to the suggestion that I have made, these common pleas judges would themselves constitute this tribunal. I am willing to vote for the suggestion of the gentleman who has preceded me if this idea of mine does not meet with favor, as it possibly may not. I am willing to vote for a circuit court composed of these very judges, and presided over by a circuit judge, because I cannot see any other way in which the Supreme Court can be so well relieved of the labor that is now imposed upon it. In this way it could be relieved without closing the doors of the courts against any suitor, and every man could take his case to the Supreme Court if he desired to do so. If his case was a bad one, and if the first judge decided against him, and five or six other judges affirmed that decision, he would probably never go into the Supreme Court at all; but all cases that go there would first have been refined in the crucible of one judicial decision, and would be accompanied by an opinion containing a collation of authorities which, as I said before, would be worth much more to the Supreme Court than any paper-book prepared by counsel.

I have been told, and I believe it to be the fact, that if you would limit the appellate jurisdiction of the Supreme Court to cases involving the sum of five hundred dollars, nearly three-fifths of the entire jurisdiction of the Supreme Court would be taken away from it. That would certainly relieve the court, but suitors would not be satisfied with such a system, and if you cannot relieve the court, either by restricting the amount or by increasing the number of judges; the only other way is to create this intermediate tribunal, and if this intermediate tribunal is to be composed exclusively of the judges of the common pleas, those judges will not be offended by its creation. If this suggestion of mine does not meet with favor I shall vote for the suggestion of the gentleman from Philadelphia, that such court shall be composed of common pleas judges, but presided over by a newly created circuit judge.

Mr. BROOMALL. Mr. Chairman: I regret very much to be compelled to differ from the majority of the Committee on the Judiciary upon the question of an intermediate court, or rather I regret very much that the majority of the committee have deemed it their duty to differ from me. I am well satisfied that this idea of an intermediate court has arisen in the Convention itself; that the people are not asking it. The object in calling this Convention was not to create an intermediate court; it was not, indeed, to aid the judiciary in any manner. It had other purposes and other objects; and I believe if the people had supposed we would materially change the judiciary system, that would have been an important element in the election by which it was decided that the Convention should be called. Our present system is an exceedingly simple one, understood by everybody, with one single step between the court in which the case originates to the highest court of appeal, the court of last resort. Everybody understands it. There is no delay in it other than that which is incipent to all human affairs, and I am satisfied that an attempt to interpose anything between these two would be met by objections on the part of the people generally. We must not forget that there are of us here one hundred and one lawyers, and only thirty-two men who are not lawyers. We must not forget that the people will be very apt to impute to us a desire to benefit our profession and increase the importance of our business, and they may

even go so far as ill-naturedly to say that we had some idea of making places of profit for ourselves. I would, therefore, be very cautious lest I should give cause to any such idea as this, because if that idea should get into the minds of the people I am afraid they would reject our whole work, the good as well as the bad.

I said that I differed from the majority of the committee. I am the less uneasy about this difference from the fact that that very majority, from the exhibition we have had on this floor to-day, do not appear to be very harmonious, and the records of the Convention show that that majority was not very large, inasmuch as the committee of fifteen members managed to make one majority and eight minority reports. It is not so clear, then, that the disposition of the Committee on the Judiciary is in favor of an intermediate court; and the Convention, if it should vote down that proposition, I am satisfied will not be violating the wishes of more than half of the Committee on the Judiciary.

The great objection, in my mind, to this intermediate court is the delay which it will cause to suitors. I do not propose to contrast the plan proposed by the chairman of the Committee on the Judiciary with that of the gentleman from Philadelphia, because it is not worth while to say anything about either in detail, for each of these gentlemen has so effectually demolished the plan of the other that I guess the majority of this Convention will find it easy to get rid of both of them. [Laughter.]

But let us take the plan of the majority of the Committee on the Judiciary, and what do we find? Why, in all cases under $500 the cause begins in the court of common pleas; and from there the case goes, upon appeal, to the circuit court. It is there argued, and unless the circuit judges are unanimous—and the gentleman from Philadelphia (Mr. Woodward) does not give us a very favorable idea of the disposition of judges to unanimity—the case then goes to the Supreme Court also. We have in any case under $500 these two different proceedings in error, that in the circuit court and that in the Supreme Court, requiring two separate arguments and two paper-books, doubling the expense and doubling the delay. Then, if the circuit court should be unanimous, still the case does not necessarily stop there, because if any judge of the whole eight should be of the opinion that there is any important question in the case that is worth the attention of the Supreme Court, he so certifies, and the case goes up. Between these two means of getting small cases, those under $500, from the circuit court to the Supreme Court, we may rest assured that almost every case that goes from the common pleas to the circuit court will also go from the circuit court to the Supreme Court. That simply means for all these cases double the delay and double the expense now incurred.

If the case involves more than five hundred dollars, then, according to the report of the majority of the committee, it begins at once in the circuit court, and if it is not over two thousand dollars, it goes from there to the Supreme Court. Now, let us consider the class of cases in which the circuit court has this original jurisdiction. It is provided that these courts shall be held at least once a year in every county. I suppose in a majority of the counties of the State they will be held just once a year and no more; so that a case that is brought now will have no chance of being tried before the year is up, and if there should be a single continuance the matter goes over for another year. Look at the delay in these cases! Will the people stand all that delay? In my district a case is brought and tried often within three months of the time when the writ issues. I know that there the business is kept up. I know that there we have a judge who is capable of doing probably half as much more business as he has now, and yet our population numbers nearly double the population of the jurisdiction of an average law judge, being one hundred and nineteen thousand, whereas the average population for a law judge is but sixty-five thousand.

Mr. BOYD. Will the gentleman from Delaware permit a question?

Mr. BROOMALL. Certainly.

Mr. BOYD. My question is this: How many cases do you try in a year in Delaware county?

Mr. BROOMALL. In the district or in the county?

Mr. BOYD. I mean in the county of Delaware.

Mr. BROOMALL. I really do not know. I suppose we are about as litigious as our neighbors of Montgomery county, and I suppose we try as many cases as are tried in Montgomery.

Mr. BOYD. I do not think you try over ten a year. [Laughter.]

Mr. BROOMALL. If the gentleman from Montgomery will come down there and stay a few months, we will show him what the extent of our law business is. I think we try as many cases in the district as are tried in any other district of the State, I do not care where it is, where there is but a single law judge.

My objection to this intermediate court is that the people do not want it, and if they had it, they would get rid of it as soon as possible, on account of the delay.

Is there any necessity for an intermediate court? Certainly there is no necessity for the relief of the court of common pleas. The gentlemen who have advocated the circuit court do not, I believe, claim that it will relieve the court of common pleas. It is true it will take a class of cases from that court, but they are few, and it has not been claimed by any of its advocates that the establishment of a circuit court is intended to relieve the court of common pleas. It is said that the courts of common pleas are overworked in this State. That may be true; but I believe the reason why the courts of common pleas in this State are behind in their business, is because the judges are not efficient, are dilatory, and do not push business; they have not executive faculties. Too often they are inefficient men. I do not believe that there is any district in the State where the business could not be kept up, if its judge possessed and exercised the energy and ability of the judge of the Chester and Delaware district.

Mr. HAZZARD. Perhaps lazy lawyers have something to do with it.

Mr. BROOMALL. The gentleman says that lazy lawyers may have something to do with the delay; but a judge who will hold lawyers to their work and give them no opportunity for delay, would try causes much faster than they are tried in many parts of the State.

But there is a remedy already existing for the relief of the courts of common pleas without requiring a constitutional provision to aid them. That is, in the districts where the courts are overworked, to supply them with additional judges as has been done in many cases in the State, and as is proposed to be done in other cases in the report of the majority of the committee. That is the legitimate mode of aiding the courts of common pleas.

It is said that the election cases that are now proposed to be put upon the courts of common pleas will greatly add to their business; I mean contested election cases in the Legislature. How many of those contests are tried in the Legislature in a single term? Sometimes one, sometimes two, sometimes three, and sometimes there are no contests. That, therefore, would be one, two or three contested election cases added to the duties of the sixty-five or seventy judges of courts of common pleas in the State of Pennsylvania in any one year. That would add very little to their labors: and if it did, the plan of supplying additional judges where there are really needed, would be an adequate and proper remedy.

But the great object of this circuit court is said to be to relieve the Supreme Court. If the Supreme Court needs relief, and if this is the only mode of relieving it, then as a matter of course we must adopt it; but first let us inquire whether the Supreme Court does need this relief.

I grant that the business of the Supreme Court is behind. But every member of the bar knows that a list that is behind, whether in the Supreme Court or in the lower courts, has a terrible tendency to increase in length, and it will increase just as long as it is behind. Take a list of fifty or sixty cases in any court of common pleas that have been hung up for two or three years, because they have not been reached, and you will find that three-fifths of them, if not more, have been hung up intentionally because of the chance for delay, and would never have been brought or resisted at all if it had not been that the defendants or appellants wanted to get the delay which the length of the list afforded them. Whenever such a list as that is really approached with a determination to try it, every member of the bar, here present, must have seen how quickly it vanishes. I have known as many as thirty and forty cases disposed of in a single day, many of them appeals which had evidently been made for the express purpose of being hung up; and most of the cases in the Supreme Court are of precisely that kind. As soon as it is known that you can hang up a case in the Supreme Court, without prospect of having it heard, everybody who has a case that is desired to be delayed takes it into the Supreme Court. I have very little doubt that the length of the list of the Supreme Court is owing, in a very great degree, to the cases that have been taken there for the purpose of getting delay, and for nothing else. Is there a member of the bar here who has not taken cases to the Supreme Court purely for delay,

knowing that they could not be tried under a year or two years? Is there a member of the bar here who would not plead guilty to a charge of that kind?

Mr. H. W. PALMER. If that be true, somebody has to swear to a lie.

The CHAIRMAN. Delegates will not interrupt a gentleman on the floor, except in a formal way.

Mr. BROOMALL. There is a very considerable portion of this delayed business of the Supreme Court that can be traced to the direct fault of the Supreme Court itself. In the first place there has been a disposition on the part of the judges, of late years, to tell all they know in every case decided. We occasionally see that disposition here when some of us get the floor, and feel obliged to tell all we know on all subjects before we yield the floor, and this weakness exists in the Supreme Court. Let the judges cut down their opinions to the simple decision. If necessary let them cut down their opinions to one-tenth of the length they now are, and let the Legislature pass a law that no opinion reaching in length over half a page shall be published at the expense of the State, and in cases where the opinion is longer only the syllabus shall be given, and then we shall get rid of all this thing. The gentleman from Fayette (Mr. Kaine) speaks of a case in which a judge entrusted with writing an opinion failed to do so for want of time. If he wanted to write an opinion as long as Blackstone's Commentaries, I confess he might not have time to write the opinion, but it would have taken very little time to write the mere decision of the court, for or against, reversing the judgment of the court below or affirming it. That would have taken but very little time, and I suppose my friend's client would rather have had that than to incur the delay of a year, but that would not have afforded the judge an opportunity of showing how much he knew on that and on all kindred questions.

This weakness on the part of the judiciary has brought them an immense amount of labor. It has brought them labor, not only in writing their opinions, but it has brought them labor in another way. You can hardly pick up an opinion reaching over three or four pages that does not contain something in it calculated to mislead the profession in the State upon some subject, and unsettle the law in the minds of the lawyers. Members of the bar, reading these essays, think them the opinions of the court, and bring cases up upon the *dicta*, and are gravely told by the Supreme Court, when they get there, that the judges did not mean anything by what they had said. [Laughter.] I simply insist that, when they do not mean anything, they shall say nothing. But there is another way in which the court brings difficulty upon itself. Within the last ten years, probably, the indexed heading in our reports of "cases over-ruled and commented upon," &c., alluded to by the chairman of the Committee on the Judiciary, has come into fashion. The list of cases over-ruled in some of the books extends over half a page. All this is modern. It did not formerly appear in the reports, and the reason it did not appear then was because the judges did not then think it necessary to over-rule every case that did not square exactly with their opinions. A judge of a court of common pleas will decide a case in a particular way, and the case is carried to the Supreme Court, and there reversed. After a few years the same judge may be elected to the Supreme bench, and then, upon the very first case that comes up on that question, he thinks it his duty to over-rule the former decision, and he sets about making that the object of his life and he is never satisfied until he gets it done. All this is a great and manifest evil.

This recklessness in over-ruling decisions has gone to such an extent that, in one single volume of the reports, and within two hundred pages of each other, there are opinions upon the question of waiving frauds, directly opposite, directly and diametrically opposite; and the beauty of that is, that the last opinion does not say anything about the preceding one. It over-rules it without noticing it. And these two cases are within two hundred pages of each other, in 17 P. F. Smith. Probably that was done carelessly, but whether carelessly or purposely, it has the same effect upon the profession. It unsettles the law. Judges should learn that it is better that the law should be settled than that it should be right. It may be necessary at some time to make the overturning of decisions by the judges of the Supreme Court a misdemeanor, punishable by fine and imprisonment.

Decisions may be wrong, but there is a better way of correcting them than by over-ruling. Let the Legislature change them. That would have no retrospective effect. It would not unsettle titles previously held good. How much better it

would have been, when Judge Lowrie made his onslaught on the old law, on the question of constructive estates-tail if an act of Assembly had been passed declaring his novel opinions to be law. How much it would have saved the profession, how many cases it would have saved, if he had procured an aci of Assembly declaring that where a man devised an estate for life with remainder over to the children of the devisee, the first taker should take the whole estate. Where the Legislature changes the law it does not relate backward. Where the Supreme Court does it, it does, and unsettles all the titles held under similar language throughout the entire State. These are the reasons why the overturning of decisions by the Supreme Court is so much to be regretted. Let them mend their behavior in this regard, and they will catch up with their business, and when that happens, and when it is no longer possible for cases to be hung up for the mere purpose of delay, fewer cases will be taken up.

But there is another way in which a Supreme Court may be relieved of its labor, and that is this: There must be an end of litigation somewhere, as my friend from Philadelphia (Mr. Gowen) a few days ago said—I will not repeat his Latin lest the State Printer should associate me with him in his crusade against the literature of the age—but there must be an end to litigation somewhere.

The CHAIRMAN. The gentleman's time has expired.

Mr. BOWMAN. Mr. Chairman: I ask unanimous consent for the gentleman from Delaware to proceed.

The CHAIRMAN. There is no objection. The gentleman from Delaware will proceed.

Mr. BROOMALL. There must be an end to litigation somewhere. Cases that would cost more to get reversed than is involved in the controversy might as well end in the common pleas. In a great many cases the judges of the courts of common pleas are as good as the judges of the Supreme Court; quite as good lawyers as their brethren of the Supreme bench; and we have now learned from a former ex-Chief Justice, who is present in this Convention, (Mr. Woodward,) that in the Supreme Court we get the opinion of but a single judge, in a great many cases; so that cases that involve so small an amount of money that the expense of taking them up will be more than the amount in controversy, might as well end in the court below. I would not deny a man the luxury of law when his controversy is about ten cents; I would let him have it, but at his own expense. Gentlemen may think it hard to deny men their legal remedies; but I do not know that there has been any great complaint because a man is prevented from taking an appeal from the decision of a justice of the peace, unless the amount in dispute is over five dollars and thirty-three cents. I know no complaint on the part of the community on that subject. Yet a case that has gone against a man in court, for only a single cent, can go to the Supreme Court, whereas, if it comes up before a justice of the peace, it cannot go past him unless it is five hundred and thirty-three times that much.

Now, there might as well be a limit below which a case shall be at least discouraged from going to the Supreme Court. I would have an act of Legislature putting the costs upon the plaintiff in error, in all cases where the amount involved is less than $100, unless the Supreme Court judges would certify, first, that the title to land came in question, or, second, that the right to a franchise or office was involved, or, third, that some law of the State, such as a tax law, or some provision of the Constitution of the United States or of the State came in question. Where it is a purely money matter, if the plaintiff in error wants the luxury of law, I would let him have it at his own expense where the amount involved is under $100. I am told that this would cut off at least one-third of the cases, one-third of the labors of the Supreme Court. The gentleman from Philadelphia told us a little while ago of six cases heard and argued consecutively in the Supreme Court in one day, involving, in the aggregate, only $130. That would lead us to suppose that discouraging this taking up of cases of less than $100, putting the costs on the plaintiff in error, would lessen the labors of the Supreme Court more than one-third, but at least it would lessen them one-third; and why not do that? Is not that the direct remedy? Is not a remedy that will save the expense of all these new courts, that will save the delay of the proceedings provided for in these several circuit court schemes, and that will save the money of suitors who ought not to be encouraged to fritter away their means in trying causes that are more expense than profit.

But again, I have very little doubt that both in the Supreme Court, and in the courts of common pleas, there are old and inefficient judges, men who have not the amount of work in them that they had once. I have no doubt that there wants a little more young America upon both the benches of the common pleas and the Supreme Court; but the want of a provision for the support of these old, infirm and decrepit judges under the present system prevents those gentlemen from retiring. The committee have very wisely provided a means by which these judges, after they have served a certain length of time, shall retire upon half pay, or full pay, or in some way shall be provided for. Now, if the Convention will adopt that plan, I have very little doubt that we shall get rid, by resignation, of many of those men who feel that their time of work has gone by, but who are very much indisposed to be turned off to starve.

I have no doubt that much of the weakness of the bench arising from age and infirmity of body and mind will be got rid of by that plan, and the Supreme Court itself will be thereby relieved.

I am, therefore, opposed to the change of the present judiciary system except that I would consent to abolishing the associate judges not learned in the law. I would consent to abolishing the district courts, and the courts of *nisi prius*. Those I care very little about; but I am one of those who believe that there is a great deal of good in the present Constitution, and I am very much afraid we are not going to improve it. The fact is, I am not sure that I ever did know a better Constitution than the Constitution made in 1838, and since amended, with the exception of one, and that was its predecessor; and as I have no hope of getting back to its predecessor, I will content myself with trying, wherever I can, to keep back to the Constitution of the State as it is, except in a very few particulars.

Mr. RUSSELL. Mr. Chairman: I shall detain the committee but a few moments. I wish first of all to correct a wrong impression which seems to have taken hold of the minds of the gentleman from Philadelphia and the gentleman from Delaware in regard to the report of this committee. The gentleman from Philadelphia persistently referred to it as the report of the chairman of the committee. The committee consisted of fifteen members of this Convention, nearly all of them old lawyers and having, as I have understood, a large practice. On that committee, only five, as I understand, dissent from the report of the majority upon the subject of a circuit court, namely: Mr. Kaine, Mr. S. A. Purviance, Mr. Reynolds, Mr. Dallas and Mr. Broomall. Those five are the only members of the committee who have filed minority reports, and the other ten members of the committee, as I understand, concurred in the report presented by the chairman, the gentleman from Lycoming (Mr. Armstrong.) So that the gentleman from Philadelphia and the gentleman from Delaware are mistaken when they undertake to produce the impression upon the minds of this committee that this is a report either of the chairman or of a bare majority of the Committee on the Judiciary.

I am not going over the argument which has been made here by the chairman of the committee, the gentleman from Lycoming, and by the gentleman from Philadelphia, in favor of circuit courts. What they have said I think should satisfy the members of this body that there is a necessity for an intermediate court, some court by which the Supreme Court will be relieved from the great mass of business with which it is now, to use the language of the chairman of the committee, utterly swamped. The simple question before the committee is, whether we shall strike out the words in the first section, "in a circuit court." If we do that, as a matter of course we end the question of a circuit court, and we then go back to devise some other plan which will relieve the Supreme court, if the Convention desires to relieve them.

Only one other plan has been spoken of here, and that is that suggested by the gentleman from Fayette, (Mr. Kaine,) and if the members of the committee will take up that plan and give it the investigation which they ought to give to it, they will find that it presents to this committee the strongest argument in favor of the intermediate court, because if his plan is adopted it will increase the business of the Supreme Court to almost double what it is now, for the simple reason that there will be an addition to the courts of common pleas which will enable the judges of the courts of common pleas to get through the business before those courts; and the more business there is done in the common pleas the more

business there will be for the Supreme Court to do.

Now, Mr. Chairman, the best teacher we have on all these subjects is experience. It is, perhaps, unfortunate that this court should be called a circuit court, because there is an impression on the minds of some of the older members of the bar, indeed perhaps all the members of the bar, that a circuit court has been tried in this State and has been a failure. Perhaps it would have been better to have called it an appellate court, or some other name which would not have connected it with the old circuit court. But we must recollect, Mr. Chairman, that this is a circuit court entirely different from the old circuit court that we had from 1799 to 1809, and from 1826 to 1834. That was a court that was held by the judges of the Supreme Court, and there is no evidence, I have never heard any one allege, that the people of the State or the suitors who had business in that court wished to get rid of it; but it was the judges of the Supreme Court themselves who desired to have it abolished, and who eventually did get the Legislature to repeal the act establishing that circuit court.

But we have the experience of the national government in regard to circuit courts, and the members of this committee will recollect, as soon as I mention the matter, that there is a circuit court established by the laws of Congress under the Constitution of the United States, and that that circuit is very much like the one that has been reported by a majority of this committee. We find laid down in Troubat and Haly's Practice, 1:143:

"The circuit courts of the different districts consist of a justice of the Supreme Court and the district judge of such district; but no district judge of such district can give a vote in any case of appeal or writ of error from his own decision, but he is allowed to assign the reason of such, his decision."

That court has original jurisdiction, and that original jurisdiction is very much like that we are giving to this curcuit court. It has jurisdiction where the amount in controversy exceeds the sum or value of $500, the same jurisdiction which is given to this circuit court, and in addition that court has appellate jurisdiction by writ of error to the district court, just as the circuit court proposed by the Committee on the Judiciary will have jurisdiction over the courts of common pleas.

I have heard no complaint in regard to the circuit courts of the United States. They are held every year in this city and in the Western district, and I have heard no objection whatever to them. I am satisfied that we must do something to relieve the Supreme Court of this State. Some plan must be adopted by which the great amount of business by which they are crushed down shall be taken from them. I see no other way of doing it except by the adoption of the circuit court which the report of this committee gives us.

Mr. MINOR. Mr. Chairman: It was my intention not to participate in the discussion of the report of the Committee on the Judiciary at all; for although the practice of the law was formerly my business for several years, it has been only incidental during eight or nine years' residence in this State. But reference has been made to the system of Ohio, and in fact by one member reference has been made to myself as informed upon it, and I rise only for the purpose of throwing such light as I may be able to do on this question. The system of Ohio, theoretically, is very simple, and I can state it briefly, and, I think, so that members will understand just what it is, theoretically and practically.

It will be observed that the provisions in the Constitution of Ohio are few and general, giving the Supreme Court jurisdiction in four specified classes of cases, and such appellate jurisdiction as may be conferred upon it by law. The district court has original jurisdiction in the same cases in which the Supreme court has, and such appellate jurisdiction as may be given it by law. Then the ordinary jurisdiction beyond the justices of the peace, for all purposes, is conferred on the courts of common pleas, except, of course, the probate court.

That is the system theoretically, and you will see that it is very simple. Under that system the Legislature made their provisions directing how it should be carried out. The Supreme Court, you are aware, consists of five judges. The district court is composed, I think, of four judges, any three of whom constitute a quorum. The common pleas judges sit as common pleas judges and go up, forming a part of the district court, the residue of the district court being made of one supreme judge. Experience developed

this: That the district court being given appellate jurisdiction in cases of jury trials and almost everything else, soon became overburdened, and in order to relieve the Supreme Court from everything going there and also give the district court time to be something besides a mere second common pleas court, the Legislature provided, as they had the power under the Constitution to do, for limiting the cases that should go to the district court. One mode was to give a second trial by jury in the common pleas court, and then a person could appeal right around into the same court. In other cases he was permitted to take it to the district court.

Perhaps that is all that is necessary to say in explaining the theory and general form of it. It has been modified from time to time by the Legislature, as circumstances have developed the necessity; but during all this it has been found that two things have existed; one was, that it seemed to be very important to have an intermediate court, and yet the intermediate court that was established there is hardly sustained by any one. Over ten years' practice in the State developed that to my own mind, and this last fall, when I was there, on inquiry of judges and lawyers, I found the same complaints, only with greater strength. The one thing that has caused the court there to be a failure was the fact that the common pleas judges were sitting in review of their own and of each other's decisions.

The remark of the gentleman from Washington (Mr. Hazzard) is correct. In fact, I have seen things go even thus far: I once tried a case before a district court, and after the decision of the court overruling the common pleas judge, who was sitting on the bench, but not participating in the particular trial, he began to argue with me to show me that the rest of the court was wrong. I felt that it was improper in him, but he did it; his mind was not changed. I must say I have seen or heard of instances that were entirely beneath the dignity of any judge upon the bench; combinations to sustain each other; combinations to over-rule each other; jealousies and dislikes, so that counsel would know of those things and endeavor to take advantage of them.

That this would be true no man could tell until it was tested by experience. It has now been on trial there for over twenty years, and so far as I have ever heard, the verdict is unanimous that that one feature destroys the value of the court.

Many and many a time I have seen a judge who has sat on a jury case in the common pleas apparently sitting as a judge in the district court upon the same case. It was improper, but yet it was done; and in other cases, if he does not do it, he is sitting by the side of the judge who does. Then in their consultations at chambers, these disputes which occurred would occasionally leak out, and were such as were entirely unbecoming and at the risk of suitors and to their loss, so that many persons have been deterred from going to the district court, because it was simply coming around to try the case before the same man, unless they could see that judges were coming who would be willing to over-rule a particular judge, and then they would go up to the court. I need not enlarge upon that point. I feel it due to state it, because, as I said, the voice is unanimous, so far as I know, that the court must be remodelled for that reason. I am not aware that any desire to do away with the court, but they desire to change its construction, and for that cause. Many, perhaps most of the judges, have endeavored to rise above this influence, and have acquitted themselves with dignity, yet all feel it, and human nature goes everywhere.

Now, sir, without dwelling longer upon that, I come to the other point. There seems to be developed, in practical experience, this necessity: Not only that the Supreme Court should be relieved, but also that suitors should be able to obtain their rights by not being compelled to stop in the common pleas, even if they do not go to the Supreme Court. I will mention some instances. One is that of a person whose case is on trial in the common pleas, under the best light he can get at the time. It perhaps goes against him. If he is compelled to go from that court direct to the Supreme Court, he must go upon the facts as they stand, and cannot introduce any further testimony. It is a very frequent occurrence that something is developed upon the trial, or something discovered afterwards, whereby additional evidence is found, that puts an entirely different aspect upon the case, and a man's rights, by the subsequent opportunity for trial in the district court, are saved; whereas, if it was cut off, his rights would suffer by the decisions of courts, unreliable judges, prejudiced jurors, new decisions, changes of statutes, and various other causes that might be enumerated, but which it is not necessary to take time to

state. I say, therefore, from my experience, that I could not vote to strike out the term "circuit court." I would either leave it there, or I would leave it so that the Legislature could establish one.

Just one point further, for I am being as brief as possible consistent with the expression of these propositions. It seems to me that there are two radical defects, both in the report of the committee and in the substitute that has been offered. One is that to which I have already alluded, because one plan compels the common pleas judges to sit upon their own and each other's cases in review. The plan of the committee requires the circuit judges to do precisely the same thing when sitting in banc, and, of course, the evil would be as great in the one case as in the other, and from the same causes. That evil running through both systems, I think both are defective in that respect. Another difficulty is, that they take suitors away from home, compel them often to go long distances to obtain justice.

The plan which strikes my own mind, if I may be permitted to suggest one, would be a change, so that there may be a circuit court, and yet so that it may come into the county, and whenever there is a decision in the county, let it either stop there or go direct to the Supreme Court. I confess I cannot see the necessity for two circuit courts. That matter may either be provided for in the Constitution, or it may be regulated by statute, as it is in Ohio. A man there may take certain cases as a matter of right to the district court; other cases he cannot. If he would go beyond the district court to the Supreme Court, except in certain specified cases, he must have the opinion of that court that there are questions involved in the case that require the decision of the Supreme Court; and upon that suggestion being made, either upon motion by counsel or by the court upon their own suggestion, it is reserved for decision there, if in the opinion of the court it ought to go. Other modes of reaching the Supreme Court may be provided, should occasion require.

I will mention as an illustration one case which I tried in that State. The case was decided in the common pleas directly against us, under local influence, as we believed, though not by intentional wrong. There was no hope of any decision to the contrary there. We took it to the district court. Under further evidence and new discovered law, we found a remedy which direct appeal to Supreme Court would not have given. The most that we could obtain in district court was a reservation to the Supreme Court. The Supreme Court decided in our favor, declaring it one of the most difficult cases they had had before them. The district court alone saved us. It was a case that involved a large amount, a case of that peculiar nature that required the most careful investigation of the most intelligent judges. Similar instances might be adduced almost without limit.

I say then that it seems to me there are three elements, two of which should be saved, and one of which should be avoided. First, there should be the opportunity of suitors going beyond the common pleas to the district court, as occasion requires, and many times higher, while the Supreme Court should be relieved of having all cases come directly from the common pleas into it. Second, justice should, as far as possible, be brought home to the suitor in his own county by courts sitting there, shorter or longer, as the business may require; but third, in no case should a court be constituted so that a judge sits in review either of his own work or that of his fellow-judges in connection with them.

Mr. WORRELL. I move that the committee of the whole now rise, report progress, and ask leave to sit again.

The motion was agreed to. The committee rose, and the President having resumed the chair, the Chairman (Mr. Harry White) reported that the committee of the whole had had under consideration the article reported by the Committee on the Judiciary, and had instructed him to report progress and ask leave to sit again.

Leave was granted the committee of the whole to sit again on to-morrow.

Mr. WORRELL. I move that the Convention adjourn.

The motion was agreed to, and (at five o'clock and twenty-eight minutes P. M.) the Convention adjourned.

EIGHTY-EIGHTH DAY.

TUESDAY, *April* 29, 1873.

The Convention met at ten o'clock A. M., Hon. W. M. Meredith, President, in the chair.

Prayer by Rev. J. W. Curry.

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

THE JUDICIAL SYSTEM.

Mr. MINOR. I move that the House go into committee of the whole on the report of the Committee on the Judiciary.

The motion was agreed to, and the House accordingly resolved itself into committee of the whole on the article (No. 15) reported by the Committee on the Judiciary, Mr. Harry White in the chair.

The CHAIRMAN. The question is on the amendment of the gentleman from Allegheny (Mr. S. A. Purviance) to the amendment of the gentleman from Philadelphia (Mr. Woodward.)

Mr. SIMPSON. Mr. Chairman: I trust the committee will not strike out the words proposed by the gentleman from Allegheny for the reasons assigned by the chairman of the committee and by the gentleman from Philadelphia who offered an amendment to the report of the committee, to substitute one section for the other.

I have some little experience myself in regard to the business of the Supreme Court, and I want to give this committee of the whole a small leaf from my experience as to the manner in which justice is administered in the Supreme Court of Pennsylvania to-day, and has been for the last year or two, arising from the fact of its being overburdened with business. In a few days from to-day, Mr. Chairman, it will have been two years since the register's court of Philadelphia reversed the decision of the register of wills upon the question of granting letters of administration upon the estate of one Schellenger. In a very few days after that the case was removed to the Supreme Court by appeal. It went there in its regular course in, I think, the month of June, 1871. In 1872 I attended the Supreme Court almost daily with the expectation of having the case reached early and disposed of; but when the session passed over in the month of April, when the Supreme Court rose for the summer, there were two cases still ahead of Schellenger's appeal upon the docket, undisposed of, that case not having been reached. It went over for a year. In January, 1873, when I went to look after it again, Schellenger's appeal was No. 68 on the list. I attended again and was told it was not at all probable that it would be reached at the early part of the session; but towards the end of the session I was there every day watching for Schellenger's appeal, and when the Supreme Court rose this month there was still one case ahead of that appeal undisposed of on the list. In one whole year the Supreme Court had advanced just one case nearer Schellenger's appeal than it did the year before. I suppose, in the ordinary course of events, taking that as the standard, Shellenger's appeal may be reached in January, 1875; but the Lord have mercy on all cases below it, and there are many a good deal below it too.

My experience is that there must be some intermediate court between the court of common pleas and the Supreme Court if there is not to be a denial of justice to suitors in the courts; and there ought to be relief.

I confess, upon an examination of the report of the committee and of the proposition of the gentleman from Philadelphia, (Mr. Woodward,) I infinitely prefer the latter to the former. I think it is more in accordance with the genius of Pennsylvania institutions, will be better understood by the profession, will be better practised under. It assimulates itself in my mind to the practice under the judiciary system of the United States, and for that reason, and in the hope that when a case has been taken to the Supreme Court there will be some day, within a reasonable period, certainly within the lifetime of some individual, when the case may be reached and disposed of, I shall vote against the amendment of the gentleman from Allegheny (Mr. S. A. Purviance)

and trust the committee will also vote against it. You may call it by what name you please, a circuit court, a superior court, or an appellate court, but there should be some appellate court interposed between the present minor courts and the Supreme Court of Pennsylvania, in which cases not involving very large amounts or very great principles might be decided, and that somewhat speedily, and not permit a denial of justice, as is the case under the present administration to-day.

Mr. BIDDLE. Mr. Chairman: In the administration of judicial justice, I suppose we must all admit that there are two things of primary importance to be regarded: Correctness of decision and an exhibition on the part of the tribunal towards the suitors and to the community that every reasonable effort has been made to reach correctness of decision. To let the suitor feel, or at least to let the community from which he comes feel, that the law is not only decided rightly, but that every fair opportunity for the presentation of the case by the litigant has been given, is almost as important as the first of these aims. Our whole system exemplifies this in a striking degree; and we know we have it on the highest authority, that even if the judge decide according to law, without giving the party against whom his decision is pronounced an opportunity of being heard, he well merits the title of the "unjust judge." It has passed into an axiom, and is quoted with great approval by my Lord Coke in a very celebrated case.

It does not do, therefore, to say that a mere hasty, perfunctory hearing in cases, large or small, is a sufficient administration of judicial justice. I say "judicial justice" advisedly. There are other kinds of justice of course.

How is this best to be attained? No one will hesitate to say that, if it were possible, every case should have the opportunity of being reviewed by the tribunal of last resort.

Amounts have little to do with this question. Independently of the vast principle that may be wrapped up in the trial of very small sums of money, every man who has a stake in the trial of a cause feels that it is important to himself. It may be small relatively to the aggregate of wealth in the whole community, but it may be his little all, and to him it may be a matter of life and death. I speak by way of metaphor when I speak of life and death. If I have an opportunity hereafter upon the question which really involves the life of a citizen, upon the administration of criminal justice in capital cases, I shall speak out what I feel very decidedly.

If it were possible, then, we should be all agreed. I am sure that a man feeling aggrieved by the sentence of a local tribunal should have the right to have his case adjudicated by the principles which are recognized as the same all over the Commonwealth, by the court of appeals. I suppose, however, this is practically impossible. Indeed, varied as were the views, I may say opposite as were the views of the gentlemen who discussed the question yesterday, even my friend from Delaware, (Mr. Broomall,) they all seemed to admit that there was a pressure upon the Supreme Court which required some measure of relief. In the opinion of the gentleman from Delaware this evil was capable of being removed in a way different from that which was proposed by any of the other gentlemen who spoke, namely, by the imposition of heavy costs or by means of a penalty up to a certain amount upon an appeal from the decisions of the lower court, and also by making the judgment final in many cases dependent also upon amount. I think both views were touched upon by him, and found favor in his eyes. Therefore we start in this discussion with the assumption that for some reason the appellate court is overburdened, and with the necessary deduction from that assumption that unless relief is extended somewhere, in some way, the difficulty will go on increasing, and the chances be diminished of a speedy hearing or of any hearing at all in appealed cases.

Now, there are two totally different systems by which this end may be achieved. I propose to say something about each of them. You may either so load down the smaller cases with their cost in the nature of a penalty, as to defeat the humble suitor from any attempt to obtain appellate justice, because it becomes too costly for him. That, to a great extent, is the English system. You may forewarn him when he goes to the Supreme Court, that the costs of the clerk and the costs of the opposite counsel, in the shape of fees, which may be taxed against him if he is not successful, shall be so large as practically to render it impossible for him to appeal, since these charges may equal or surpass the sum involved. And this is certainly a very practical and formidable deterrent; or in view of what has also

been suggested, you may stop the case, just as you do before an alderman or a justice of the peace, when the sum involved is below a certain limit, and instead of $5 33, you may make the judgment of the court of first instance final, when the sum involved is $500. On the other hand, you may do what this report suggests, and what is adopted, so far as the appellate question is concerned, in somewhat a different shape by every gentleman who spoke except the gentleman from Delaware. You may have, in some sense, an intermediate appellate court, either composed of the same, with other judges, or of other judges altogether, or of a larger court, and in that way give the party an opportunity to review his case.

In regard to the first mode, I do not think, upon reflection, that we should feel satisfied that it is a fair one. A suitor has a right to have his case fully heard and determined. He should not be deterred by the magnitude of the expense for getting his case decided in conformity with what he believes to be the law of the land; that is, the law as laid down by the court of last resort, which is supposed to be and ought to be uniform. He has a right to have that case thoroughly heard, and unless it is thoroughly heard it might as well not be heard at all. I do not believe in a half hearing. It sins against the maxim to which I referred a little while ago quite as much as no hearing at all. It is, in other words, the semblance of a hearing without the reality, and he has a right to something more; he has a right to feel and to say: "My case has been decided against me by a local tribunal; possibly, from some feeling of local prejudice which is impossible to define, but which may exist; possibly from a too narrow view of the subject, if not because the judge is not in accord with the principles of the law as laid down in higher courts; at any rate, I have a right to have it tested further, and I have had it tested." So far I agree with what was said so well by the gentleman from Philadelphia (Mr. Woodward,) who, formerly, himself occupied the highest position in the administration of justice in this State. Any suitor has a right to have, perhaps, more than one man to pass upon his case, no matter who that single man is. He may believe, we are all taught to believe, that in the multitude of counsellors there is safety; at any rate if he has that satisfaction, he will derive a satisfaction which he cannot otherwise attain. As I said before, it is not only well to settle the law correctly, but to let the suitors and the community feel that it is so done. Well, how are you to do this? I hope it will be conceded that it is unreasonable to punish a man by excessive costs in this question of a quest after justice, and that every arbitrary mode of assuming that, up to a certain sum, the original judge is right, and that beyond it he may be wrong, will not find favor in the eyes of this body. I myself would do away with the limit in regard to a justice of the peace, because I cannot but feel and know that many cases below $5 33 may involve a principle quite as high as those over $100. Assuming, then, that the suitor has a right without regard to the amount, and without being unfairly burdened with expense, to have his case sifted, what is the best mode of doing it?

We have two plans, practically but two, then offered to us in this view of the subject. Which is the best? If I understand the distinguished gentleman from Philadelphia, who spoke yesterday at considerable length, in presenting his views, he is opposed to an original intermediate court, although he would have one under another name; and he is opposed to any limitation at all; that is, if I understand him, and I tried to do so, both by reading his project and by listening closely to what he said, he would allow an appeal, first, to his intermediate circuit court or court below, and then he would allow a second appeal beyond that, to the Supreme Court. I so understood him. He would make a double appeal.

The other plan allows, practically, but a single appeal. Now, it is said, I know not how truly, it has certainly never been said from any quarter near to me—not from our own immediate community—that this plan of an intermediate court, which I do not think is rightly understood, meets with great disfavor in various sections of the State. And the gentleman from Allegheny (Mr. Ewing) who interrupted, properly, the gentleman from Philadelphia while he was speaking yesterday, told us that the objections from Allegheny county were not so much to the original jurisdiction in these circuit courts as to their appellate jurisdiction. I assume that that is so.

What are the objections to the plan of the gentleman from Philadelphia? I would rather consider them first. He proposes first, then, a double appeal. I

think that it is a radical objection. I do not believe that any suitor desires or ought to have the right to keep his case in successive courts, after it has been fairly heard and the law correctly pronounced. I think the delay of justice a monstrous evil. We know it is placed in the same category with its denial, and a great delay is practically a denial. I cannot understand that it is the right of a freeman to be used as a sort of shuttle-cock between the battle-doors of successive appellate courts, to be knocked about from one to the other. I do not believe it a right that he should possess. I know it is wrong to the rest of the community. It is to the interest of the community that litigation should end; and if you obtain the advantage of a thorough discussion of a case, the sooner it ends the better. I am, therefore, opposed to an intermediate court in the sense of a stepping stone to the reaching of a final adjudication. That I understand to be the New York system, and I think it is fraught with evil. It would be a great deal better to let a man having $100 in controversy go directly to the court of last resort, which is the only alternative you can present, rather than to let him go first to the intermediate court and invite him, by holding out the temptation of possible success, to spend his money and waste his time in going further. I think that is bad. I also think it vastly better, instead of having this intermediate court, even freed from the objections that I have just pointed out, composed of the judges of the vicinage, the judges of the adjoining counties, composed of a distinct body of men, and my reasons are these:

If you make your appellate court, even with the addition of a new judge that is called a circuit judge, which is part of the plan I have before me, you have ten or twelve local appellate courts, and there may be just as much diversity of opinion between them as the subject matter of the controversy permits; it may be sometimes more than two differences; and if you make that judgment a finality, as I think it ought to be, within certain limits, you would have the spectacle exhibited of district number one, composed of the counties of Philadelphia, Delaware and Bucks, if you please, deciding an important principle one way, and district number two, composed of Montgomery and Chester, if you please, deciding the exact opposite; and that would bring the law into deserved disrepute.

For both these reasons, while I feel the necessity of an appellate court to relieve the Supreme Court of that which is greatly embarrassing it, of that which is practically swamping it, I would have a court organized differently; and with some modifications, it strikes me the plan reported by the committee is the best.

Before I come to discuss that, permit me just to say a very few words about the composition of the Judiciary Committee, and about the result it has reached. I think it ought to carry a certain weight *per se* with it. That committee, I believe, was composed of fifteen gentlemen. It contained in it a most important element, in the presence of my distinguished friend, now before me, (Mr. Woodward,) himself, as I said a little while ago, occupying for a number of years the highest judicial position of the Commonwealth, transferred to that high position from another judicial position, and practically coming to us from a life-long service in the cause of justice in this Commonwealth. So far as I have known him, from the first day my eyes lighted upon his face, which was in the county in which he was born, he has been part and parcel of the administration of justice in this Commonwealth; and everything coming from him is entitled to great respect; and when we find a general concurrence on the necessity of this court between him and a majority of the committee, it ought to go a very great way.

We have had also very distinguished members of the bar from almost every section of the State. For my own community I am entitled to speak. We had the leader of the profession in the city of Philadelphia, (Mr. Cuyler;) we had also from the same city a gentleman of great distinction, (Mr. Dallas,) much younger than many of us, but still on the road to the same eminence which his distinguished compeer has already attained. We had a very distinguished gentleman from the extreme western part of the State, the county of Allegheny, (Mr. Purviance,) and we had gentleman from the centre and from other sections—from all sections of the State—so that the sentiment of the profession was well represented. All sections, and, if I may use the phrase, all interests, were heard in that committee; and from a body composed as that body was, the unanimity, it strikes me, is quite remarkable. Lawyers, from their habits of thought, from their mental training, are much more dis-

posed to differ than to agree. The very training that enables them, on short notice, to adopt, almost with equal facility, either side of a case, to represent fairly the interests of each of the antagonists in a court of justice, of necessity teaches them that so much may be said on every side of a question, that it is extremely difficult to ascertain where the real justice of the point lies. They are trained to controversy; they are trained to differ; but when you find, as I understood from the gentleman from Bedford, (Mr. Russell,) who spoke yesterday afternoon, that there was a practical unanimity of two-thirds, or nearly so, on this subject, it goes with me for a very great deal, indeed.

When I find the distinguished chairman of the committee not his own mouthpiece at all, but the mouth-piece of nine or ten gentlemen of distinction, it would remove a great many doubts in my mind. I feel that I ought to waive everything but what I should call a radical difference, because I know his industry this winter; I have seen it tested myself, and I feel that when they have agreed (as I know they have, with a single eye to the presentation of that which is best,) on a report carrying with it the weight of about two-thirds, it ought to go for a great deal. I do not say that it ought to be conclusive at all. If I thought that my friend from Delaware (Mr. Broomall) was right, (as he very often is, at least in my opinion, for I have voted with him on a great many questions,) I would not care if he stood alone, and I will say that nobody could have presented better than he did his own view of the case.

I do not say this, therefore, to bind the judgment of the Convention at all. I am not on the committee, and I feel the less constraint from that very fact. I have no theory to defend, none to advance; but if we find that there is at least equality, and here there is much more, I say so far as I am concerned, this agreement would turn the scale, where there was nearly equality of value in the systems.

Now, I think I could point out direct and absolute advantages in the plan they have proposed. And I say here—I must touch on this subject—that what was said yesterday by the gentleman from Fayette (Mr. Kaine) about the proposed change in the administration of justice in England ought not to weigh a feather with us. Why should it? In the first place, it is a mere project; it is merely tentative. It consists in a speech, and a very able speech, of the present chancellor, seconded, if you please, by a former chancellor of a different political party; but that is all; they have done nothing yet.

The CHAIRMAN. The time of the gentleman has expired.

Mr. LANDIS. I ask unanimous leave of the Convention that the gentleman proceed.

The CHAIRMAN. The Chair hears no objection, and the gentleman from Philadelphia will proceed.

Mr. BIDDLE. It is purely experimental; nay, it has not reached even——

Mr. KAINE. Will the gentleman allow an interruption?

Mr. BIDDLE. Certainly.

Mr. KAINE. I desire to say to the gentleman from Philadelphia, that he is mistaken as to what I said yesterday on that subject. I read from the report of the royal commission and not from the speech of either chancellor.

Mr. BIDDLE. I am quite aware of that; but I have had the pleasure of reading the speech of Lord Selborn, which is of more recent date, made this winter in the House of Lords on that subject; and I referred to that as the last expression of the legal mind in England on this subject. It was printed very extensively; I had it here one day. It was delivered, I think, in the month of January in this year. I referred rather to that. It is substantially the same as the report. At any rate, it has the advantage of giving us the very last impress of their legal minds. It is not even experimental; it is purely hypothetical. Nobody knows what will be the result of their uprooting their whole system. It may be good, or it may be very bad; and I am not prepared, upon the faith of the report of a royal commission, or upon the faith of a speech from any chancellor, no matter how eminent, to tear up that which has, measurably, done its work well. The quotation is in the minds of most gentlemen: "There are some things which we had better endure than experiment in a way where we do not know how we shall land."

I believe our system is a most valuable one, a system by which justice is brought fairly home to the citizen, with an opportunity of a review of that which, from haste, has been done incorrectly. That has been the English system, from which we have taken our system; their system differing from ours in this, and better to

that extent, that in their manner of reviewing cases tried before a jury the appeal takes the shape of a motion for a new trial instead of a writ of error; that is to say, it is a review on the whole merits of the controversy rather than on the mere few dry principles of law raised either by the record or by the bill of exceptions. It is a better system. It is more like an appeal. Every lawyer knows that writs of error to English courts are very few. I think I am safe in saying, and at one time I had to examine all of them, that they do not average more than one in a volume. In the one hundred and sixteen or one hundred and eighteen volumes of common law reports I doubt if there are one hundred and fifty writs of error to be found; and they very rarely go to the court of last resort. How few cases ever reach the House of Lords, which is a law tribunal really, composed of three or four or five men; never more.

Now, let me come back, after this little digression, to the essence of this plan. It is this, or at least I hope it will be: Take a sum, $500 if you please; I understand it has been said, as coming from one of the judges of the Supreme Court, that that would cut off a vast body of appellate litigation, enough to give them relief and to enable them to keep up with the rest of their work. Put that in an intermediate court as a finality. I confess I do not like the feature between $500 and $2,000. I would make it a finality, with the exception I am about to state. A court composed as this court will be ought to satisfy men, and there ought to be a difference in amounts. I shall be met with that objection, and I shall meet it. There ought to be a difference in amounts, and for this reason: I do not deny that it would be a great deal better to take every case to the court of last resort. I suppose we all agree to that, if it could be done, if it were possible; but it is not possible under our present system.

You must make a distinction of some kind, and you have not only to consider the interests of the suitor, (and I do not take back one word of what I said a little while ago,) but you must consider the interests of the whole community, and if you extend to the suitor a thorough hearing apart from what he may choose to consider the local sentiment which is against him, the local prejudice, if you please, while it may be hard for him that he cannot go further, still the vast interests of the community require that the door should be finally shut down on him. I see no injustice in this. I do see injustice in shutting him off altogether. This would have great advantages over the system proposed by the gentlemen from Delaware; this would have all the advantages of the system proposed by the late distinguished Chief Justice of this State; this would have advantages over the other system, because it gives a new tribunal with this great advantage—a tribunal whose decisions would be uniform throughout the State. That is an enormous gain. You would get rid of all that class of objections which would be made by a suitor from Montgomery county, in contrast with a suitor from Bucks county: "Why, here this local appeal court decided one way, in my favor, and my appellate court decides the other way, against me." The decisions of that circuit court or that appellate court would be uniform throughout the State. They would have unity, and unity gives uniformity. They would have traditions very soon as a court, and traditions give conservatism. They would probably be quite as good a court as the appellate court; and if I am asked, why then not stop there, I simply say, by reason of the impossibility of doing so. I have no other reason. I say, and I repeat again and again, I would rather allow every case to come to the court of last resort; but that is impossible as I understand the statistics.

You get rid, therefore, of what I consider two disadvantages in the system proposed by the gentleman from Philadelphia, who spoke yesterday so much at length. You get rid of this unnecessary step in justice; you get a finality in either case; you get a broader instead of a narrower appellate tribunal, which, with me, goes for a great deal; and you get, as a consequence of that broader tribunal, uniformity of decisions so far as that tribunal is concerned, and when that tribunal finds itself wrong, by reason of a cause above the allowed sum getting into the Supreme Court, if they are honest men, as I am bound to suppose they will be, they will conform to the law of the tribunal of last resort. They must necessarily do it.

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

Mr. BIDDLE. Yes, sir.

Mr. BROOMALL. I ask whether there is any difference, in principle, between making the court of common pleas a finality upon amounts under one hundred dol-

lars and making the intermediate court a finality on amounts under five hundred dollars?

Mr. BIDDLE. I certainly think I have spoken a good while in vain if I have not shown the difference. The difference is this: The court of common pleas is composed of but a single judge or two; the appellate court is composed of several, and you have got the conflict of several judicial minds from which to elicit the spark of judicial truth, and you have got the advantage of a fresh hearing upon the points of law unmixed, untainted with anything like local feeling, which, with me, counts for a great deal. That is the way I would answer the question.

Now, ought there not to be an exception? It would be an iron rule to say that any sum of money, five hundred dollars or any other, should be the limit, because we are met at once by the case put by the distinguished gentleman from Philadelphia, (Mr. Woodward,) who spoke so well yesterday of the tax or the royalty upon coal, which was twenty-five cents a ton. He would be met, if the suit was before an alderman, however, by a barrier insuperable at present; he never could go further. I would do away with that.

I was saying, not where a single judge, although that is a matter of detail, but where a majority, (and I believe these men will certify fairly; I am bound to think so,) where a majority of this court which has the final appellate jurisdiction, by reason of the fixedness of the sum, will certify that in their opinion the principle is such as to require review, it should go up, and I believe in ninety-nine, nay, in one hundred cases out of one hundred, they would certify as they thought right. I believe they would. I believe, therefore, that system, for these reasons, is the best.

I might say something here about the original jurisdiction, but it is not necessary now; and while I am in favor of it for many reasons, I do not think I ought at this stage of the debate, when other gentlemen may desire to speak, and I have been highly favored by having my time extended, to go beyond the exigencies of the question immediately before the Convention. It is a vast question, properly referred to by the gentleman who opened our proceedings this morning with prayer as a topic on which peculiarly we should ask assistance from above, because with a pure and with a prompt administration of justice we may defy, I think I may say, all the other evils of our system, great as they may be; and with the opposite, I care not what Constitution you have, how good it may be in other respects, the people of this country, this Commonwealth—and it is a great country—will be cursed in all their outgoings and incomings.

For these reasons and for others that, if time permitted, I might give, I am in favor of retaining this feature of the report which is involved in this little word which the amendment proposes to strike out; and I beg gentlemen, even if they feel any doubt on this subject, to continue the word at present, and allow us to discuss hereafter, more in detail, the various results which flow from the retention of this word. If you strike it out, you say practically this, both to those who believe the distinguished gentleman from Philadelphia was correct, and to those who believe that the report of the committee is correct, you shall have no relief such as is offered by either of their plans; you are to go on overloading, term after term, and year after year, the court of last resort until it will become a mere byword among us. You give no opportunity of perfecting in detail that which you may think wrong in detail in the report. You say all this, misled, as I conceive, by a word. I cannot conceive why it should have the effect which it seems to have in the minds of some gentlemen. Your present system, excellent when the population was small and the interests comparatively narrow, when your material interests were not a tithe, nay, not a hundredth of what they are now, was well suited to you, but you have outgrown it; and you cannot say that you want nothing better.

This scheme reported by the committee, Mr. Chairman and gentlemen of the Convention, has the great merit of preserving the essential features of the existing judicial system, and of only introducing change where change seems to be imperatively called for, change which is merely the handmaid, as it were, of the existing system, and which does not throw out any practical feature of importance in that which we already possess.

For these reasons I shall vote against the amendment to the amendment.

Mr. ELLIOTT. Mr. Chairman: I can offer no excuse to the Convention for detaining it this morning in an effort to express my views upon the question pending, after it has been so thoroughly and so

ably discussed by distinguished gentlemen of the Convention, except the great interest that, as a lawyer and as a member of the legal profession, I feel in it myself.

In my judgment, sir, no amendment of the present Constitution ought to be more carefully and thoughtfully considered than those which propose material changes in our present judiciary system. I believe that our present system is not surpassed for simplicity and efficiency by that of any other State in this government, and we should be careful before we change it; we should be well assured, in my judgment, that the change will be a decided improvement. Unquestionably our present system has defects in its details; but that the system itself is defective, I utterly deny. The two cardinal principles of our present system which I desire to see maintained and perpetuated are, first, that there shall be one court of original jurisdiction for the trial of all civil actions; and secondly, that there shall be one appellate court, to which the causes tried in the court of original jurisdiction shall be directly taken, and when that court has pronounced its judgment in any case, that case shall be at an end forever.

In our present Constitution a few plain sections constitute our whole constitutional law upon the subject of the judiciary. I believe our people understand them; the legal profession understand them, are satisfied with them, and, with the permission of this Convention, are content to live under them. The report of this committee, however, proposes a most radical and, to my mind, most dangerous change in the present system. It proposes an intermediate court—a court between the common pleas and our court of last resort—with concurrent original jurisdiction with the common pleas in certain cases, and with a limited appellate jurisdiction. Now, sir, I propose for a few moments to discuss the propriety of establishing this circuit court as a court of original jurisdiction, the propriety of having two courts throughout this Commonwealth of concurrent original jurisdiction in a certain class of cases.

What good is to be accomplished by such a court? What purpose is to be served by a new court of original jurisdiction? Will it expedite business throughout the State? It is not claimed, and I apprehend that it is not intended, that this court shall be in session at the time the courts of common pleas are in session in the different counties. It is intended that it shall be held, as far as its original jurisdiction is concerned, in the same court room, at a time when the common pleas is not in session. We gain nothing by having two courts sit at different times, twenty-six weeks in the year, over one court sitting continuously. We gain nothing in the way of expediting business by having this as a court of original jurisdiction. I apprehend but few gentlemen, if any, in this Convention, outside of the Committee on the Judiciary, will contend that it will simplify the administration of justice. The more courts you establish of concurrent original jurisdiction in a community, the more, of necessity, you complicate the practice.

Will it purify the judiciary of Pennsylvania? Since the organization of this Convention, since we first met here day by day, we have had testimony from nearly every delegate upon this floor, of the purity of Pennsylvania's judiciary; and there has been incessant effort to impose other than judicial duties upon the judiciary of Pennsylvania for the alleged reason that amidst the corruption of the other departments of the State, the judiciary had remained pure. Will it add to the bench men of greater strength of character, men of broader views and wider experience? The judges of the common pleas bench of our State to-day are, in my judgment, the peers of the judges of the Supreme Court of the State of New York, the system more nearly allied to this circuit court system proposed by the Committee on the Judiciary than any judicial system of any other State with which I am familiar. The judges of our courts of common pleas are selected from the leading men in their profession in the district over which they are called to preside. They are selected by men who know them personally, and as a rule, are selected for their ability and integrity; and I apprehend we shall gain nothing by electing eight judges at large in the State, or any other given number, instead of having them selected in the districts where they preside. By leaving the selection of these eight men to a State Convention, the cunning politician who understands the science—for it has been reduced to a science—of manipulating State Conventions, will be very likely to secure a triumph over his less cunning but more profound competitor. Then, if it will not simplify the practice, if it will not expedite the business, if it will not purify the judi-

ciary, if it will not add strength to the judges upon the bench, as a court of original jurisdiction, I apprehend that this circuit court must, of necessity, be a piece of unnecessary and cumbersome judicial machinery.

I see no benefit to accrue from this as a court of original jurisdiction, but I see very many evils to result from it. I think every member of the legal profession will agree with me that it would be an evil to have two sets of records in every county in the State, to have two sets of officers, two sets of appearance dockets, two sets of judgment dockets. Suitors and others interested in matters of which they are made to take notice by their being therein contained, would find it to work very inconveniently. We would have executions going out from two courts of original jurisdiction in the same county for the sale of the same property, and very many other things which could be mentioned in connection with these courts of original jurisdiction.

But, sir, it seems to me, in the discussion yesterday this idea of having a circuit court with original jurisdiction was abandoned by those who had previously advocated it. Those favoring a circuit court contended only that, in order to relieve the Supreme Court, we must have this intermediate court as an appellate court. In my judgment, in order that this court shall be any sort of relief, however it may be constituted, it must be a court whose determination of questions brought before it shall be final; because I apprehend that if we say it shall be an intermediate court to which suitors must go in order to reach the Supreme Court, or the court of last resort, it can have no effect except to increase the expenses of litigation and the delay of suitors. It is the experience of all lawyers who have practiced in the State of New York, where such a system prevails, that after cases have been tried by a court of original jurisdiction, and have gone to the Supreme Court, sitting in banc at general term, very few cases stop there. The spirit of contention has been so thoroughly aroused in the breasts of the parties litigating that they will never be satisfied to drop their suit until the court of last resort has pronounced the final decree upon it.

The State of New York has been referred to here. There they have this system. There the judges of the court of original jurisdiction, the Supreme Court, set in banc for the purpose of appellate jurisdiction. Yet, sir, has the court of appeals of the State of New York been relieved? At this very moment they have a court of appeals in session there with more than it can do, and they have a commission of appeals, another court of last resort, in session, constituted on purpose to try cases that had accumulated in the court of appeals prior to the year 1870. This very plan of an appellate court without making its determination final has been tried in the State of New York for the last twenty years and failed of its purpose; and there is no lawyer in Pennsylvania who has practiced in any of the southern tier of counties of New York, at least no lawyer connected with the bar to which I belong, but will tell you that this system there is an absolute failure and that it serves no good purpose whatever. There are very few, if any, causes stopped after having been heard at this general term, and the court of appeals of New York is burdened with cases much worse than the Supreme Court of Pennsylvania is to-day. They cannot get through their business with two courts of appeals sitting at the same time; and yet all cases over and above a certain amount must pass through this general term before they can reach the court of appeals of the State of New York. May the good Lord deliver us from any system akin to the system of the State of New York! If you begin a case there to-day and get it determined in the court of appeals in ten years from this time, you will have been very expeditious indeed.

One reason why I am so thoroughly opposed to this circuit court is, that I know something of its result in the State of New York, living, as I do, in one of the border counties. I know something of the workings of this system there; and for that reason I say that, to make it of any sort of relief to the Supreme Court, we must make its determination final; and if we do, then we have introduced into our system the anomaly of courts of last resort, entirely independent of each other, for the determination of cases involving precisely the same issues, and differing only as to the number of dollars in controversy. We might have the opinion of the circuit court one way and the opinion of the Supreme Court the other way, and yet, both of these opinions would be the law in the cases in which they were pronounced. Does any gentleman desire a system of that kind in Pennsylvania? This is my objection

to the decision of this court being made final and conclusive. In order to relieve suitors, in order to relieve the Supreme Court, we must make it final, because the suitor who has anything involved, and who has carried his case to the circuit court from the common pleas, where an opinion has been rendered, will not stop until the court of last resort has pronounced upon it.

I desire to call the attention of the Convention for a moment to the specific plan reported by this committee and the one proposed by the gentleman from Philadelphia yesterday. I know that those sections of that report are not directly before the Convention at this time; but this committee have had the subject of circuit courts under consideration for the past three months, and I think I have a right to assume that they have developed the best plan that the wisdom of man can originate, and if the plan they have reported will not stand the test of examination, it is fair to assume that no plan that will be presented to this Convention will stand the test of examination.

In the first place, so far as the original jurisdiction of that court is concerned, there are but eight judges. The section provides that they shall hold at least one court in each county during the year, and from the number of appellate courts that they will be compelled to hold if they have any business before them, and from the few judges that are to be selected, of necessity they cannot go into the majority of the counties of this State more than once in each year. Hence a suit brought in a circuit court of original jurisdiction, if not tried at the first term after the suit is brought, must of necessity go over one whole year. But the committee provide that suits may be brought in the circuit court of original jurisdiction when the amount in controversy exceeds $500. Now, I would like to have some gentleman of this committee inform the Convention how that question is to be determined. In an action of slander, in an action of ejectment, how are you to determine whether it is proper to bring your action in the circuit court or in the court of common pleas? Is the amount in controversy to be fixed by the amount stated in the declaration? It is a very easy matter to state any amount you please in a declaration, and in an action of slander and in many other actions that might be named it would be impossible to tell whether the circuit court had jurisdiction over the case or not.

I would not object very much to the provision that if a man was foolish enough to bring his action originally in this circuit court, he should wait until doomsday before it was tried, but there is another section which provides that any action which might have been brought in the circuit court may be transferred to the circuit court from the common pleas on the application of either party; and I object to that for the reason that where a man understood perfectly well that he had no sort of defence, the first move he would make would be to remove the case against him into the circuit court, where it would slumber for years.

Now, sir, take the section referring to the appellate jurisdiction of this court. It provides that it shall have appellate jurisdiction where the amount in controversy does not exceed $2,000. Who is to determine that? I should like to know who is to determine that the amount in conversy is $2,000 or $1,000. Suppose that I want to take a case from the common pleas either to the circuit court or the Supreme Court, how am I to determine, if I am a defendant in an action of slander, to which court I will take my writ of error? And that section provides that in all cases where there is not more than $500 in controversy the determination of the circuit court shall be final. Now I should like to know how that court will ascertain from the record whether there was $500 in controversy or not and whether that case shall stop there or whether the court shall suffer it to go on to the Supreme Court.

Mr. CUYLER. Will the gentlemen pardon an inquiry?

Mr. ELLIOTT. Yes, sir.

Mr. CUYLER. How is the question he puts to the Convention now determined, as between the *nisi prius* and the other courts in the city and county of Philadelphia?

Mr. ELLIOTT. I am not familiar with the practice here.

Mr. CUYLER. How is it between the common pleas and the district court? We never have any difficulty on such questions, and yet the jurisdiction of *nisi prius* is limited to causes involving more than $500, and of the common pleas to causes not exceeding $300 as to original jurisdiction. We have no difficulty in practice.

Mr. ELLIOTT. Mr. Chairman: So far as the question put by the gentleman from Philadelphia in reference to the practice here is concerned, I admit at once that I am entirely incompetent to answer his question; but this matter strikes me, as I have stated, and I should like to have any gentleman explain it.

Mr. ARMSTRONG. If the gentleman will permit me to interrupt him for a moment, I propose simply to correct a misapprehension on this question. I do not consider that the question of original jurisdiction, or indeed, of appellate jurisdiction, is now before the committee, for it is not involved in the amendment; but mis-statemements or misapprehensions, certainly inadvertently made, ought not to go uncorrected. The gentleman states that either party may transfer a case into the circuit court; but he omits to state that the section on that subject reads in this wise:

"Any proceedings in law or equity, commenced in the court of common pleas, which might have been originally instituted in the circuit court, may be removed thereto by either party."

He stops there. He should have added:

"Within such time and upon such conditions as may be by law prescribed."

Mr. ELLIOTT. I am very glad of the interruption, but I should like to have any gentleman tell me how I could have stated that section differently. I quoted it substantially as the gentleman has read it. It is true that the section the gentleman refers to provides that the manner of removal shall be regulated by law. That is all. I said they might be transferred. Was I not correct? The mere manner of transfer is to be provided by the Legislature, not the power of transfer at all.

Mr. ARMSTRONG. It does not say that, but it says, "within such time and upon such conditions."

Mr. ELLIOTT. Certainly. I apprehend that; still I am right and within the record when I say that the Legislature has no power to prevent the removal; that is the point which I was discussing, that by this section either party has the right to remove his cause into the circuit court. Am I not right? Now, sir, I say that after it is removed, with but eight judges of original jurisdiction, it would slumber there for years and would not be disposed of during an ordinary man's life time, and that is one objection to it. And I say that after the concentrated wisdom of this committee has been fixed upon a system, and one has been produced as defective as this one, it is hardly fair to assume that any proposition constituting a circuit court will be presented to this Convention that will or ought to meet its approval.

In my judgment the remedy, instead of by this appellate court, instead of by this intermediate court, that can be of no service, as I have said, unless its determination is made final and conclusive, and it is hardly worth while for me to say anything in addition to what was so well said by the gentleman from Philadelphia yesterday in reference to the impropriety of limiting a poor man in his action to the circuit court and permitting those having larger litigations to beyond; in my judgment the remedy, so far as the common pleas is concerned, if we have not judicial force enough, is to increase the judicial force, make the districts smaller and increase the number of judges; and without having this appellate court, without having any sort of intermediate court, without having anything like a writ of error from the common pleas to any other tribunal, except the Supreme Court. The Supreme Court might be relieved in this way: To have, say three common pleas judges in each district, and have those judges sit together for the purpose of hearing motions for new trials and in arrest of judgment.

The CHAIRMAN. The time of the gentleman from Tioga has expired.

Mr. NILES. I desire that his time may be extended, as he has been interrupted.

The CHAIRMAN. If there is no objection the gentleman from Tioga will proceed. The Chair hears no objection.

Mr. ELLIOTT. Mr. Chairman: As I said, my judgment would be to have enlarged districts from what they are now; to have three judges in a district; to allow those judges to hold courts the same as the common pleas judges hold court now; and have those judges sit together for the purpose of hearing motions for new trials and in arrest of judgment. In that way the Supreme Court would be as likely to be relieved as by an intermediate court where you do not make their determination final, for each suitor would have the opinion of three law judges upon his case on a motion for a new trial before he took it to the Supreme Court; and if, after that, he would take it to that court, he would take it there after the decision of your intermediate appellate court.

I am willing, Mr. Chairman, to vote for anything that is reasonable which will operate as a relief to the Supreme Court, and which will facilitate and expedite business in the common pleas; but I am not willing to surrender this principle of our system that we shall have one court of original jurisdiction and one court having exclusive appellate jurisdiction, and thus, at some time, have an end of litigation.

Mr. Chairman, this is an important question; it ought to be carefully considered. I have no doubt of the entire sincerity of the committee which reported this plan of a circuit court. I have no doubt that the committee deem it the most perfect and just report that could be made to this Convention, and it ought to be carefully considered; but, in my judgment, nine sections for a judicial report would have been much better than thirty-nine. If the leading articles of this Constitution are to be as voluminous as the judiciary article, it will be necessary to have the Constitution of Pennsylvania carefully indexed and digested for common use.

Mr. PATTON. Mr. Chairman: I think we are unnecessarily complicating and overburthening our judicial system by adding to it this intermediate circuit court, at an annual cost to the State of over $50,000, besides adding to that aggregate the expense of the retiracy of worn-out or superannuated judges on a continuance of a part of their salaries.

When at home during our late recess, I conversed freely with members of the court and bar on this subject, and I found they were uniformly opposed to it. While I concede that our labors are not alone for the benefit of our immediate constituents, but for the whole State, I mention this fact as indicative of the probable sentiments of the bench and bar throughout the entire Commonwealth.

With rare exceptions, our present judicial system has worked well, and in those exceptional cases, where the presiding judges may, for the time being, have been overburthened, it would be more wise and economical in such cases for the Legislature to authorize an occasional temporary appointment of an assistant judge than for us to permanently create this new court—an innovation upon our judicial system which the people will reject.

Our present system is so simple that the people have become familiar with the remedial characteristics of both the courts of original and appellate jurisdiction, and through it justice is brought quarterly and oftener, if required, within the limits of every county and neighborhood of the whole State. Therefore, in the opinion of your speaker, the unnecessary multiplication of tribunals, instead of accelerating the administration of justice, would only lead to confusion and delay.

In view of the growing profligacy of public expenses in every department of the government, State and National, down to borough municipalities, there seems to be a waking up among the people of a reactionary feeling in relation to public expenditures, and hence our work will be generally and justly scrutinized by our constituents, with a sharp eye to a prudential retrenchment of the public burthens; and it will therefore be the part of wisdom for us to shape our fundamental law, *to some extent at least*, in accordance with that economical sentiment which is at all times a healthy controlling influence upon the prosperity of the State.

As our government is one of checks and balances, it would seem fitting for the judges of the Supreme Court, as recommended by the committee, to be appointed by the Executive and their number increased to seven, while the other judges are elective, so that the paramount tribunal may be independent of any extraneous popular influences that might be brought to bear upon the adjudications of subordinate courts while reviewing and rectifying their decisions so as to keep the scales of justice even and steady.

Thus augmenting the Supreme Court to seven would greatly increase its ability for the more rapid dispatch of business, and obviate the necessity of an auxiliary court as indicated in the section.

The Supreme Court must reduce its elaborate decisions to one-half or less of their present size, and then they will obviate that large and unnecessary amount of labor which the members now seem to think is necessary for the public interest and their own judicial fame.

Mr. Chairman, in conclusion, I repeat that I am decidedly opposed to the creation of this new circuit court, from the fact that the old system has worked well and given general satisfaction to the citizens of the Commonwealth; that the people are familiar with its operations and are not petitioning for a change so radical in all its features, but on the contrary, from the best evidence I can obtain, are entirely satisfied with our judicial system as it now exists.

The creation of this new court will also involve the yearly expenditure of a large sum of the people's money without an adequate return for the investment.

Therefore it is plain to be seen that it renders our judicial system more complicated, expensive and inconvenient as compared with the old system, without securing to the people any material benefit or advantage.

On the contrary, Mr. President, the protracted litigation in this court would grow very tedious in all cases of original jurisdiction. When we take into consideration that but one session a year is seriously contemplated in a majority of the counties, and also the skill and ingenuity often displayed by learned counsel in the continuation of important causes, years might be consumed before an honest client would be able to see the end of his case.

There are other serious objections to this intermediate court which present themselves to my mind, but I will not consume the time of the Convention at this stage of the debate in enumerating them.

It has frequently been affirmed by those who are watching the deliberations of this body with a careful eye, that the great trouble seemed to be in our desire as a Convention to do too much, to create too many radical changes in our present system of State government. In our laudable desire to incorporate all the good things into the new Constitution, and reject the bad, I trust we shall not fall into the error above indicated.

Mr. Chairman, I shall be compelled to vote against that portion of the section now under consideration creating this new court, and to sustain the amendment of the delegate from Allegheny.

Mr. WRIGHT. Mr. Chairman: We all feel the importance of this new principle, which is an innovation upon our customs of the past, and we should act with great deliberation and caution in the vote we shall give upon the amendment to the amendment.

It was a matter of grave consideration before the Judiciary Committee, because it was the suggestion of a principle new to the jurisdiction of Pennsylvania, and I would say that when first proposed to the Committee on the Judiciary it had but very few advocates or friends, simply from the fact that it had not been examined. The more, however, it was discussed the more its merits were disclosed, and the more advocates it obtained, until at length when the report of the committee was made, a majority of those gentlemen who had had the matter under consideration for two months, and had considered it *pro* and *con*, finally agreed to report to the Convention the provision for a circuit court, and it is now before the Convention, and I hope they will act with the same candor and discretion that actuated the Committee on the Judiciary in proposing it. I have to say that that committee felt the same responsibility that the Convention feel, to make a provision for the future that shall be amendatory of the past. It will be better for the people of the State in the obtaining of the administration of justice.

Then is it wise and proper to enter upon this experiment? Should we incorporate in the organic law a provision instituting a circuit court? The vote upon that question to-day is one of the gravest and most important questions before us.

How does it affect the Supreme Court? It is an admitted fact that some relief must be brought to that body. At the present day they are incapable of the discharge of the vast duties imposed upon them. At the present day they cannot determine the multitude of causes that are thrown before them for adjudication. How then are they to receive a remedy? Not by the multiplication of their number, because that will not forward or increase their effectiveness. That court must be a unit, and whether consisting of three men or of nine men they move only with the same degree of expedition and celerity.

It will relieve the Supreme Court in this way: In the first place, it takes away from that court (which long since should have been taken from them) the exercise of an original jurisdiction; in equity and in the decision of civil issues, a vast burden has been cast upon that court in the holding of their *nisi prius* terms. This provision removes from them any obligation, therefore, to render service in that line which heretofore they have been obliged to follow. It takes from them original jurisdiction. It takes from them their *nisi prius* duties, and we may say, I think with safety, that almost every cause under five hundred dollars in value will be determined in this intermediate court. The decision of this appellate circuit court is final upon every question of five hundred dollars where all the judges concur. If one of them dissents, then it goes to the

superior court; but if they all concur, the decision of the district court is a finality. Sir, if you will look at the reports of the Supreme Court of this State, I think I am justified in saying that perhaps one-half of them do not embrace the consideration of subjects exceeding five hundred dollars. That vast amount of business, therefore, now cumbering the halls of the Supreme Court, will be decided by this intermediate court.

This report gives to the Supreme Court an original appellate jurisdiction of $2,000. Now, the party in the common pleas, where the value of his lands or the value of his goods, or whatever may be the claim in the cause, comes to that amount, has his redress by a direct writ of error to the Supreme Court, and it does not go through this intermediate channel; but under this provision, wheresoever the amount is under that it goes to this court, and if it does not exceed $500, their finding will terminate the question and end the cause.

In view of that I am disposed to favor the institution of this court. I may say likewise that the probability is that the decisions of this intermediate court will be as uniform as the decisions of the Supreme Court. I admire the way in which this intermediate court is constituted. They become representatives of the entire State. It is a State court elected by all the people. The best men, no doubt, will be selected to fill the office. It will not be subject to the principle that applies to nominations in counties or in small districts, but it becomes a Commonwealth affair, and men of the highest ability and integrity will doubtless be elected to fill the office.

How does it affect our common pleas? for that is another grave question. Now we have but the one tribunal. When this court is established, it gives to the suitor a choice. He may bring his cause, if it exceeds five hundred dollars, in the circuit court, or he may bring it in the common pleas. Who are the men that are to try the issues brought in that circuit court? Generally, they are strangers; they are selected from the wide bounds of the Commonwealth, and they come into our courts stripped of all pre judices and all narrow preferences. They are strangers to the parties; they are strangers to the witnesses, and they come among us to administer justice and to decide our causes without any predilections in favor of the one side or the other. In many counties that would be a consideration of the first and the highest possible importance. Now, we are tied down to the one man. He has his friends; he has his relatives; he has his personal preferences, and he has his prejudices. We have to bring our cause before him, or bring it not at all.

I do not apply any of these remarks, Mr. Chairman, to the judges in my own county. They are able, judicious, honest and effective men, and nothing can be said against them; but I do know of counties in the Commonwealth where justice, in fact, is denied to the suitor. This measure affords him a kind of relief.

It contains also this valuable provision that, where a suit already brought cannot be tried before the presiding judge or the additional law judge, upon an affidavit being filed, it may be transferred into this circuit court.

Again, it has a great advantage in changing the venue causes. We shall not be obliged, after the adoption of this measure, to go to the Legislature and obtain an act in order to transfer a cause from one county to another. If, upon affidavit or petition, it is brought before the judges of the circuit court, they have the authority to send it to one of the neighboring counties for trial. I contend that this will greatly relieve the judges of the common pleas.

Suppose we do not adopt this system, what will be the result? The number of districts in the State will have to be greatly multiplied; a large number of common pleas judges must be created—more in number doubtless than the number of the circuit judges. That will be objectionable to the people. If we undertake to enlarge the number of districts in the Commonwealth the people will object to that. I say that the number of judges in this circuit court will not amount to the number that will have to be added to the list, payable out of the funds of the Commonwealth, if we do not adopt it.

There is an objection made to it, that but one session in the year can be held in any one county of the State. That is unfounded upon the very terms of the section itself. It provides that at least one session shall be held; but when we come to elect eight men of intelligence, and eight men who are disposed to do their duty, we are to apprehend that more than one session, if required, will be held in every county in Pennsylvania. They will be men, doubtless, anxious to

do their duty, to keep up their lists, and to bring every cause to a ready trial. Take our common pleas courts generally, I learn from some of the delegates here that a cause is not reached until the third or fourth year. That kind of objection applies to any court; but if we have an efficient circuit court we say that every cause will be tried in one or two years; and that, I think, is a calculation founded in common sense and good judgment.

For these reasons I am disposed to favor the proposition, and to try the experiment. It cannot make matters any worse. It is a new principle in the administration of justice, it is true, but I think is one calculated to work well. The people may object to it at first, but in the end it will be found that we shall gain by the institution of this species of a court. If we do not adopt it, the Supreme Court judges are overworked. If we do not adopt it, the number of common pleas districts throughout the State must be greatly multiplied. I therefore favor the adopting of this principle and putting it into use.

Mr. BOYD. Mr. Chairman: As one of the members of this committee, I hardly think it was exactly the thing at this early stage of the discussion to criticise the conduct of the committee, and especially that of the chairman. It was unkind to call this the report of the chairman; it was equally unkind to intimate that there was but a bare majority of the committee that made the report. It was unkind because it was untrue. Whatever of good may be adopted by this committee of the whole of the report, I shall claim, as one of the majority, my full share of the credit of that report, and I am by no means willing, if even the chairman was so disposed to claim the credit of it entirely to himself—I prefer to have honors easy where honors belong.

Now, sir, I am not aware that any members of the Judiciary Committee have aspirations for the bench. Indeed, if I know them at all, they are far above any such position, for who would to-day aspire to a position of that kind? There may be some of the humbler members of that committee quite willing to do so, but for the leading members of it, they would be entirely disinclined in that direction; and hence, when my friend from Delaware (Mr. Broomall) more than insinuated that the people might think that this committee were providing places for themselves, and that in behalf of the profession at large they were endeavoring to increase their business by adding additional facilities to it, it was hardly the thing for him to do, because if there ever was a committee, and especially a chairman, who have done their whole duty, it has been this committee; and that the subject has occupied the undivided attention of that committee is plain from the fact of the discussion that ensued there and here, and all the reports that have been made upon that subject.

Now, we claim that there has been a majority of that committee who have submitted this report; not only a majority but a two-thirds vote in that committee have come before this body with this report; and here let me speak a little from the record.

We have upon the Journal, on page 427, first the dissenting opinion or minority report of the gentleman from Fayette (Mr. Kaine.) He submits it at large. He proceeds to district the State; he makes a disposition of the judicial districts throughout the Commonwealth; he seems to have bestowed a great deal of labor and paid considerable attention to this subject, and yet he told us yesterday on the floor that he thought the Constitution was well enough as it is; that it required no amendment or change whatever in this regard; and yet he seems to have taken the trouble to have submitted a minority report, and the only one that has been submitted except that of Judge Woodward. In reading that report I have discovered but two features in it. There may be a great many more, but if there are they are entirely too deep for me to comprehend and see. If his report is adopted Judge Sharswood can never be Chief Justice of the Supreme Court, and in like manner has he deposed Judge Mercur from the same position.

Mr. KAINE. Will the gentleman allow me to interrupt him?

Mr. BOYD. Certainly.

Mr. KAINE. I desire to know of the gentleman from Montgomery whether he and Judge Sharswood have had a communication upon that subject.

Mr. BOYD. Judge Sharswood told me a few weeks ago that he was by your report deposed from that position, and that he never could be Chief Justice. [Laughter.] Is it not true? Did he ever decide a case against you? [Laughter.]

Mr. KAINE. No.

Mr. BOYD. Then why depose Judge Sharswood? Why depose Judge Mercur?

What have they done? I do not believe the gentleman understood it. I do not believe he knew the effect of the arrangement he was making. He certainly did not seem to have a very clear idea yesterday when I interrogated him upon an important question involved in this debate. He has also districted the State, without consultation, so far as I know, and has made up the judicial districts of the common pleas throughout the entire Commonwealth, without consulting anybody, certainly no one in Montgomery county. He has actually placed Montgomery with Chester and Delaware. Well, Chester does very well for a little while over here [pointing to Mr. Darlington's seat] and Delaware does very well over there, [pointing to Mr. Broomall's seat], but that Montgomery should ever be tied, hand and foot, to such a district as that, God forbid. [Laughter.] And that he should do this without even consulting Montgomery county or ever intimating to them that he designed to do so! It is against this and his entire report that I protest and object, and I am confident that there will be but one vote in favor of it, and that when that is announced the gentleman himself will get up and state that he voted under a misapprehension. [Laughter.]

Mr. KAINE. Will the gentleman allow himself to be interrupted?

Mr. BOYD. Certainly!

Mr. KAINE. I just desire to make this remark to the gentleman from Montgomery: That the report to which he refers is not at all before this committee and he is out of order in discussing it.

Mr. BOYD. Well, sir, it is on page four hundred and twenty-seven of my Journal, and if the gentleman says it does not belong there, it shall come out [tearing it from the Journal] and I am done with it. [Laughter.] I supposed that it was his report, and I supposed that it belonged there, and I supposed he knew what he was putting there; but as he now disclaims it I can do nothing else but dismiss it and clean my Journal of that kind of rubbish. [Laughter.]

Mr. Chairman, the other members of the Judiciary Committee who have not agreed to the circuit court, and who are here upon the record, are Mr. Dallas, Mr. S. A. Purviance, Mr. Broomall and Mr. Reynolds. Those are the only five gentlemen that have dissented to the majority report, with regard to the circuit court. Therefore, you have ten gentlemen that concur in the report we are considering, as against these five, and what is remarkable too, sir, you will observe, is the fact that out of these five gentlemen, only two of them—none now since Kaine is out of the way—have submitted a minority report. They object to the circuit court, but they make no report recommending any other tribunal to meet the difficulty, and the necessity which everybody agrees has arisen for a circuit court; and I am at a loss to comprehend why it is that in the discussion here upon the simple question of circuit court or no circuit court this debate should have taken so wide a range, and why gentlemen should have seen fit to go into the details of the matter to the extent that they have.

It is agreed by every man upon this floor, so far as heard from, excepting the gentleman from Delaware, (Mr. Broomall,) that there is a necessity for an intermediate court. In other words, it is conceded by all men that it is impossible to administer justice under the present system that is now in use; that the enormous growth and increase of the legal business of the State, incident to the growth of commerce and trade, is such that it has become a necessity that there should be some other tribunal for the purpose of relieving the Supreme Court.

Why, I remember, sir, well, some twelve years ago, when the Supreme Court here assigned an entire week, and many a time two weeks, to the cases from Schuylkill county alone. Now, in consequence of the increased business and of the pressure upon that court, they have been obliged to put Bucks, Berks and another along with Schuylkill in the same week—so that now it stands: Bucks, Berks, Schuylkill and another—four counties.

We used to come to the Supreme Court here in Philadelphia with Bucks and Montgomery ten or twelve years ago; and it was just as much as we could do to get through with the business from those two counties in that week. Now additional counties are placed in the same week that we used to have, and so it is throughout every district in eastern Pennsylvania, and my information is the same in western Pennsylvania.

Now, the remedy suggested by the gentleman from Delaware is that the judges shall be instructed to write shorter opinions, that they shall condense their thoughts, that they shall boil themselves down, so to speak, in such a way that they

can compress. Why, sir, we have had judges—I can remember them for thirty years—on this bench, and we considered that we had among the best lawyers in the State upon that bench, and if they have failed to answer the purposes and expectations of the gentleman from Delaware I do not think it is likely we are ever going to get a set of judges that will measure up according to his standard. It may be that the gentleman from Delaware can be induced to take a seat upon that bench; but then that is but one judge. And if he will perform what he says a man ought to perform in that position, he is our man, but where are you going to get four more? [Laughter.] I could name two other gentlemen in this body—that would make up three—but I do not want to excite the envy and the jealousy of my friends around me, and hence I decline to name them. But there are two others in this body that would be fitted to sit with him on this bench, and it may be that three would do the business instead of the five that are supposed to be necessary. It would be well to have five, but we cannot always command the talent; it is too high priced for the position. [Laughter.]

The gentleman from Tioga, (Mr. Elliott,) who spoke a while ago, described the evils of the New York system. We all know that that system is bad; but I have not the slightest idea that the system that this Committee on the Judiciary has reported will be anything like it in its *modus operandi*. I also object to the plan, as well as did my friend from Philadelphia, (Mr. Gowen,) the coupling or collecting together of five judges or three judges of the common pleas. I desire here to raise my solemn protest against any such system as that, because, while it is thought and believed that the judges throughout the State are pure, and whilst we admit that they are, yet the pertinent remark suggested the other day by my friend from Washington, (Mr. Hazzard,) that they are human, is true also. For myself, I would never trust my case before any tribunal to which I had appealed from a lower tribunal, if upon the new tribunal appealed to sat the judge who, in the court below, had pronounced upon my case. My friend from Philadelphia (Mr. Woodward) says that a court is incapable of being influenced by the judge who happened to try the case in the court below, but that that judge was the most competent to enlighten the bench as to what the case properly was. There never was a judge, sir, that sat on the common pleas or on any other bench, but had a pride in having his judgment sustained. That feeling of pride is a part of man's nature, and as inseparable from him as his life, and it would be against human nature for him, while sitting in consultation with the judges that it is proposed to constitute an intermediate tribunal, not to lean a little bit in favor of the judgment he had given. It is human for us all so to act. I listen always with great respect to what falls from the lips of my friend from Philadelphia (Mr. Gowen;) but does he not believe such a judge to be unjust who is willing to sit on the bench and have a son or a brother at the bar, or for a man to have a brother at the bar and a father upon the bench, and *vice versa*. And yet we know instances in this State of men sitting on the bench under such circumstances. A judge of this kind would be willing to even manipulate the other judges to sustain his decision. I do not think that I would trust even Gabriel himself under such circumstances. Certainly, the gentleman from Philadelphia should not advocate a system of that kind with the experience that he must have had in Schuylkill county, with Judge Ryan on the bench and his brother at the bar. As you want me to speak out more plainly, I have done so. Who of us wants such a system as that? Yet we are liable to that difficulty if the system is to be carried out in the method proposed; with these five judges sitting together in the manner in which it is suggested, we shall be liable to this difficulty all the time; and hence it is I cannot agree with my friend, Judge Woodward, in his plan of gathering together the five judges of a district, one of whom shall be one of those who tried the case.

Mr. WOODWARD. I understood my learned friend to say that he was opposed to this pending amendment of mine. He wants some other method, and he claims some share of the report of the Committee on Judiciary.

Mr. BOYD. Yes, I want my share of the glory. [Laughter.]

Mr. WOODWARD. Then I am surprised that he has not read these amendments. It is very clear to my mind that he has not read them, because they carefully exclude from the court of review the judge of the court that tried the particular case under review. They only provide that he may, if called in, sit as an assessor. If the gentleman knows what an assessor

is, he knows that he is not to decide the case.

Mr. BOYD. But that he *may*.

Mr. WOODWARD. No, sir; he is not to take part in the decision of the case.

Mr. BOYD. If I comprehend your system, it is that the judge who tried the case reviewed shall be one of the judges who shall sit in consultation to decide upon it.

Mr. WOODWARD. It is not so, and if you will read it you will see that it is not so.

The CHAIRMAN. The time of the gentleman from Montgomery, a leading member of the Committee on the Judiciary, has expired.

Mr. BIDDLE. I ask unanimous consent for an extension of his time.

The CHAIRMAN. Unanimous consent is asked for the gentleman from Montgomery to continue. It is not objected to. The gentleman from Montgomery will proceed.

Mr. BOYD. I thank the committee of the whole for the honor. (Laughter.)

What the amendment of the gentleman from Philadelphia says is:

"Whenever the Supreme Court, in any case, shall award a writ of *venire facias de novo*, the new trial shall be had in the court where the cause originated, and shall be again removable into and reviewable by the circuit court, as in other cases, with right to a second writ of error, if allowed, as aforesaid. In no case shall a judge of the circuit court take part in the decision of a cause tried before him in the common pleas or district court, though he may sit at the argument as an assessor."

What is that for?

Mr. WOODWARD. He may sit at the argument as an assessor may sit.

Mr. BOYD. I do not want him there at all; that is my point. [Laughter.] The objection I have to this amendment is that it allows a judge who tried the case to sit on the tribunal of review. He is to sit there as an assessor, and he is to assess what? Assess a judgment in his favor and in favor of his ruling. I want him away; and therefore it is that I base my objection to the system of the gentleman from Philadelphia, and the system advocated by the gentlemen who propose to group the five neighboring judges into a court of appeal.

It seems to me, therefore, that after the fullest consideration has been given this subject, there is but one method by which the difficulty can be reached; and that is to have a tribunal which you may call an intermediate court, or by any other name you please, for the purpose of disposing of the minor and more unimportant cases. If we have a tribunal of that kind, it is plain, from the experience of us all, that the more important causes that will reach the Supreme Court will be then fully considered, that a more reliable judgment will be pronounced, and greater uniformity secured in the decisions of the court; whereas now, by the pressure of business that is upon the Supreme Court, it is plain enough that there must be conflicting decisions arising constantly. It is not at all wonderful that this should be so. If it was necessary thirty or forty years ago to have five judges upon the supreme bench, considering that the judicial business of the State has more than quadrupled in that time, how can it be supposed that now five judges can administer justice, in view of the increased business? If this kind of thing is to be continued, it is plain that there must be the same irregularity, the same unreliability in the decisions that we have had, and unless some gentleman can devise some plan by which it can be reached, it seems to me that we are here to very little purpose.

These are all the remarks that I feel called upon to make at this time, except to state to the gentlemen of this committee of the whole that we are just upon the threshold of this subject; and we are met rather more savagely than were the Committee on Railroads and Canals when they made their report. Members seemed to "go for" that committee after they had got a little start; but here they seem to go for us, upon the very first line, and that without either rhyme or reason. Now, then, why not say that there shall be a circuit court? Why not accept the section as it has been reported from the Judiciary Committee? Why not vote down the amendment of the gentleman from Pittsburg (Mr. S. A. Purviance) as well as that of my friend from Philadelphia, (Mr. Woodward,) and take the section as we have reported it, as a concession with which to start? Then if we find, as we proceed further, that this system will not answer the purpose designed; when we discover, as we may, that many of the suggestions made by his Honor, Judge Woodward, should be incorporated into our report, as amendments, then we shall have it before us ready for that purpose. But, if at this stage you strike out the

words, "circuit court," that ends the whole business. You will have no intermediate court at all; and that, surely, this Convention is not prepared to say shall be the case.

I will not discuss the question of original jurisdiction, because if it is not desirable, we can easily dispense with that. But let us create, at least, an appellate court. Until we have progressed along through this report, we cannot act intelligently and justly towards this Committee on the Judiciary or towards the courts or the litigants of the State. In order to do justice to all these parties, we must take up this report and consider it, section by section, and if, as we progress in that consideration, any one of its suggestions is found not to answer or is proved to be a failure, we can easily vote it down. But at present I trust that this committee of the whole will vote down these amendments that have been offered, and let us proceed regularly and in order.

Mr. MANN. Mr. Chairman: Every member who looks at the Constitution as it stands, it seems to me, will be led to inquire what is the necessity for the first section of the article reported by the Committee on the Judiciary. Unless there is some necessity for changing the Constitution as we now have it, it seems to me that it is the part of wisdom to let it remain as it stands. The only difference between the first article of the Constitution, as we find it, and that reported from the Committee on the Judiciary, is this: That whereas, the Constitution as we have it now authorizes the Legislature, should the people require it, or should the business of the courts require it, to establish a circuit court or an intermediate court, this report of the Committee on the Judiciary compels the Legislature to organize it. That is all the difference. The Constitution, as it stands, says that the judicial power of the State shall be vested in certain courts, and in such other courts as the Legislature shall from time to time establish.

I inquire what is the necessity of a departure from this old rule as now recommended by the Committee on the Judiciary? The Legislature have ample power, the people have an opportunity to secure this circuit court whenever they desire it. But they do not desire it. They have never asked for it; they do not ask for it now; and there is no desire, as was said yesterday, for any such court outside of this Convention. It has not made itself manifest anywhere in this Commonwealth outside of this Hall; and I maintain that it will be a very grave step for this Convention to make so wide a departure uncalled for by the people. There is ample power in the Constitution as it stands, and as we have it now and have had it for years, to provide for any system the necessity for which now exists or which may ever exist. Why, then, shall we not adhere to the law as given to us when it provides such ample power? Simply because some of us are anxious to impose upon the people new machinery, and are unwilling to trust to the people themselves to provide such remedies as they may desire. Can any other answer be made to this? Here is a remedy, ample and complete, within the hands of the people whenever they choose to exercise it.

Mr. Chairman, I listened with great attention to the argument made by the chairman of the Judiciary Committee, as every gentleman listened with attention and interest; but I ask any candid delegate here if he was satisfied when the gentleman closed that there was a necessity for this departure. I confess, anxious as I was to be convinced by the gentleman's argument, I could find no sufficient reason in the statements which he made, taking them just in the view that he made them, to justify this departure. What is the argument made by the chairman of the committee and the gentlemen who have spoken for this report? The only argument is that the Supreme Court is so burdened with business that you must find some relief for it. I reply to that—if it be true, which I deny, that the Supreme Court is so burdened with business that you must furnish some relief—that furnished by this report is the very poorest that can be furnished, for this reason: The argument was made by every gentleman who has spoken in favor of the report that we want speedy justice. The statement made by the gentleman from Philadelphia was that to deny speedy justice is to deny justice entirely. I grant that statement; but does it sustain the argument in favor of the establishment of a circuit court? By no manner of means; for I maintain that the position of my colleague (Mr. Elliott) upon this floor, that this circuit court is similar to the court in the State of New York, is entirely and literally correct; not that this report establishes the same system as they have in New York, throughout, but

that so far as the trial of causes is concerned, it is the exact counterpart of the New York system, and what is its working? In reply to the gentleman from Philadelphia, who has stated a very hard case, as he thinks, as to the inability to get a case tried in the Supreme Court, I will give the history of one case originating in the county of Steuben, New York, adjoining the county of Tioga.

A gentleman owning a large lumbering establishment went on to the land of his neighbor and cut from two to three hundred dollars' worth of fine timber. The owner of the timber brought suit in the court below for the value of the timber, and by making technical defences the defendant delayed, as every man can delay the trial of a cause who knows that in the end he is to be beaten, he delayed the trial of the cause. It was prolonged for some time, and a verdict rendered in favor of the owner of the timber. Then it went up to the intermediate court, in the State of New York, just as it may to this circuit court, as provided by the report of this committee. There they reversed the court below. It went back again for another trial, had another trial, and again it went up to the intermediate court, and there was a reversal again. Another trial was had and it went up to the circuit court again. There there was an affirmation; and at last it went to the court of last resort, just as it may in this case; and if you look at this report, a suit brought in Pennsylvania, in the court established by this report, may take those precise steps. At last, it went to the court of last resort in the State of New York, and they reversed the court below, and it went back again, and that suit, brought for two hundred and fifty dollars worth of timber, twenty years ago, is now precisely where it started when it was first tried. The owner of the timber is dead and it is left to his heirs, and they are to carry on the suit for twenty years to come, perhaps, under this system which the Judiciary Committee of this Convention have offered to us, or one precisely like it. The man that brought the suit was exhausted. He lost his timber and lost the value of all the expenses of the suit, and died without reaching a result.

That is the working of a system, so far as trying causes is concerned, precisely like the one offered to us. Nothing of that kind can occur under the simple system which we have now, for a suit goes directly from the court below to the court of last resort, and it is there reversed or affirmed at once without the delay and cost of this intermediate trial, which amounts to nothing in nine cases out of ten. In nine cases out of ten this intermediate trial will be mere labor and money lost, and this whole machinery will be offensive to the people because it will increase their expenses, will increase the cost of litigation, the length of fee bills, and add to the number of officers to whom fees are to be paid. It involves an increase of expenses in every direction, without a particle of benefit to litigants, for no man can show to reasonable, unprejudiced men how this circuit court is to advance the business in any particular.

Every suit brought may take precisely that course, guarded as this report is. There may be a verdict in the court in which the suit is originally brought and reversed in this intermediate court, and go back for trial and reversed again, and it may be years and years before a suit under this machinery can reach the court of last resort at all; so that it will not help suitors and it will not of itself relieve the business of the Supreme Court.

There are many other ways of relieving the Supreme Court of its overburden of business. On the question as it is now before this committee, it hardly seems in order to attempt to state those ways. It may be that I have so little knowledge of the difficulties of the case that I am entirely at fault; but it does seem to me that it is a very easy one, and a very simple matter to relieve the Supreme Court of all this overburdening without putting upon the people of Pennsylvania an odious machinery which they do not call for.

We are told that increasing the number of judges will avail nothing. Now, I undertake to say that statement is made without force or without reason. Suppose, for instance, you increase the judges of the Supreme Court to nine, and provide that five of them shall be a quorum, who could hold court all the time; then four of them might be writing opinions all the time. Suppose you take away from that court, as this report recommends, which is all right, its original jurisdiction, its *nisi prius* and all other duties not properly belonging to a Supreme Court, and you have at once relieved it of a very large amount of business; and then if you relieve it of superannuated judges, you will have remedied another very large difficulty, and that, I

apprehend, is where a part of the overburden comes in. I do not care to be more specific; but it is patent to any man who has any knowledge of the Supreme Court, that a part of the difficulty arises from this cause, and you will relieve that difficulty by putting on to the bench four or five new men of energy and fresh blood, who can attend to the duties of the position, and can transact the business properly and energetically. There is no member of the Convention who is not anxious to remove that evil; and clearly that will do it. Let five judges be holding the court all the time, and four others be writing up opinions or treatises on law, if they will do it, and still there will be time enough to get rid of all the business in proper time.

It was very proper for the gentleman from Allegheny to make this motion to strike out of the first section the words, "circuit court," at this time, because, that is the thing which the people of the State and the members of this Convention are now thinking about. What is the use in spending a week's time perfecting the machinery of a circuit court if there is a majority opposed to it? That is a proper question to settle now. Are we to have an intermediate court at all? If not, why not say so at this time?

It is conceded that all the judges of the the common pleas are opposed to this project. Now, the judges of the common pleas, as has been well said, are the peers of any other judges of this Commonwealth. I maintain that you may draw by lot from the common pleas judges of Pennsylvania any five of them and put them on the Supreme bench, and we should have just as good a Supreme Court as we have now. Now, then, are you to put on the people of Pennsylvania a scheme confessedly against the judgment of this class of men?

But, sir, not only the judges of the common pleas are unanimously opposed to this project, but nine-tenths of all the members of the bar of Pennsylvania are opposed to it, and the Pittsburg bar unanimously opposed to it, and I believe they are nearly unanimously opposed to it all over the State, as they ought to be, because it proposes to reduce to courts of arbitration the courts of common pleas of the State; and it proposes to reduce to mere arbitrators' advocates the lawyers of the State, except those who may live in favored localities.

Now, is it wise to put or attempt to put upon the people of Pennsylvania a scheme thus opposed by the legal mind of the State? I submit that it is not; that it would be very dangerous. It is an odious scheme to the people. Wherever I have heard it spoken of they are afraid of it. They are as much afraid of it as they are of the court of chancery of England, and they believe it will work as injuriously to them. I believe they have great reason to be afraid of it.

For these reasons I hope the amendment of the gentleman from Allegheny will prevail.

The CHAIRMAN. The question is on the amendment of the gentleman from Allegheny (Mr. S. A. Purviance) to the amendment of the gentleman from Philadelphia (Mr. Woodward.) Is the committee ready for the question?

Mr. ARMSTRONG. I do not propose at this time to discuss this particular question any further; but I know there are other gentlemen who are desirous to speak upon it, but would prefer doing so this afternoon. I have yet something to say by way of argument upon it, but I should prefer to wait until I have heard a more full development of all the objections which have been made before I rise to express the views of the committee in reply. I feel a little inclined, therefore, to move that the committee rise. ["No!" "No!"] If it be not the sense of the committee, I will not do so for the present; but I think it would afford an opportunity to some persons to express their views this afternoon who will not do so now. I will make the motion.

The CHAIRMAN. The gentleman from Lycoming moves that the committee rise, report progress, and ask leave to sit again.

The motion was agreed to, there being, on a divsion: Ayes, forty-nine; noes, thirty-three.

The committee accordingly rose, and the President having resumed the chair, the Chairman (Mr. Harry White) reported that the committee of the whole had had under consideration the article reported by the Committee on the Judiciary, and had instructed him to report progress and ask leave to sit again.

Leave was granted.

The PRESIDENT. At what time?

Mr. BIDDLE, and others. Three o'clock this afternoon.

Mr. DARLINGTON. Immediately.

The PRESIDENT. The question will be on the longest time—three o'clock this afternoon.

The motion was agreed to.

LEAVE OF ABSENCE.

Mr. TURRELL. I ask leave of absence for Mr. M'Clean, who was called home on Saturday, in consequence of the severe illness of his mother.

Leave was granted.

RECESS.

Mr. J. N. PURVIANCE. I move that the Convention take a recess until three o'clock.

The motion was agreed to, and (at twelve o'clock and thirty-five minutes P. M.) the Convention took a recess until three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

THE JUDICIAL SYSTEM.

Mr. HUNSICKER. I move that the House resolve itself into committee of the whole on the article reported from the Committee on the Judiciary.

The motion was agreed to, and the Convention resolved itself into committee of the whole, upon the article on the judiciary, Mr. Harry White in the chair.

The CHAIRMAN. When the committee adjourned this morning they had before them the amendment proposed by the gentleman from Allegheny (Mr. S. A. Purviance) to the amendment of the gentleman from Philadelphia (Mr. Woodward.)

Mr. J. N. PURVIANCE. Mr. Chairman: It is due to the Committee on the Judiciary that their report should receive the most deliberate and respectful consideration. It emanates from gentlemen of great experience in the profession, and no member of this Convention has labored more earnestly and constantly than the distinguished chairman. He felt, as the profession generally do, that an evil existed that called loudly for a remedy. Whether that remedy might be attained through the action of this Convention or the Legislature, was not for the committee to determine. Their duty required a consideration of the whole subject, and although their work in all its parts may not receive the sanction of the Convention, yet is hoped it will not be too hastily acted upon, and that whilst their plan may not be deemed the best, something in place of it will be substituted which will meet the general expectation of the profession and the people.

For my own part, I have to say that I have failed to understand that the legal profession desire the change as to circuit courts, which the report recommends. The general impression seems to be that no radical change should be made in the present judiciary system of the Commonwealth.

The number of supreme judges might be increased to seven, one of whom to hold a court of *nisi prius* in Philadelphia; another a *nisi prius* at Pittsburg, so that you would always have five judges on the supreme bench.

They should be elected, not appointed, as recommended in the report. It would be difficult to give any good reason for the supreme judges being appointed by the Governor whilst the others are all elective. If it is thought that the Governor is more competent to make a choice than the people, he should appoint all; but experience shows that the reverse is the case. We have had more able judges on that bench generally since 1851 than before that time. They would not be less partisan, for the people, in their votes, have been less governed by party ties than the Governor. They are not less independent, for they are no more likely to court public opinion than that of the Executive; and as it is proposed to make them ineligible for a second term, they stand entirely independent. The only way any man can obtain or retain his popularity as a judge is by performing his duty fearlessly and correctly. There is less reason for the supreme judges being appointed than those of the common pleas, as the one comes in daily contact with the people; the other never.

Take away all original jurisdiction from the Supreme Court, add two additional judges, and the present court, so increased, can readily get through with all of the business. Leave the Supreme Court the power to issue writs of *mandamus* to the inferior courts, or to the officers of the government; also writs of *quo warranto* to inquire into the commissions or authority of either; writs of *scire facias* to vacate charters, on the application of the Attorney General, and require all the business to be prepaid and decided by the inferior courts, and you will find no complaint of the want of time. That tribunal is now occupied with original bills in equity, writs of *manda-*

mus and *quo warranto*, &c., none of which cases should ever come before it, except on appeal, when the case is generally reduced to a few points, requiring little consumption of time, the questions having all been previously decided.

I am entirely opposed to the entire circuit court system as proposed in the report of the Judicary Committee and in the amendment offered by the learned and distinguished gentleman from Philadelphia, though the latter gives to that court only appellate jurisdiction. With original and appellate jurisdiction, it would be still more objectionable. The beauty of our present organization consists in its simplicity, the one set of courts for the trial of all questions of fact by jurors, with the power to declare the law and direct its application; the other to review the legality of the decision and correct all error. There is no circumlocution or shifting causes about from one court to another. The suitor is not obliged to carry his cause from court to court before having it settled by the one of last resort, to which all of difficulty and magnitude will ultimately go. At present two trials, one in each court, generally settle the controversy. Under the proposed system every case, if of sufficient amount, will have to be tried three times at the least, thus entailing on counsel and suitors additional labor and expense. If it could be established that higher commissions gave superior knowledge, I would favor the trinity courts, because in the first you would get all the wisdom and legal learning of the interior courts, in the second you could get a superior wisdom, and in the third you would attain all wisdom perfected in infallible judgment and legal learning. But it will not do to stop with merely objections to the report of the Judiciary Committee—to condemn it, and at the same time propose nothing in its place. It is easy, as the honorable member from Philadelphia (Judge Woodward) says, to tear down, but not so easy to build up. Now, to merely attack the report and offer nothing in lieu of it, is not treating the committee with the courtesy and consideration which it is entitled to. The important matter is to get up something better if that can be done; if it cannot, then hold our peace. I was delighted with the expression of the honorable gentleman from Lycoming, when he said: "I believe our judicial system is the best of any in this Union;" and further he remarked that "we should not attempt to tear up our judicial system;" and again he remarked, "we want no change in the fundamental system of our forefathers."

These are grand expressions of a strong faith in the present judicial system. Why then seek to change it by so radical a revolution of the whole judicial system of the Commonwealth? The people, so far as my knowledge extends, have not asked at the hands of this Convention (nor do they expect it) any very material change in our judicial system. They do want that something shall be done to bring about a more speedy trial of causes. To add to the judicial force may accomplish this. It has been suggested by many of the profession, as well by lawyers as judges, that we should have a president judge in each county of a population of forty thousand, and increase the number as circumstances from time to time would require; that the judge should reside at the county seat, and hold courts from week to week, until all business should be finished. Or under the present district system there might be some provision made for the more speedy trial of causes in the country districts. In the cities the judges work hard, hold courts over forty weeks in the year, whilst the average in the rural districts would not exceed twenty weeks.

When we hear the long list of undisposed of cases pending and at issue in almost every judicial district of the State, and the allegation that, though on the docket for years, they cannot be tried, the inquiry naturally arises, why do not the judges hold courts more frequently? Why is judicial business not to keep pace with all other business of the country? Advance in speed seems to be the general rule in all the business and pursuits in life. Things are not as they were thirty years ago, except the one, and only one branch of business, the law. Our Constitution, in the Bill of Rights, declares that "all courts shall be open, and every man shall have remedy by due course of law, and right and justice administered without sale, denial or delay." Notwithstanding this clear constitutional mandate, a state of things exist in the delay of the trial of causes that loudly calls upon this Convention or the Legislature for a remedy; I think more properly the latter. We can say nothing in the new Constitution that would be stronger or more imperative. And we cannot doubt but that when the Legisla-

ture is relieved of the burden of special legislation that they will more fully and carefully direct their attention to the interests of the public generally. The people will demand such necessary legislation as will secure more effectually a speedy trial of causes, and they will not fail to get it. I need not remark upon the additional expense that a circuit court would add annually to the cost of our judicial system, now amounting annually to about three hundred and twenty thousand dollars. With a debt of twenty-seven millions it is not likely that the people would incline to increase expenditures, unless in a case clearly demanding it.

I shall, for the reasons stated, vote against the circuit court system as recommended by the committee.

Mr. CRAIG. Mr. Chairman: I had thought that I would not speak again in this Convention, and for several reasons. One is that for several months I have been so physically feeble as scarcely to be able to make myself heard, and I have had other objections which would have prevented me from speaking upon any occasion of less importance than this. I know of no subject which can come before this Convention which is of more interest to the people of this State than the very question of the re-organization of the judicial system. I either have not read or heard as some other gentlemen have, or else one of the very questions for which this Convention was called together was that we might have some reformation of our judiciary system. It has seemed to me, and to many others, that everything in this world moves and progresses except the judiciary system, and that appears to stand still. When the former Convention was called, in 1837, we had but about half the population in the State of Pennsylvania which we now have. The great subject of corporations and the great amount of business which we have now thrown upon the courts, was unknown and scarcely thought of at that day. Nearly all the law relative to the subject of corporations which we have to-day in this State, has grown up since that time. The peculiar law in relation to the railway system, the railways themselves, the law relative to all corporations, the vast increase in the subjects of commercial law arising out of operations of these corporations, have precipitated new and entangling questions upon the courts which our fathers of the judiciary knew not of.

It was comparatively an easy matter to obtain a judge prior to 1838 who was competent to administer the functions of our Supreme Court as it was then constituted and as the cases then came unto it. The first great class of cases to be settled in this country, a new country as this was at that time, was a class of cases called the land titles of the State. These were the great questions which occupied the attention of the courts prior to 1838 and for some years afterwards. The great questions of commercial law relative to corporations, the great questions of eminent domain, had not then occupied very much the attention of courts anywhere. These all had to be learned by our new judges and by a new generation of lawyers. It is an entirely different matter now to be a judge on the bench from what it was at that day. A higher degree of education, a wider range of knowledge upon all subjects of business and of science, is required than was required then. It was only necessary for a man to be great in one department of the law that he might be qualified to be a judge at that time. But it is not so now. He must be great in all departments of the law if he be fitted to sit upon any bench, either common pleas or the Supreme Court. Then the population was sparse and the cases were not many that were then in our courts. But since that day the population of this State has largely grown; business has grown and has changed in character. It is all new, and yet our courts stand still where they were forty years ago. It has seemed to me, sir, that everything in this world progresses except the judiciary system.

But we are told that we have the simplest system in this Union or in any other country. I take exception to this remark. I have tried cases in other States and I have found their judges and lawyers uniformly saying that they found it impossible to understand our judicial system. They look into the cases in our books and they say, "we cannot understand them." But when we go into other States and find them higgling away at the old questions of special pleading and the division of the courts into law and chancery, we can very readily understand that their system is the simple one and ours is the complicated one. That is the truth about it.

Everybody outside of the State of Pennsylvania who is acquainted with these different systems will so pronounce it. But we stand with our hands in our pockets, and we brag about our great State, great in territory, great in population, great in wealth, great in educational advantages, great in everything. We brag and boast about the simplicity and the greatness of our judiciary and our judicial institutions; and yet we require it to stand stock-still, so that it shall not keep up with the progressive events of the age.

We are asked, what necessity is there for a circuit court? Now, I shall not undertake to go over the ground that has been gone over by gentlemen who have answered this question. It is a very pertinent question; it is a very suggestive one; but it does not suggest its own answer. It may be true that the Legislature could have done nearly everything which we have provided in the report of this committee; and if they could do it, why did they not? In the thirty or forty years in which they have already had an opportunity to improve our judiciary system, why have they not done it?

You have heard read in your presence and hearing the condition of the business of the Supreme Court; how year after year it has accumulated there, how the cases are piling up there, and how the judges of that court are now overworked. This was one of the conditions which we found when we came to the consideration of this question in committee; that not only the Supreme Court was overworked, but that the courts of common pleas were overworked. There was necessity for some relief, both to the Supreme Court and to the courts of common pleas.

We found the Supreme Court afflicted with something called *nisi prius*. We find anomalous courts, called district courts, existing in the State, which have a peculiar and special jurisdiction; and yet, gentlemen who speak about our judiciary system are not alarmed about them. I say, they have a special and peculiar jurisdiction, limited to a few particular subjects. I ask how long it would take a man to sit upon the district bench or to practice in a district court till he would be fit to go on the supreme bench and determine all the multifarious questions which come before that court. If he were to live to be a thousand years old, he would never acquire the judicial knowledge necessary to sit upon the supreme bench in that way.

Mr. HANNA. I should like to interrupt the gentleman for a moment. I should like to ask the gentleman whether Judge Sharswood, now upon the supreme bench, was not for many years a judge of the district court in the city and county of Philadelphia?

Mr. CRAIG. It is very easy for gentlemen to put exceptional cases. Judge Sharswood and Judge Williams are both remarkable men. They have few equals, anywhere, and they had a great knowledge of all departments of the law before they went upon any bench.

Mr. CHURCH. If the gentleman will allow me to interrupt him, how about the gentleman on the supreme bench who was the president judge of the gentleman's own district, Judge Agnew?

Mr. CRAIG. Judge Agnew was the president of the courts of our district; he practiced in all the departments of the law, and sat as a judge in all departments of the law. The question is not pertinent to the matter now before us; for he is no exception. If it be anything, it proves the truth of what I have said, that a man, to make the best judge on the supreme bench, must have had practice in all departments of the law, and he cannot arrive at that degree of knowledge which a judge ought to possess by limiting himself to any one special department.

We found the court of *nisi prius* drawing constantly upon the strength and the time of the supreme bench. We found the Supreme Court invested with a large amount of original jurisdiction which we thought ought to be taken away from it, and we did it. We believed that some relief was necessary to the Supreme Court, and we have devised, as an appellate court, this circuit court as the best thing which we could get at. It is easy to make it odious by calling it an "odious peice of machinery." It is easy to make anything odious by turning up your nose at it and sneering at it. It is easy to make a thing look black by saying it is so, by perpetually calling it hard names; but mere assertion does not amount to much as logic.

It is said that the people have not asked for this thing. I have said already that I have heard and read differently on that subject; but what have they asked us for here? How many things have we been petitioned for here? Well, we have been petitioned to prohibit the sale of intoxicating liquors, and we have been petitioned to put part of the Westminster catechism

into the Constitution; and what else have we been petitioned for? Not much.

We turn, then, to the courts of common pleas and see how they are overworked. We called upon the prothonotaries of the different counties of the State and ask them for information on this subject. The prothonotaries of twenty-seven of the counties have seen proper to furnish us with the information, and the remainder have not. In those twenty-seven counties that have reported to us on that subject there are seventeen thousand nine hundred and eighty cases at issue pending and undetermined—within twenty cases of eighteen thousand. In these are many of the counties which have the fewest cases of any others pending and undetermined. I presume that the ratio would be much greater if we had the report from the whole State, and that it would run up to much more than double this number.

Now let us look at some of these counties. I shall take first the county of Potter. All the cases, including the year 1867, pending and undetermined, in a population of eleven thousand two hundred and sixty-five, are one hundred and seven cases. The gentleman from Potter (Mr. Mann) may well look out from his dry place and say, "it is not much of a shower after all." So in the county of Chester, all cases pending and undetermined, including the year 1870, amounted to one hundred and thirty-four, of which one hundred and fifteen are within one year past. The gentleman from Delaware in that district may well look out from his dry place and say, "it is not much of a shower." In Tioga, including the year 1867, with a population of thirty-five thousand and ninety-seven cases, there are four hundred and thirteen cases pending and undetermined. That is in the same dry place.

But now turn over a leaf and look at others. Here is the county of Schuylkill, in which, including the cases as far back as 1868, there are two thousand seven hundred and seventy-nine cases pending and undetermined; in the county of Fayette, including the cases as far back as 1863, there are one thousand three hundred and sixty-two cases pending and undetermined; in the county of Westmoreland, fifteen hundred cases; in the county of Erie, two thousand three hundred and seventy; in the county of Indiana, one thousand six hundred and twenty-three; in the county of Lawrence, having a population of twenty-seven thousand two hundred and sixty, seven hundred and fifteen cases. If the same ratio would hold good in the county of Schuylkill that does in the county of Lawrence, they would have in Schuylkill over three thousand cases pending and undetermined.

This was the situation in the common pleas. In almost every quarter of the State the courts are overburdened and pressed down with cases which they are unable to dispose of. Some relief, therefore, must be given in the common pleas; it is indespensably necessary, and if we provide the means by which all these cases are to be tried, determined and disposed of, you see what an avalanche of business is at once thrown upon the Supreme Court; the pressure now there, already too great, is made greater, and yet that court is to be afforded no relief.

In devising this circuit court we thought that, with a very little expense to the State, (indeed none at all when we come to consider that we abolish the associate judges not learned in the law, for they cost as much as the circuit judges will) we had arranged and constituted a court which would serve both purposes; it would relieve the pressure in the common pleas and at the same time the pressure in the Supreme Court. We therefore conferred upon it both appellate and original jurisdiction. We provided for no increase of officers, as has been suggested. The business is to be done by the same clerk, in the same court house, in the same office, and the same judgment index and the same execution docket may be used for this circuit court. Nothing new is required but a new blotter and a new appearance docket.

This, sir, is not the New York system; it has nothing kindred to the New York system; and I need only refer to what the gentlemen who mentioned that system have themselves said upon it, that under the New York system, every case must be filtered through the intermediate court before it can go to the Supreme Court. That is not so in this system. This is a limited system, in its appellate jurisdiction.

I think the necessity for this scheme of a circuit court does exist. The question before the committee now is not whether we shall adopt this or that scheme, but the question is whether, not being frightened by a name,

> "That which we call a rose,
> By any other name would smell as sweet,"

we shall adopt any measures for the relief of the Supreme Court on the one hand and of the common pleas on the other. That is the simple proposition.

The CHAIRMAN. The gentleman's time has expired

Mr. CUYLER. I ask that by unanimous consent it be extended.

The CHAIRMAN. If there be no objection, the time of the gentleman will be extended.

Mr. CRAIG. If the Chair please, I do not feel able to speak any further.

Mr. CUYLER. Mr. Chairman: I am a member of the Judiciary Committee. I have shared in its labors, participated in its deliberations, and united in its report, and now I desire to bear my fair share of its responsibilities. I am also a member of the bar, and through many years and in important matters have had considerable experience, such as should aid me in forming a judgment upon such questions as those now under consideration in this committee; and though I may not merit the dignity which my distinguished and generous brother from Philadelphia (Mr. Biddle) bestowed upon me this morning, yet, being two or three years his junior at the bar, I will say that to him properly belongs the honor which he accorded to me, and I shall be content to follow in his footsteps, though it be *haud passibus æquis*, in the pathway of professional distinction.

It has never been a problem in Pennsylvania, so far as I know, how to secure an honest judiciary, and it is a very proud thing for us to be able to point back through the history of our State and to say, as I believe can be said with truth, that there is no instance on record of the impeachment of a Pennsylvania judge for lack of integrity, and to be able to say, as I can say after thirty years' experience at the bar, and as I presume other gentlemen here will say, that they have never even heard of a case where the integrity of a Pennsylvania judge was the subject of doubt or discussion. I certainly have never heard of such a case.

On the other hand, while we have secured in our State a judiciary eminent for its purity and its integrity, it has sometimes fallen short of the ability which we could have desired; and that has been due, as I conceive, to the circumstance—for which I know of no remedy—that we have never been able to entice to the bench of this State, certainly not of late years, gentlemen who have had very large experience at the bar. We have had, and we have now, eminently learned men, men who, so far as the knowledge which is to be derived from books is concerned, cannot be surpassed in their fitness for the duties they discharge; but as a general rule knowing, so far as my observation goes, comparatively few exceptions, we have not often of late years had upon the bench men who had derived their training for the bench in what has seemed to me to be the only schooling in which a thorough training can be had; that is, in the large and active practice of the profession; and if there be any reason why so often British judges have surpassed our own, I think it has been due to the fact that in England the bench has been the reward of long and distinguished and successful careers at the bar, so that their judges have brought to the discharge of their duties the peculiar learning which can only be derived from a vast professional experience.

Therefore it is, Mr. Chairman, that I do not agree with the gentleman from Philadelphia, who spoke yesterday, (Mr. Woodward,) as to the system on which he would appoint judges to the bench in Pennsylvania. I understood him to say that he would begin by appointing the common pleas judges, and he would confine the selection of the judges of the circuit court to those who had had a training or schooling upon the common pleas bench, and then, ultimately, would appoint to the Supreme Court only from those who had been trained in the circuit court, thus establishing what he was pleased to call a holy order of priests set apart to minister in the temple of justice, and consecrated to the peculiar duties to which they were to be set apart. I do not believe that by that system we shall secure the best appointments to our supreme bench, and I should be sorry to see the selection of judges of our highest courts confined to those who had been trained in lower courts. That is aside from what I consider to be the particular question before the committee, although, hereafter, when the question comes up to be discussed, "how are our judges to be selected?" this may come to be a matter worthy of consideration.

The question immediately under discussion is, whether it is desirable to establish a new intermediate court. It is not important at this stage of the discussion what name is given to the court; nor yet is it now important to consider whether it

shall be confined to an appellate jurisdiction, as the amendment of the delegate at large (Judge Woodward) proposes, or whether it shall also exercise an original jurisdiction, as the report of the Judiciary Committee proposes.

Now, Mr. Chairman, I am in favor of the circuit court system. I am in favor of the circuit court system as reported by the committee. If I cannot get the circuit court system as reported by the committee, I am in favor of the system as suggested by Judge Woodward, although I fail to perceive any very marked distinction between the two systems, except the fact that Judge Woodward would exclude, under his plan, from the circuit court, all original, and confine it purely to an appellate jurisdiction.

The argument in favor of an intermediate court (call it a circuit court, or call it by any name that will be agreeable to gentlemen) seems to me to rest upon a logical necessity. I find myself unable to escape from it. Granted the fact that the Supreme Court is to-day overburdened by the mass of business that presses upon it, which all of us who are accustomed to practice in that court know to be the fact; granted the fact that with the growth in wealth and prosperity of our State, the business of the court must vastly increase in the future, and that we sit here framing a Constitution which is intended to last for all time, or for an indefinite time, it seems to follow that the Supreme Court is to be relieved of the pressure that exists upon it, as a matter of logical necessity, by one of two plans: either by increasing the number of judges of the Supreme Court, or by providing a method by which minor causes may be stopped before they shall finally reach that tribunal.

Now, as to the method of relieving the court by the appointment of additional judges, what is to be said on that subject is this: if the court is an entirety, (as, for a reason I shall presently state, it seems to me of necessity it should be,) you gain little or nothing by adding judges to the court. It takes as much time for seven or nine judges to hear a cause, as it does for three or five. To add to their number is not to expedite the transaction of business, for there is no force in the argument that the labors of the court are diminished by a distribution of the labor of writing opinions among a large number of judges.

I believe it to be the unanimous testimony of the judges of the Supreme Court and the experience of the bar that since the passage of the act of the Legislature, I think the winter before last, whereby the judges were not required to write opinions where they affirm judgments, the labors of the court, so far as the writings of opinions is concerned, have been reduced to something that is entirely within the power of a bench limited to the number of the present incumbents. I have inquired of the judges of the court; I have inquired of Chief Justice Thompson, who has so recently left the bench which he so greatly adorned and who was upon the bench long enough after passage of this act, to acquire an experience of the new system established by this act of Assembly, and I think I state as well his opinion as the opinion of all the judges of the court, that so far as the labor of writing opinions is concerned, under the existing rule the labor is entirely within the compass of their powers.

It is possible somewhat to relieve the court and benefit it by adding one or two judges to their number, as the report proposes; that is, increasing the number from five to seven. The advantage which I conceive arises from such an addition to their number is that, as gentlemen are apt to be well advanced in life before they attain to the supreme bench, and certainly are so before their terms expire, the infirmities and weaknesses of age, the increased perils of sickness and inability to attend to business, must oftentimes diminish the number of judges who will be actually in attendance at the court, so that with a court composed of only five judges, it must often come to be the case that even if the *nisi prius* court were dispensed with, you would have not more than four, and oftentimes not more than three judges actually sitting.

Therefore the report proposes to add two to the number of the judges composing the court of seven, and making a quorum to consist of five. With five composing the quorum of the court, a sufficient number of judges to ensure a thorough consideration and a patient listening to the case is always secured, and gentlemen are always certain of having their causes heard before a competent number of judges, which, with the present number of the court, is not always practical. Therefore it seems to me that the argument in favor of increasing the number

of judges from five to seven is unanswerable; but it also seems to me equally clear that by that increase you do not at all add to the judicial power of the court so far as the disposition of business is concerned; and the same remark would be equally true of a court composed of nine or of a still larger number of judges.

Fix the number of your court at what you will, so long as the court *is a unit* it can substantially dispose of no more business than one limited to the present number can. What is that amount of business? So far as this county of Philadelphia is concerned, we had read to us yesterday from a newspaper, the Philadelphia *Ledger*, an exceedingly well digested article, in which a statement was made of the power of the court at the present time on this subject. So far as the city of Philadelphia is concerned, with some two hundred and fifty causes on the list at the last term of the court, a fraction over fifty made up the whole number that was heard; and taking the average number of causes heard, and allowing for three very long causes that were upon the list, seventy-two or seventy-three, I think, makes the power of the court over its list in the city of Philadelphia to day. If therefore there be two hundred and fifty cases upon our list, and if the power of the court over the average causes does not exceed seventy-two or seventy-three causes a term, it follows as a necessity that a cause must remain undisposed of in the Supreme Court for three years before members of the bar can with any degree of confidence count upon a hearing of their cases; and if this is so now, what must it be through all the great future? As this State shall grow in wealth and in commercial complications, and in population, and in business, how will it be through all the long future? If to day it requires three years before, in some counties of the State, with reasonable confidence, gentlemen may expect to have their causes heard, how will it be when the business of the court shall be doubled or trebled or quadrupled, as it will in the course of years to come? We must, therefore, have relief.

All men will concede, all men must concede, that to be compelled to wait for the appellate court now over three years, and hereafter for a longer period of time, is a practical denial of justice to the citizen; and it is apparent, as I think I have just stated, that that relief is not to be had by increasing the number of judges so long as the court shall continue a unit. If this be the fact, what remains to us? Why, as a matter of logical necessity, there remains to us one of two things: Either we are largely to increase the number of the judges and divide the court into two courts of equal and co-ordinate power, or we are to create a subordinate jurisdiction where these minor causes may be heard and the upper court be disburdened from the pressure which now rests upon it, and will increasingly rest upon it, in the future. I cannot perceive how, logically, any other plan can be suggested. If there be a right of appeal; if there be a right to the citizen to have his cause heard in an appellate jurisdiction; if the Supreme Court as a unit is incompetent by reason of the pressure of business to discharge the work, it seems to follow as a logical necessity that by one of two methods, either by creating two courts of co-ordinate jurisdiction or by creating a minor court, where minor causes may stop, we must relieve the pressure which exists and increases upon the Supreme Court.

Shut up, then, as it seems to me we are by a logical necessity, to one of these two courses, it is pertinent to inquire which of the two is reasonably the better. Now let us see.

Could it be tolerated for an instant that there should exist in this State two courts, both supreme, both having a power to declare the law in its last resort? What gentleman is there that would not shrink from such a result as that? Let gentlemen reflect how it is now. Even in our present Supreme Court, with five judges, how large a percentage of cases there are in which there are dissenting opinions, and the court fails to be able unanimously to arive at a result. Why, it is useless, perhaps, to speculate; and yet, possibly, the reason for that very condition of things may be found in the remark I made when I began to speak. It is to be found in the fact that, while our judges are men of eminent honor, purity, integrity and learning, they lack too often that species of knowledge which, in this age of the world, is of vital importance to a judge, and that is that species of knowledge which is not to be acquired from books merely, but is to be attained by the hard, continuous and active experience of professional life, as it is in England. I think I am right in saying that during all the long incumbency of Lord Mansfield, of the king's bench, in England, there were but two instances of

dissenting opinions, Perrin *vs.* Blake, and one other case. I believe there were but two in all that period of time, in both of which, I think, Judge Yates dissented, and in both of which the law was ultimately held on the basis of the opinion Judge Yates had announced. But compare such a condition of things with that which exists now in our own State, or in our own country, how large a percentage of cases there are argued in our Supreme Court every term in which the bench fails to be unanimous; nor is it peculiar to the State of Pennsylvania. The same thing is true of every State of the Union, and the same thing is pre-eminetly and most impressively true of the Supreme Court at Washington. But this is digressing from the real question before the committee.

I have said, Mr. Chairman, that as a matter of necessity we come down to one of two plans, either a co-ordinate court of equal power to declare the law in the last resort, or a minor court of appellate jurisdiction which may stop minor cases.

Now, as to the co-ordinate court, I do not propose to add anything beyond that which I have said. The objections to such a court are so very manifest that I presume no one will be found to advocate such a view. Certainly I have heard no argument on the floor of this committee in support of any such view. With the confusion, in some degree, now existing from a divided court, it were terriffic to contemplate the condition to which the law would be reduced if Pennsylvania had two Supreme Courts of equal jurisdiction.

Then if we cannot have relief to the business of the court, by having two courts of equal jurisdiction, what follows as an absolute necessity? That the evil exists no man denies. That the remedy must be found, and that it is pre-eminently the duty of this Convention to find that remedy, no man can deny. That it cannot be found by increasing the number of judges of the Supreme Court, nor yet by establishing two courts of co-ordinate jurisdiction, is too clear for discussion. Does it not follow as a matter of absolute necessity, as a logical sequence from that which I have said, that the other mode is the only one that remains open to us; and that is that by the establishment of some intermediate tribunal, which shall nevertheless be an appellate tribunal, a method shall be afforded to the citizen whose cause is not of vast importance, either by reason of the amount or of the principle which it involves, whereby he may have the exercise of appellate jurisdiction over his cause, and attain to a final decision of the questions that it involves.

That such a tribunal, if we are to have any appellate jurisdiction at all, must be created, seems therefore to me to be just as clear a proposition as that two and two make four. When gentlemen concede the existence of the evil, when they concede that the remedy is not to be found in the direction of two courts of co-ordinate jurisdiction, they are driven by an inevitable necessity to concede that the remedy is to be found in the establishment of an intermediate appellate court.

Now, I say further, Mr. Chairman, that this court should be an intermediate and an inferior court. It should be so for several reasons. It should be so, first, because, as I have just argued, it ought not to have the power of fixing the law in the last resort. That should be confined to one tribunal. It should be so, in the second place, because the amounts that are involved in the controversy, are comparatively petty. It should be so, in the third place, because the questions which arise, irrespective of the amount, are not of much magnitude.

The establishment of such an inferior appellate court, therefore, seems to be a necessity; yet there flows from this another consequence, and that is, that if there be a cause brought there in which, although the amount involved is not large, the question is grave and important, it may be carried to the higher tribunal and disposed of there in the last resort. A case often arises in which, with very petty amounts actually involved, great principles are nevertheless at stake. It is but right that wherever such cases arise there should be an opportunity of reviewing them and of determining the principles of law that affect them, by the court of last resort. Therefore, this report provides, with great propriety, that in such cases there shall be an appeal from the decision of the minor to the higher court, and a review had there.

This, then, Mr. Chairman, seems to me to be the statement of the reasons logically why this court should be created; and I confess I find myself shut up to them by an iron necessity. I cannot consistently, with my views of what reason requires, see how gentlemen can possibly escape from it. To deny it is to say that the citizen is to have a practical denial of justice by being compelled to wait now three years, and, as time passes, longer, before he can have a hearing of his cause. To

deny it is to say that the citizen is to have no right to an appellate jurisdiction, and no opportunity to have his cause reviewed by a superior tribunal. Therefore, so far as this part of the question goes, the argument with regard to it, in my humble apprehension, is without an answer. Now, as to the particular method by which we propose to reach this relief——

The CHAIRMAN. The time of the delegate from Philadelphia has expired.

Mr. SHARPE and others moved that Mr. Cuyler's time be extended.

The CHAIRMAN. The Chair hears no objection, and the gentleman will proceed.

Mr. CUYLER. I thank the committee for their courtesy, and will be very brief in what I have to add.

Now, as to the method in which relief is provided, to which I understood the delegate from Tioga (Mr. Elliott) in his argument of great ability this morning to object. I take precisely the opposite view to that to which at last he has arrived. I think that which commends this system to the citizens of Pennsylvania, is that it shocks none of their traditions; that it is in harmony with all previous experiences of the people of the State. I do not allude to the old circuit court which passed out of existence and perished years ago for reasons that in no degree affect a court constituted as this is proposed to be constituted, but I say that it has been the practice of the people of this State uniformly to create these intermediate jurisdictions, in relief of the business of the State. See how it is in the county of Philadelphia. We have here in this county two courts, and have had since 1811, which divide the jurisdiction; the district court anomalous, according to the argument of the gentleman from Tioga, and the court of *nisi prius*. The district court and the court of *nisi prius* practically are courts of co-ordinate jurisdiction.

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

Mr. CUYLER. Certainly.

Mr. EWING. Does the gentleman claim that the district court and court of common pleas of Philadelphia are intermediate courts? Is there ever a writ of error or appeal from one to the other?

Mr. CUYLER. They are co-ordinate courts.

Mr. EWING. Are they similar at all to these circuit courts?

Mr. CUYLER. I will explain what I mean. We are accustomed in this county, and they are accustomed in other counties of the State, as in Allegheny, to the establishment of courts, which may take off from and divide the jurisdiction of the usual and ordinary courts. That will perhaps more clearly express the idea that I mean to convey. I mean to say that it has been the practice of the people of this State, when the business of the constitutional courts of this State has accumulated to such a degree that they are not able to master it, to create such other courts of co-ordinate jurisdiction as may relieve them, and access to which is left to the option of the suitor himself. Thus the common pleas of this county has an original jurisdiction to the amount of three hundred dollars. The district court has an original jurisdiction from one hundred dollars upward. The *nisi prius* has a jurisdiction from five hundred dollars upwards. Thus it is that between sums of one hundred and three hundred dollars, the district court and the common pleas have a co-ordinate jurisdiction; and above five hundred dollars, the district court and the court of *nisi prius* have a co-ordinate jurisdiction upwards in amounts to an unlimited extent.

When has such an experience been found in England, from whence our legal traditions are derived, and much of our law, to be otherwise than in accordance with the habits and customs of the people? In England, without legislation, they have grown up to that condition of things, for while I believe originally the court of queen's bench, and the court of exchequer, and the court of common pleas had entirely separate jurisdictions, yet from the necessities of the people, without the legislation of Parliament, did those three courts grow into a precisely co-ordinate jurisdiction, by the operation of legal fictions, through which they attained to such enlarged jurisdiction. And following that same thought out, by the instinct of the English people, they finally established an intermediate appellate court, (for in the English court of exchequer chamber, which reviews the decisions of the queen's bench and of the common pleas, and of the exchequer, being composed of the judges of the court of exchequer sitting with the judges of the other courts, except that the judges of the court from which the case comes up are excluded always, I think, from their deliberations;) they have established, by the instinct of the British people, just that very court of intermediate appellate jurisdiction which I wish we had here in

all its breadth, and which, when we reach the proper stage in the discussion of this report, I, for one, intend to make an effort to have introduced into it. I pause for a single instant, to make a comment upon it.

If there be a striking defect, so far as my experience goes, in the judicial system of Pennsylvania, it is found in the custom by which questions of fact are reviewed upon motions for a new trial. Take the case of one court—and I mention that court only because the judges appeared in this room before the gentlemen of the Judiciary Committee, and questions were propounded to them, and they made direct answers in the presence of the Committee of the Judiciary—take the district court of the city and county of Philadelphia. A question is tried before a jury in that court; reasons for a new trial are filed, and the case comes up for hearing before the judges of that court. It is the rule of practice of that court, which I condemn, that if the judge who tried the cause is satisfied with the verdict, even though his brethren on the bench shall think there was a mistake in that verdict, it is affirmed, simply on the judgment of that one judge, against, perhaps, the views of all the rest on the bench. I believe that to be a wrong in our judicial system which ought to be remedied. It is by no force of any act of Assembly, but it is by force of a vicious rule of practice in that court, that such a doctrine prevails. Take our court of *nisi prius*, where the weightiest questions are tried before juries, and after a verdict is rendered a motion for a new trial is heard before the judge that tried the case, alone, and he finally grants or refuses it in his mere discretion, without the possibility of review by another judge, and gentlemen know very well that as serious wrongs result to suitors from mistakes of fact, as from mistakes of law; and every gentleman would concede that these very mistakes of fact quite as truly as mistakes of law, work out, and equally so, unjust results in litigation. Now, if we can introduce into our Pennsylvania system something like the court of exchequer chamber, in England, whereby other judges, several in number, and other than those who tried the case or than the one who tried it, may hear a discussion upon questions of fact and pass upon them, I should think a vast improvement had been made in our judicial system. I hold that to be one of the crying necessities of the day, as far as our judicial system is concerned.

Thus it appears that it is not shocking to the habits of the people of Pennsylvania, when the business of a jurisdiction accumulates so as to become unreasonable, to establish other co-ordinate tribunals to pass upon the questions which have thus come to be oppressive to the courts. Our *nisi prius* and our district courts in this county, and the district court in Allegheny county, are illustrations of the truth of what I say.

But let us look at another view of it. This article proposes to abolish the court of *nisi prius*. It does seem to be held by gentlemen of this Convention, so far as the discussion indicates the mind of the Convention, without a dissenting voice, that the court of *nisi prius* should be abolished; that one of the methods of relieving the Supreme Court is to take away that jurisdiction from it. I confess that in the Committee of the Judiciary I differed from that view. I did believe, and I do believe, that sitting at *nisi prius*, and holding jury trials, conduces to the healthy-mindedness of the judge, and that sitting in an appellate court, with no opportunity of that sort, does, at least in some degree, constipate the mind of the judge, and does, at least in some degree, affect the soundness of his judgment upon mingled questions of law and fact. Therefore my plan in the Judiciary Committee was to increase the bench of the Supreme Court to nine judges, and cause four of them to hold courts of *nisi prius* by detail alternatively of their number, at four different points in the State. We could do that and preserve the present form of the Supreme Court, while we greatly increased its efficiency.

But by common consent the court of *nisi prius* is to be abolished. What will you do for the county of Philadelphia in view of the abolition of that court? What is to take its place here among us? Our existing courts are not competent to deal with the mass of business that presses upon them; still less will they be competent to deal with this mass of business when that from the court of *nisi prius* is taken there also. Some other tribunal, and a tribunal that shall sit here all the year through, has come to be a necessity to the business of this Commonwealth. In other words, if we lose our *nisi prius*, we want, in this county, a circuit court to take its place. It is a necessity, and as the business of the Commonwealth grows in various points of the State will this necessity, in other counties, continue and increase. This provision in the Constitution provides a constitutional method for re-

lieving that business as, from time to time, it increases throughout the State, and this constitutes another reason why, to my mind, it ought to exist.

Now, Mr. Chairman, I have been betrayed into longer remarks than I had intended to indulge in, for I did not design to go into a discussion of the general questions that are presented in the report of the Committee on the Judiciary, but simply to confine myself if I could—though I have failed to do so—to the pending motion which, as I understand it, is to strike out the circuit court. On that subject I only refer to that which I said at the start. It seems to me to follow as a logical necessity, from a simple concession of the fact that the court is to-day overburdened and must continue to be increasingly so during the future, and that therefore, relief such as that proposed by the committee is a vital necessity.

Mr. BAER. Mr. Chairman: I had not intended to trouble the House with any remarks on the judiciary article, but, on reflection, I believe it to be the duty of every member of the Convention to make known his views on this amendment. In case we adopt the amendment of the gentleman from Pittsburg, (Mr. S. A. Purviance,) and thereby strike out the words "circuit court," the committee of the whole will have an idea of what the sense of the Convention is, so that the action will not be a mere negative, a mere voting down of the section; but having ascertained what the views of all the members of the committee of the whole are in reference to this subject, an amendment might be framed upon their views so as to meet the general wish. Let every member here in a few words—and it will not take very many from me—state his views so that the committee of the whole can have an idea as to which way the preponderance of opinion is. Then if this section is voted down you thereby destroy the entire basis upon which the report of the Committee on the Judiciary is founded, and the report should go back to that committee in order that they may re-form it so as to suit the sense of the Convention expressed by this vote; and for that reason the discussion upon this first section ought to be full, as it involves the whole question of the reconstruction of the courts.

For one, I am satisfied to leave well enough alone. I believe that the people are satisfied with the courts as now established, and I say, therefore, in the first instance, that if the proposition of the gentleman from Allegheny to strike out the words "circuit court" fails, I shall go for the proposition of the learned gentleman fr n Philadelphia, (Mr. Woodward,) because his system of courts, as they would be established by his amendment, is far more preferable to me than the one reported by the Committee on the Judiciary. For many reasons I prefer it, and among others, it does not raise the question of moneyed limitations. It does not establish a Supreme Court for the rich, to which the poor cannot possibly go. It does not say to the people that the all of the poor man is worth less to him than the all of the rich man. Yet if the report of the majority of the Committee on the Judiciary be adopted, the case of a poor man, determined by its money value, might not be able to be taken to the Supreme Court.

The question has been raised, and to a very large extent conceded, that there is a necessity for some relief to the Supreme Court. Therefore, if you reject both of these propositions, some other plan must be substituted. It would be well enough for every member of the Convention to give his idea as to what he would like to have substituted, so that when we come to prepare a substitute, if this circuit court be voted down, as I hope it will, we will be able to act promptly and understandingly and to the point. I do not believe that there is the general desire on the part of the people that is urged in this Convention, either for the increase of the judges or for the creation of another tribunal. I believe that there are evils existing in the judicial system, and the Supreme Court is overloaded with work; and I believe that one of the steps for the alleviation of the evils now complained of would be to permanently locate the Supreme Court at one point in the State, instead of having it traveling about to three or four places. Locate it at the Capital of the State, and let all questions go there. Then this great mart of commerce, this great point where so many cases arise, will be upon the same footing as the people of the interior, and will have to go to Harrisburg to try its causes; and, if that is done, it is ten to one that many cases that are in this city carried up to the Supreme Court simply because the court is so convenient of access, would never find their way there if the court were removed to Harrisburg, and thereby the supreme bench will be relieved of just that amount of labor; time, too, would be saved in the manner in which the cases before the court would be

tried, if the city practitioners had to go to Harrisburg to try their cases. I believe it is notorious that the profession throughout the interior of the State, when they go into the Supreme Court, work upon the principle of the old Conestoga teams; they go to work vigorously, and to the point; they do not strain to display very much legal learning, but they generally reach the point at which they aim, and always accomplish the same end as their learned brethren of this city, who, I understand, sometimes consume three or four days in the discussion of a case.

Now, I concede that the subject-matter in controversy in this great city is much larger than they are in the country; but I deny that the principles involved are any more important in the big cases than in the little ones, and I also deny that it necessarily takes any longer to try the same principle in any case because more money is involved in one than in another. Therefore I make that one point; I would have the Supreme Court located at the State Capital, to which all suitors would have to go.

Then I think the number of cases that come to the Supreme Court may be greatly reduced by a very simple process, that would not entail any additional cost on the people of the State. I would not create any additional tribunal, but would simply convene four or five common pleas judges of adjoining districts in each county once or twice a year, before whom motions for new trials should be argued and all the questions involved brought up and considered, and then nearly all the cases that now go to the Supreme Court would stop in the court below. You can do that without creating another tribunal, or at least without creating any new judges, because you can take the judges of the adjoining districts; or go further, as I would if I had the power, and locate a common pleas judge in every county in the State that has a population of thirty thousand, and by putting a common pleas judge there I would dispense with the associate judges; I mean the lay judges on the bench, because a common pleas law judge, resident in the county, could do all the work that is required, both of himself and the associate.

By the committee's project you provide for the abolition of the associate judges, but give us no remedy in lieu. If you adopt either theory, either that presented in the committee's report or that of the gentleman from Philadelphia, you make it necessary, if we want a writ stayed after it has been issued out of the court, to travel over two or three counties to find the president judge of the district before we can have it stayed, because no other person has any power to stay the writ if you abolish the office of associate judge. That you can remedy by locating a president judge in each county, and before you did that, for one in this Convention, for fear men might suppose the Convention was incorporating a principle in the Constitution to make positions for lawyers, I would pass an amendment here to make all lawyers in the Convention ineligible to any office for the next three years; so that they would be out of the way and men could not raise any such question as that.

Now, whether you take that principle of putting one judge in each county, or whether you locate three judges in a large district, and let them alternately hold courts, you can still provide that they shall meet in banc once or twice a year, and that arguments shall be held before them before you go to the Supreme Court. The people will not complain of that; the lawyers would have no reason to complain of that. There is no expense in preparing a paper-book in going there, but you go there and argue your case on a motion for a new trial, in which you bring in all the law points that you had raised in the court below, and then you can go over the facts, because you have your evidence there; and in five cases out of ten you will end the cases there, unless they are very large ones. All small cases, after three judges have passed upon them, will stop there. That will satisfy the people because it does not fix a moneyed limitation; it does not take away their rights; they will be willing to stop because they think a conclusion has been arrived at, and it is not interfering with their rights.

This course does not do that. It estops them, and says because the amount in controversy is not large enough, you shall go no further. I am opposed to that. But I also dislike this theory of placing three judges in one district as much as I dislike the theory of a double district, such as we have in many portions of the State to-day. Take ours, for instance, composed of the counties of Bedford, Somerset, Fulton and Franklin, a large district with two judges. At one term the president judge holds the court. A question arises, and it is not fully determined; he takes the papers with him. At the next term the assistant law judge comes and holds court. The result is, that a case which

had been up before goes over, because the same judge is not there; and that same difficulty would arise if you elected three judges to preside over a district to hold the courts alternately.

For that reason I prefer that there shall be a single law judge in each county, and that you combine three or four or five of the counties, and ask that three or four or five of the judges shall convene once or twice a year to hear motions for new trials before you go to the Supreme Court. That would be a simple way of providing for it. Now, if you adopt either of the theories that have been advocated here you will simply create a court of delay; you will make it much more expensive to get a final determination of the case. As has been well argued and well said, you reduce the high position of a judge of common pleas to a much lower standard than it is now. You add dignity, it is true, to the Supreme Court, by making it a court that shall only consider cases involving a large amount of money; but you take away the right of the people who may be as much affected in character, or whose personal liberty may indirectly be brought into question, when the amount involved cannot be fixed, by keeping them from going up to the Supreme Court.

I trust that every member of this Convention will give his views, and especially that the learned and illustrious President of this Convention, who has had a long experience in the courts of this State, will give the Convention his views upon this section before the vote is taken; and that when we do take it we shall be able to vote intelligently, and in such manner that we shall either curtail all the work we have before us by means of this vote, or go further, and adopt the circuit court theory.

Mr. MITCHELL. Mr. Chairman: If I were confident that the amendment of the gentleman from Allegheny (Mr. S. A. Purviance) would prevail, I would not desire to say a word; but if that amendment should be lost, I should feel that I had not done my duty had I not raised my voice against the creation of a circuit court.

Mr. Chairman, I am in favor of meeting the question of the existence of this court at once. I am opposed to shirking the question now. I am opposed to the Convention voting for this section of the article, for the purpose of afterwards examining either of these schemes in detail. If we pass this section, the mistake is made, and we can only hereafter employ our time in trying to mitigate the evil.

The report of the Committee on the Judiciary is entitled to a great deal of weight, but for the purpose of preventing the Convention from adopting it because it is merely the report of the committee, I say that it is not entitled to any more weight than the well digested opinion of any member of this Convention. I consider the argument of the gentlemen from Tioga (Mr. Elliott) unanswerable. Why is there no attempt made to answer his argument? If I understand the voice of the people of western Pennsylvania, which is a unit upon this question, we demand relief not merely for the Supreme Court, although it is a branch of the relief that we wish, but we demand relief at home. We ask for a more speedy administration of justice in our courts of common pleas. There is where the great evil lies.

In western Pennsylvania we are far behind with the lists of causes, and the people are denied justice because there are not a sufficient number of judges of the courts of common pleas; and when we ask the Convention to remedy this evil—when we ask them for bread they give us a stone—by giving us the circuit court, with original jurisdiction, to meet once a year in the different counties of this Commonwealth, and to become a laughing stock to the people of Pennsylvania.

What relief is that to us? How will that help us in our burdened list of causes? By creating a new tribunal? No. By making more efficient the tribunal that we already have. Increase the number of judges of the court of common pleas; give them time carefully and well to try the causes that come before them, and, my word for it, the Supreme Court will not be swamped with business as it is now. The fruitful source of the evil is want of time to try the causes properly, to digest the law arising upon the cases, and hence we have crude opinions, and these crude opinions must be amended by the Supreme Court, and, therefore, it is full of business.

Now, Mr. Chairman, I do not desire to occupy the time of this Convention; but I would just ask those who favor the scheme of a circuit court, where has it been tried? Has it been tried in any place, and has it worked successfully? If it has, point it out. What State? Where? If it has not been tried in any place, then it is a nondescript; and the fact that the gentlemen who favor the scheme of a circuit court differ themselves

in every essential detail, shows that it is impracticable.

The Committee on the Judiciary apply the money test; they discriminate between the rich and the poor. They say to the poor man: "The Supreme Court is a very good place to have a case decided, but we will provide you a place midway that is not quite so good, and you must stop there." The learned gentleman from Philadelphia, in his supplement, actuated by the strong principles of democracy, strikes out the money test, but still he does not strike out the evil. He offers to the people of Pennsylvania an inferior tribunal, and says to them, in effect, "you must stop there," and, although he abolishes the money test, yet to the poor man and to the man who cannot provide the legal ability to fight and worry his case through the circuit court to the Supreme Court, he says, in effect, "you must stop there."

The learned and able delegate from Philadelphia (Mr. Biddle) is sick of both, and he says that he can see no virtue in either scheme unless you make these circuit courts a finality; and he tells you that the judges of this circuit court, when the Supreme Court has laid down the law and reversed their decision, will conform to it. But I would ask this Convention what is to become of the feeling and the property of the poor man, who has had his property swept away from him by the decision of the circuit court, which has been reversed in the case of his richer brother who has gone up there on the same question? What is it to him to be told, "the circuit court will conform hereafter to the decision of the Supreme Court, but you, in the meantime, on account of poverty, have had your property swept from you."

I do hope, Mr. Chairman, that the advocates of this circuit court, before they come in conflict with the almost universal opinion of the western part of the State of Pennsylvania, before they inject into the judiciary of Pennsylvania a tribunal abhorrent to that judiciary, a tribunal that is despised, I may say, by the profession in the western part of this State and has no advocates there, before they interject into the judicial system of Pennsylvania this hybrid, this thing that has no name except the name which is always used to call it by, the circuit court, by which they all hate it, will show this Convention some place in this world where it has worked well. Unless they can do this, why do they try to force on the people of Pennsylvania a judicial tribunal to which they are utterly opposed?

Give us the relief we want; give us more judges of the court of common pleas; give them time to do their work ably and well, as I know they will do it. I would rather trust the intelligence, the honesty and the industry of the judges of the court of common pleas of my acquaintance, than all the judges of circuit courts you can elect throughout this Commonwealth. I have one instance in my mind that I remember well, when one of the brightest and the best of the judges of the supreme bench of this State, sat upon the bench of the court of common pleas in the district where I live. When a case was brought before him that involved a difficult legal question, he said to the members of the bar on the opposite side, "gentlemen, I will entertain your motion for a new trial; I will take this question home; I will examine it; if I am wrong I will reverse the decision myself;" and he came back with that question well digested, and the result of it was that only one case was taken from Butler county during his whole term of ten years. Now do I ask of this Convention anything that I ought not to ask of them, when I say increase the number of judges of the courts of common pleas; give them time to do their work well; and in the language of my friend from Tioga, if they need more help to decide well, to keep cases from the Supreme Court, let them call in to their aid the judges of their district in conclave, and let them advise with them, and in that way the people will be satisfied.

Mr. MEREDITH. Mr. Chairman: I do not desire at all to enter into this debate, but having had some experience in the course of my life, I think it is proper, perhaps my duty, to say, after listening with the greatest care to the arguments that have been adduced by the distinguished members of the Committee on the Judiciary, that I am at a loss to see in what way, to any extent, the institution of these circuit courts will clear the docket of the Supreme Court. It is my belief that they will tend rather to increase the difficulty.

I shall go no further than the motion now pending, made by the gentleman from Allegheny, (Mr. S. A. Purviance,) because I think it is well enough to consider one thing at a time. The difficulty now felt is, that the list of the Supreme Court is over-crowded. I am surrounded

by members of the bar. Will any member of the bar rise here and say that in his district there is more than one case in three—one gentleman told me this morning one case in two—that goes to the Supreme Court which ought to go there? The remaining cases are cases the law of which has been decided and is perfectly settled. If that court, in such cases, instead of hearing both sides at great length, and perhaps delivering a long opinion afterwards, were to hear but one side, and then simply dismiss the case with the remark that it ought not to have been brought there, that class of cases would cease to go there, and I believe there would be abundance of time to get through with all the rest of the list.

At any rate, whether that be so or not, how is a circuit court, whether of appellate, or of original jurisdiction also, to facilitate it? Does anybody suppose that the opportunity of further delay, by having two courts of appeal instead of one, will check that kind of litigation? Does anybody believe that a man who has taken his case to the circuit court will not go on to the Supreme Court if he can?

It is proposed to remedy that evil—how? By saying that no case under a certain amount shall be taken up to the Supreme Court. Sir, I will never consent that there shall be one law for a poor man and another tribunal for a rich man. I think it against all our feelings. It is against every practice of England, from which we derive our system. The greatest cases there have often been cases of very trifling amount. The most important cases here are frequently such. The amount in dispute in the case fixes nothing as to the right. Only our courts of original jurisdiction have those limitations put upon them. No harm is done by them there, because whenever the case begins there is a final resort to the Supreme Court.

I believe, sir, that this is not the mode to remove any of the evils under which we labor. There are perhaps some things that might be improved, but they do not belong to this head. I shall, therefore——

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

The CHAIRMAN. Will the gentleman from Philadelphia allow himself to be interrupted?

Mr. MEREDITH. Certainly; I do not consider it an interruption; on the contrary.

Mr. BOYD. Supposing that the Supreme Court are overburdened with work, more than they can get along with; how would you remedy that difficulty? How would you relieve them?

Mr. MEREDITH. Well, sir, that is a question that is not easy to answer without going outside of the subject-matter of the debate. In the first place, I have endeavored to say that I do not think the Supreme Court is so overloaded that it cannot get along. In the second place, I will answer the gentleman's question with a great deal of pleasure by saying that I would not undertake to relieve it by introducing a system that would increase it. [Laughter.] I think this will. That is my answer to the "logical necessity" that we have been told of this afternoon. Sir, we are on too serious a subject to indulge in this kind of light debate or levity of question or answer. I have said what I have to say, and I will not add that I am reminded by some gentleman of the anecdote of two friends who were riding in a buggy when the horse ran away. One of them asked the other, "Can you pray?" "No!" was the reply, "I cannot." "Well," said he, "something has got to be done here." [Great laughter.]

Mr. ARMSTRONG. Mr. Chairman: I have a duty to perform or I should not again trespass upon the attention of the committee. It may be that we all need praying for. It may be that that is a sufficient answer to all the suggestions which have been made in advocacy of an intermediate court. If it is I fail to perceive it; and I do not propose to be diverted from a fair and logical consideration of the questions which are here involved by the mere suggestion of any gentleman, however distinguished, that is not founded upon a sufficient reason, and which, by its merit, commends itself to my judgment, and much less by a mere witticism.

If this circuit court—I call it such for convenience; this committee has long since learned that all that is meant by that is a supplementary appellate court—if, then, this appellate, intermediate court be one which is useless and cannot avail to relieve the Supreme Court, it would be the height of folly to approve it. If it be a system, a scheme, a plan, a project (I care not by what name it be called) which will give practical relief to the overburdened work of the Supreme Court, I say it is illogical and unwise to permit ourselves to be carried away by a mere prejudice, or by the mere force of any merely personal opinion on this subject, not accompanied by satisfactory reasons.

That the Supreme Court is overworked, no man in this House has ventured to de-

ny. It is a matter of figures; of irresistible conclusion. There is not in this presence one single delegate who has asserted in this debate that the Supreme Court, as now constituted, can discharge the duties which are devolved upon them. Is it an answer to say that our judges are not efficient, that they ought to be better men, that they ought to write shorter opinions, that they ought to hear but one side of a case? Does this current of remark accord with the judgment of delegates as to the mode of trying causes in the Supreme Court, the highest judicatory of the State, in this enlightened day? I venture to say no. The experience and the judgment of the bar of this State require the judges of the Supreme Court to vindicate their opinions. We have ceased to live in that age when opinions can be promulgated in this or in any of the States, and command the confidence of the people, unless it stands approved by the concurrent judgment of the profession. In this sense the profession stands higher than the courts; for I venture to say in this presence there is no judicial tribunal that dare defy the united sentiment of the bar. When opinions are written which reverse the judgment of an inferior court, the people demand, the counsel and the parties demand, that the court shall give a reason for the judgment which they have entered; and I venture further to say, what I believe the experience of every lawyer on this floor will confirm, that they have found the opinions of the Supreme Court, discussing important principles at length, to be of the highest advantage in the consideration of important questions.

It may happen, it does happen, that there are cases in which opinions have been extended to an unreasonable length; but it is idle to generalize so widely from such instances as to assert that all opinions are too long and that all arguments of counsel to the court are too long, and that our remedy consists in overturning the established practice of the State in both these regards. I believe the experience of the bar will sustain me in saying that the profession would be impatient, and suitors and inferior judges would be impatient to the last degree, if we were to establish an iron rule by which cases in error shall not be fully and completely heard in the Supreme Court, or which should limit the discretion of the judges of the court of last resort as to the extent to which they may think it necessary to vindicate their opinion.

I do not enter into the question of the original jurisdiction of this court, which my friend from Tioga (Mr. Elliot) this morning discussed with so much ability, and to whose argument I listened with very great pleasure. There is force in what he suggested. It may be that it is not wise to confer any original jurisdiction upon the intermediate court. I would differ from that conclusion, but this is a question of detail and ought not to complicate the question of its appellate jurisdiction, for, as I have before explained, they are totally distinct. But has the gentleman from Tioga, or has any other man suggested any other practicable mode of relieving the Supreme Court? Let us for a momeni examine the various suggestions which have been made with this intent—and I shall not discuss them at length. The gentleman from Fayette (Mr. Kaine) has suggested a plan, but it is not now before the committee in any form that this committee can consider. It has not been offered nor read, and cannot be examined in detail. I trust, however, opportunity will be given to offer it that it may be discussed in detail and fairly considered. By voting this amendment in, the door is shut upon all discussion and every effort of this Convention to perfect any system whatever to relieve the courts is precluded, unless by dividing that court, which, I believe, would be a disastrous mistake. The gentleman from Fayette (Mr. Kaine) suggests that we shall have eight judges; the gentleman from Potter (Mr. Mann) suggests there shall be nine; other gentlemen have said ten; and that they shall be divided into two or more distinct, co-ordinate branches, one in the east and one in the west, and possibly one in the middle, thus doubling or trebling, as they claim, the effective force of the court. These projects all contemplate that when these courts agree the judgments of both shall be of equal effect, and shall be conclusive within their respective districts and over the State, which, I presume, is their intention. Now, suppose that they divide in judgment, and one court unanimously, if you please, decide in one way, and another division of the court decide a similar question differently, which opinion shall stand? Suppose the common pleas to try some case involving that question; the counsel for the plaintiff produce one decision, and the counsel for the defendant produce the other; what is the law of the State? But gentlemen will say, if there be diversity of opinion in the sections of the court, let them meet together as a united court to

consider the question thus in dispute. Does that help it?

You have then a court composed of judges who have pre-judged the question and who are committed to an opinion and stand upon that opinion and defend it. Men defend their opinions just in proportion as they entertain them sincerely. Honest men who think strongly hold to their opinions tenaciously, and hence it is that when a court divices and the question comes before the entire court in banc. it is extremely difficult to change the pre-conceived opinions of the judges in cases which they have previously decided. By whatever name it may be called, or by whatever devices it may be covered, any plan which divides the Supreme Court into two or more divisions—practically committees of inquiry and nothing else—is but the establisment of an intermediate court in its most dangerous and objectionable form. No court can be supreme but that which is final. Any court which decides, subject to any further review, is essentially intermediate, and differs from the plan of the committee in being more cumbersome, expensive and dilatory, and in extending the evils, whatever they may be, to the whole extent of the jurisdiction of the Supreme Court, instead of restricting it within well-defined and reasonable limits. Now, what other plan is suggested? The gentleman from Delaware (Mr. Broomall) and the disinguished gentleman from Philadelphia, (Mr. Meredith,) our most esteemed and distinguished President, suggests—and I cannot but think inconsiderately—the shortening of speeches and the writing of shorter opinions, as a sovereign remedy for all the ills this court is heir to. I have already referred to this suggestion as one which, in my judgment is wholly impracticable in practice, and equally against the wishes of both counsel and the court. It would seem to me that the suggestions fall vastly short of the necessities of our actual condition. The gentleman from Somerset (Mr. Baer) suggests that four common pleas judges shall meet in a particular district, advise and consult together, and settle the law for themselves upon consultation. What does that amount to? There is complaint now that the judges of the common pleas are overworked; and yet this mode would impose upon them a duty which, if it is not appellate, is at least *quasi* appellate, and which would compel them to examine and decide upon all the contested cases in their four counties. It is in effect an intermediate court. The plan is not formally presented, but it is sufficiently indicated by the suggestion, and it is practicably only a mode of constituting an intermediate court. But when they have consulted, then what? On matters of new trial I can conceive that it might, in some cases, be of advantage, but when the case under consideration involves a question of law, the delay so much deprecated is as great in the one case as the other. The delay of such review by common pleas judges of a defined district is quite equal to the delay of getting into any other appellate intermediate court; and when the cause is so heard, its judgment is nothing except the mere conference of judges whose judgment amounts to mere advice, and the case goes to the Supreme Court without let or hindrance, just as it would without that kind of advisory consultation.

Now, these are all the plans that have been thus far submitted. I say all. If I am wrong, any gentleman here will correct me. I believe that not one other plan has been suggested, and all these involve the creation of an intermediate court in one form or another.

The plan suggested by my friend, Judge Woodward, and that reported by the committee, is not now in controversy. The distinctive differences are subjects of subsequent consideration, and need not be minutely examined now. The question now under consideration involves the single idea, whether or not an intermediate court is the best means of relieving the Supreme Court. It stands alone, relieved from all matters of mere detail, and is to be passed upon as an independent proposition. Several gentlemen here have propositions to suggest by way of amendment, but if the amendment now pending prevails, the Convention will cut itself off from considering any of them except only such as propose, in one form or another, to divide the Supreme Court itself into subordinate divisions for hearing arguments, and the cases to be reviewed before final decision by the Supreme Court, with a full bench, in banc. This, I again remark, would be but another form of constituting an intermediate court—whose jurisdiction would be without limitation, and whose decisions would be conflicting in the proportion of the number of divisions into which the court would be divided. I cannot conceive how such a plan could work at all. It would give no relief, but make "con-

fusion worse confounded," and leave the court itself without system and their decisions without unity, and with the probabilities of delay very greatly increased. But it is said that the circuit court would create delay. I think, on the contrary, it would greatly facilitate the business, and enable the Supreme Court very speedily to dispose of all the *remanets* and keep themselves fully abreast of their business. Cases which now reach the Supreme Court go there with well nigh a certainty that one year must elapse before they can be heard It is to be carefully observed that the proposition provides with great distinctness that delay shall be prevented by the Legislature, and that the most stringent provisions shall be provided by law to prevent delay. Will any man say that this is beyond the power of the Legislature? I think not.

But it is objected to upon the score of economy. Why, sir, if a paper-book is made which goes to the appellate court below, the same paper-book carries the case into the higher court, and the additional expense is reduced to a minimum. But my friend from Potter (Mr. Mann) suggests that the people do not want it; that they have not called for it. On the contrary, I believe that nothing throughout the State has been more loudly called for than some mode of relief to the Supreme Court. Every lawyer demands it; all judges demand it; and suitors demand it, and complain to their attorneys every day of the long delays of the Supreme Court. Does the gentleman mean that no petitions have been brought here? Sir, it is the universal petition of the Commonwealth which asks relief in this particular, and when it comes into the presence of the Convention they take the ordinary mode of referring it to a committee for the purpose of providing a mode of answer to the universal demand.

Sir, I cannot but believe that this entire scheme has been prejudged, and has been largely misapprehended in places where the whole matter has been made to turn, not upon the relief of the Supreme Court —which is its primary and paramount purpose—but upon that which is subordinate and comparatively unimportant—its original jurisdiction.

But it has been said that there is no precedent for this kind of court. Why, sir, we have precedents in the United States courts. We have a precedent in the State of Pennsylvania itself. At an early day there was an intermediate court, and it was abandoned only for the reason that the necessities of the business did not then require that it should be sustained. The time has come when it should be restored. The Supreme Court of Pennsylvania was not a court of final appeal until 1806. Then it is not a novelty in that respect; but it has been tried in New York, and much has been inaccurately stated here in reference to the courts of that State. I do not like their system; nor would I vote for any which involved an essentially similar plan; but it is clear that their intermediate court has been of great advantage in diminishing the labors of the court of appeals. I hold in my hand a letter received this morning, in reply to one I wrote very recently to the clerk of the court of appeals at Albany. I will read it all. It is dated April 27, 1873:

"DEAR SIR:—There were eight hundred and seventy causes on the calendar of 1872, and eight hundred and forty-three on the calendar of 1873, before transferring five hundred into the commission of appeals. The present calendar of the court of appeals contains one hundred and seventy-three causes. They disposed of four hundred causes last year. About four hundred returns filed per year."

Now, I call your attention to the last sentence of this letter. Four hundred causes per year is the number of cases which reach the court of final appeal in the whole State of New York, with a larger population, a much larger commercial community, and, perhaps, a more active business, and probably a much larger number of cases tried in their courts of original jurisdiction. Yet the number which reaches their court of appeals is very much less than the number which reaches the Supreme Court of Pennsylvania. By the system of direct appeals which now prevails in Pennsylvania we had, in 1872, seven hundred and seventy-eight cases for argument, of which five hundred and seventy-three were new cases, and of the whole list there were, at the close of the judicial year, two hundred and thirty-one *remanets*. Thus we had five hundred and seventy-four cases in Pennsylvania against four hundred cases brought into the court of appeals in the State of New York. I know of no reason which will account for so large a difference, except that a very large number of cases have been stopped in the intermediate courts.

The efficiency of such courts in diminishing the number of cases which reach the court of final resort is, by this compar-

ison, conspicuously illustrated. In the State of New York there were only four hundred cases returned into their appellate court, and in the same year there were five hundred and seventy-four in the State of Pennsylvania; and when it is admitted that the total number of cases tried in courts of original jurisdiction greatly exceeds those in Pennsylvania, I ask any intelligent gentleman to say how it happened, except that the intermediate court had sieved out a large number of cases which did not reach the appellate court because the parties were content with the decision of the inferior court, and thus relieved the court of last resort to that extent, which, for the year stated, shows a difference by comparason with ours of at least one hundred and seventy-four cases per year.

Sir, it seems to me illogical to argue upon this question by a mere specious generalization. We must relieve the Supreme Court. It must be done practically and efficiently, and I appeal now to the judgment of every man within the sound of my voice, whether any scheme has been suggested which meets his approval, as compared with this. No scheme of dividing the Supreme Court, I think, can commend itself to the judgment of the Convention; and no other mode, except an intermediate court, has been proposed.

Some misapprehension has existed in regard to the courts of New York. Their mode is simply this: The county courts have a jurisdiction to the extent of one thousand dollars; but the main and leading common law court, now embracing the chancery jurisdiction, is the superior court. It is divided in that State into eight districts, of four judges each, with the exception of the city of New York, where they have five. These judges go from place to place, from county to county, within their district, to hear the general calendar, whatever it may be. All the judges then meet in general term, and the cases are passed in review. This was the system until 1870, when, under the new Constitution, they changed the system, which allowed the several judges of the different circuits to pass in review upon the cases in the several districts, and provided in each circuit a distinct and separate fixed court of three judges, each to compose the court of intermediate appeal. This is what they have since 1870 under their new Constitution, and that which we propose is by so much better than theirs, that we would have but one intermediate court, whilst New York has eight.

It is unnecessary to pursue this branch of the case further. If I were discussing the relative merits of the scheme of my friend from Philadelphia, (Mr. Woodward,) and that submitted by the Committee on the Judiciary, I could run this parallel much further. But all that is necessary at this point of the argument is to ask of the committee not to cut down this question at the root, but to allow it to come before the Convention for such amendment as may be proper, and not summarily to suppress it. We ought here to discharge the duties that are devolved upon us to the best of our intelligent judgment. Let this proposition stand as it is, until other propositions can be successively suggested, and the whole united judgment of this Convention concentrated upon the report to find what part of it shall be stricken out, what may be amended and what shall stand; and when it has all passed in review, then let the Convention strike it all out if it cannot be so amended as to commend itself to their approval. But until these suggestions and amendments, which we trust many members of this Convention may be able to make and which will improve the plan, are weighed and considered and passed upon, it is premature to take the question out of the hands of the Convention.

So far as it now stands, no means of relief has been suggested which in my judgment is practical. A mere increase in the number of judges does not reach the evil. The difficulty arises, not so much from want of time to write as from want of time to hear. An increase of judges I think important; but this of itself is not sufficient. I believe the intermediate court would be efficient, and when it comes fairly before the Convention, I believe that the united wisdom of this body will so amend and improve it as to make it of lasting advantage to the State; and if, in good time, we fail so to amend it after the careful deliberation of the Convention, let it be stricken out; but do not let us now, upon such imperfect consideration of the plan, set aside the careful and deliberate judgment of the Committee of the Judiciary, and defeat the careful discussion which this question ought to have. We ask your co-operation and assistance to perfect it. Let the plan of the gentleman from Philadelphia (Mr. Woodward) and the plan of the gentleman from Fayette (Mr.

Kaine) and the plan of the gentleman from Somerset, (Mr. Baer,) or of any other gentleman in this Convention, come before us, so that all these projects may be thoroughly ventilated and understood, and then let us vote intelligently on the question. I venture to say that this Convention will not discharge its duty to itself, nor with acceptance to the people, if we fail to give practical relief to the Supreme Court. Whatever may be said, our judges compare favorably with the judiciary of other States, but whether they do or do not they are our judges, and their mode of doing business is our mode of doing business and we cannot change it. Nor do I believe that the people desire it changed.

Let us, then, reject the amendment, and come to the consideration of this proposition, inviting the co-operation of the committee of the whole to aid in perfecting the report wherein it is deficient; wherein it has anything worthy of your consideration approve it; but do not in this wholesale manner strike it out and condemn a scheme which is but half heard before the Convention, and which has not yet been contrasted with many other schemes which may improve it, some of which have not been alluded to, and have not been read in your hearing, nor one word of comment made upon their respective merits.

With these remarks I leave this question to the deliberations and judgment of this House. I have no further personal interest in it than any other member of this Convention or any citizen of the State. I desire only our judicial system to be perfected. By the plan proposed, we do nothing but supplement the existing system, and aid the judges in their efforts to transact the labors which the business of the State, so rapidly increasing, imposes upon them. We do not disturb the jurisdiction of any court. We do not disturb the mode of its operations. But we believe that the system has failed to measure up to the necessities of the age in which we live, and that we must render it some efficient assistance, by an addition of judicial force, as well in the common pleas as the Supreme Court. I believe that such needed assistance will be safely and wisely vested in the court proposed in this report, but if it be not, let this Convention assist in perfecting it.

Mr. BUCKALEW. Mr. Chairman: It is a conventional practice that the chairmen of committees shall close debate upon important questions. It may therefore be thought fitting that no one should speak after the chairman of the Judiciary Committee upon the pending question, and I should not claim the privilege now to address the members of the Convention if I had been present upon yesterday and had been able to participate in the debate at an earlier stage. But I will conform sufficiently to the proprieties of the occasion, I suppose, by declining to enter into the general discussion that others have indulged in upon the pending amendments, and by stating simply what I understand to be the question raised by these amendments, and now to be determined by the committee of the whole, hoping that, by condensing what I have to say within the proposed limit, we shall be able to reach a vote on these amendments before we adjourn.

A former Chief Justice of this State, than whom there has been none more distinguished, declared, and declared sincerely no doubt, that our system of courts in Pennsylvania was the best in the world so far as he knew and believed. Now, the two special excellencies of our Pennsylvania system of courts that must, I suppose, have attracted his attention and produced the remark to which I have referred are these:

First, we have always administered equity principles in our common law courts. Recently we have extended equity jurisdiction by our statute laws, and yet this ancient and this extended modern practice is managed and administered by the judges of our common law courts. In this respect we suppose that we have acted more wisely than the people of many of our sister States.

Then again, an excellent feature of our system, excellent and admirable in my judgment, vindicated by experience, and which, if I understand the facts, now enlists the respect of nearly the whole legal profession in this State, and, I doubt not, also the great mass of our people, is this: That we have simply courts of *nisi prius* for the trial of cases; then a single court of errors where review may be had and blunders and oversights corrected; a court of first resort, and then a court of final resort, a court of common pleas and then a Supreme Court.

This is the simple machinery which was provided early in the history of our State for the transaction of judicial business, and we have maintained it down to the present day. This is our existing system, and if we shall retain it, we will have kept and maintained the second great

excellent feature of our judicial system. But we have been told, and told with very great force to-day, by the member from Philadelphia, (Mr. Cuyler,) that we are now under a stress and pressure of absolute necessity. There is "a logical necessity," the gentleman says, that we should abandon this system. Instead of maintaining a system of two courts we must try a triplicate system. We are to interject between our courts of first and last resort another tribunal of peculiar fashion and character yet to be determined by this Convention, out of the conflicting propositions which come to us from the committee upon the Judiciary; a court which shall or shall not have original jurisdiction, which shall or shall not be confined to appellate business, which shall or shall not pronounce its judgment as a final determination of the case, and in other respects shall or shall not possess particular features which gentlemen desire to assign it.

I understand that the sentiment of the Convention is pretty generally against making this new tribunal a court equal in authority with the common pleas or a co-ordinate court. It seems to be understood by those who advocate the report of the Committee on the Judiciary that that portion of their report, or that feature of the report, is open to very fair and just objection, although many of them yet retain their attachment to it and their conviction in its propriety. They propose then to fall back upon the idea of appellate jurisdiction alone for this new court.

Well, what is that? You have not then established a new and peculiar court, as was the original idea of this report—a new and peculiar court between the common pleas and Supreme Court, which, having original jurisdiction, can originate business for the Supreme Court, and which, as as a court of errors, in connection with that power or authority, may act as the Supreme Court acts with reference to business which comes to it from the common pleas. You will then have narrowed your proposition down to the single one of the establishment of a new court of errors for the correction of the mistakes of the courts of common pleas. And what have you then? Why, you have simply a *new Supreme Court*, under a new name, confined only with regard to the character of the business which it shall adjudicate and pronounce upon.

The only argument for this new court is that it is needed to relieve the Supreme Court. If you make it into a court of errors, to correct the mistakes of the common pleas, you must make its judgments final or you cannot get this relief. That is manifest; and if you make its judgment final and decisive of the matter in controversy, you have simply established a new Supreme Court with reference to all the business which is thus to be finally pronounced upon, and assigned to it a new name.

Mr. CUYLER. My friend from Columbia will note that it is final on the case, but not final as to the law. The report of the Committee on the Judiciary says nothing about the law.

Mr. BUCKALEW. I would like to know what the judgment of any court in any case is except the law of the case, which may be revised or over-ruled in a subsequent case.

I say, then, when you have brought this proposition down to its modified form, you will simply have established a new Supreme Court for the poor suitors of this Commonwealth, or for those who may have a certain sort of business which you propose to stop off in that court; and what kind of a Supreme Court is it? One much less perfect than the present one you have. I do not know in what form we might finally determine that the judges in this court should be chosen, whether they shall be appointed by the Governor of the Commonwealth or elected by the people of the State at large, or elected in particular districts. I do not know what we might finally determine as to the manner of their selection; but as a matter of course, it would be, in popular understanding and in the judgment of the profession, in the understanding of the whole world, a court somewhat subordinate, or if that term will not be accurate, inferior as to capacity or dignity to our present Supreme Court.

Well, I should like to know now what becomes of the argument of the able gentleman from Philadelphia (Mr. Cuyler.) He was objecting to a proposition which is not yet before us, and which it would be premature to determine now or form any opinion upon. He was discussing the proposition of a division by the judges of the Supreme Court of their own number so that they might do double work, might form and pronounce opinions with greater rapidity, and thus work off accumulations of business from time to time, a thing that is done here in the courts of Philadelphia constantly. The court of common pleas divides off, and each judge carries on his own work, and in regard to it, when a

serious question may arise in any branch of the court, they all meet in banc and determine what the rule shall be for the future. He was objecting to that because he said that you destroy the unity of the Supreme Court, the unity of decision and of judgment. Well, I should like to know what else he accomplishes by a circuit court with final jurisdiction over cases except a division of the unity of final decision. His whole argument went dead against his proposition when it was transferred over from its form as an objection to a suggested regulation in regard to the Supreme Court and applied to the circuit court.

But, Mr. Chairman, I will pause at this point. I will say that, as at present advised, I shall be, for one, compelled to vote against establishing a new system in Pennsylvania; and let me add that the true remedy for our ills is this, either to strengthen the Supreme Court or to strengthen the court of common pleas, or to do both. The vice in the whole argument for the circuit courts is this: The argument assumes that there can be no remedy for the pressure of business upon our courts, except to make a new court. Now, sir, my opinion is exactly opposed to that. I believe that our system of a court of first and second resort, a court of first and then of final jurisdiction—I believe that that idea, which we have always had in Pennsylvania, is capable of indefinite application and expansion; that it will do for a country of ten millions of people as well as for one of half a million; that it can be taken by the people of this State and carried forward indefinitely in the future, even to that supposable period of time when our populatian shall be equal to the whole population of the United States at the present time.

But, sir, how the Supreme Court shall be strengthened to do its work, or how the courts of common pleas shall be strengthened to do their work, it is not necessary for us to consider exhaustively upon this amendment; and I was induced to rise after the speech of the honorable chairman of the committee, more for the purpose of protesting against our forming a hasty opinion now with reference to the other propositions that are to come before us in regard to strengthening our Supreme and local courts.

What I have desired, for one, in considering this proposition of a circuit court, has been to pronounce judgment upon its own merits as a distinct and substantive proposition, separated from every thing else, and in voting upon it I mean nothing else than to say that I believe, with Chief Justice Gibson, that our system in Pennsylvania, in its essential and fundamental features, is one of the best in the world, and that the principles which it contains and embodies can be carried forward by the people of Pennsylvania for centuries in the future, accomplishing all those objects for which it was intended in its original institution—to establish justice and protect all the rights of our people.

Mr. LAWRENCE. Mr. Chairman: I understand that the gentleman from Franklin and the gentleman from Schuylkill, and some others, wish to speak on this most important question, and cannot do so this evening. The gentleman from Franklin is not well. I move, therefore, that the committee rise, report progress, and ask leave to sit again. ["No!" "No!"] I hope these gentlemen will not be denied this courtesy.

The CHAIRMAN. Does the gentleman from Washington make a motion?

Mr. LAWRENCE. Yes, sir; I make this motion for the accommodation of those gentlemen, not for my own.

The CHAIRMAN. It is moved that the committee rise, report progress and ask leave to sit again.

The motion was not agreed to, there being, on a division, ayes twenty-six, not a majority of a quorum.

Mr. BIDDLE. Mr. Chairman: I trust the gentlemen who have been referred to will favor the committee. If the committee does not want to rise let the committee wait and hear those gentlemen.

Mr. BARTHOLOMEW. So far as I am concerned it is certainly an error. I have no desire to speak on this question.

The CHAIRMAN. Is the committee ready for the question? The question is on the amendment of the gentleman from Allegheny to the amendment of the gentleman from Philadelphia, to strike out the words "in circuit courts."

The amendment to the amendment was agreed to, there being, on a division. ayes sixty-two, noes twenty-two.

The CHAIRMAN. The question recurs on the amendment offered by the gentleman from Philadelphia (Mr. Woodward) mas aended.

Mr. SHARPE. I move to amend the amendment, by adding after the words "Supreme Court," in the second line, the words, "an appellate court."

The CHAIRMAN. The question is on the amendment of the gentleman from

Franklin to the amendment of the gentleman from Philadelphia.

The amendment to the amendment was rejected.

Mr. KAINE. I move to amend the amendment by striking out, in the second line, the words "and district courts." I merely desire to state that, after those words are stricken out, the section will then remain precisely as it is in the present Constitution, with the exception that it does not contain a provision for the establishment of registers' courts. It leaves registers' courts out of the original section of the fifth article of the present Constitution.

The amendment to the amendment was agreed to.

Mr. TEMPLE. I move to strike out all after the word "peace," in the fourth line, being the words, "and in such other courts as the Legislature may, from time to time, establish."

The CHAIRMAN. The question is on the amendment of the gentleman from Philadelphia (Mr. Temple) to the amendment of the gentleman from Philadelphia (Mr. Woodward.)

The amendment to the amendment was rejected.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Philadelphia, (Mr. Woodward,) as amended.

Mr. MANN. I should like to hear it read as it is now amended.

The CHAIRMAN. The amendment will be read.

The Clerk read as follows:

"SECTION 1. The judicial power of this Commonwealth shall be vested in a Supreme Court, in courts of common pleas, in courts of oyer and terminer and general jail delivery, in courts of quarter sessions of the peace, in orphans' courts, in justices of the peace, and in such other courts as the Legislature may from time to time establish."

The amendment as amended was agreed to.

The section as amended was agreed to.

The CHAIRMAN. The next section of the article reported will be read.

The CLERK read as follows:

SECTION 2. The Supreme Court shall consist of seven judges, who shall be nominated by the Governor, and by and with the advice and consent of two-thirds of all the members of the Senate, appointed and commissioned by him. They shall hold their office for the term of twenty-one years, if they shall so long behave themselves well, but shall not be re-appointed. The judges who shall be in office when this Constitution takes effect shall continue until their commissions shall severally expire. Two additional judges of the Supreme Court shall be nominated and appointed, whose term of office shall begin on the first Monday of ——, 18—, and whose priority of commission shall be severally designated by the Governor when nominated. Any vacancies happening by death, resignation or otherwise shall be filled by appointment for a full term, as hereinbefore provided. The judge whose commission will first expire shall be Chief Justice, and thereafter each judge whose commission shall first expire shall be Chief Justice.

Mr. ARMSTRONG. Mr. Chairman: I desire to move an amendment which is verbal, in the seventh line, to strike out the words, "additional judges of the Supreme," and insert, "judges in addition to the number now composing said."

The amendment was agreed to.

Mr. S. A. PURVIANCE. I move to strike out all after the word "section," and insert the following:

"The Supreme Court shall consist of nine members. The State shall be divided into three districts, Eastern, Middle and Western, as nearly equal in population as may be, in each of which three judges to be elected, whose term of office shall be fifteen years, but who shall be ineligible to re-election. The judges of each district shall sit in banc within their districts, commencing on the first Monday of December of each year, and remaining in session until they have gone through with their respective lists. Decisions made in each district to be suspended until reviewed. The judges of the three districts shall, on the first Monday of May of each year, and as much oftener as they may designate, at the seat of their Middle district, hold a court of review, in which opinions previously written, and before being promulgated, shall be reviewed and finally disposed of. Until otherwise directed by law, the Eastern district shall be composed of the city of Philadelphia and the counties of Berks, Northampton, Lehigh, Bucks, Montgomery, Chester and Delaware; the Middle district of all the other counties east of the Allegheny mountains, and the Western district of all the counties west of the Allegheny mountains, including

Somerset, Cambria, Clearfield, Elk and M'Kean."

Mr. CORSON. I move that the committee do now rise, report progress and ask leave to sit again.

Mr. WOODWARD. Before concurrence in that motion, I should like to submit an amendment to the amendment.

Mr. KAINE. I think we had better wait until morning.

Mr. ARMSTRONG. I would inquire whether it would be practicable to have the amendment proposed by the gentleman from Allegheny printed by morning. If so, I hope it will be done.

The CHAIRMAN. The Chair is informed that it will be perfectly practicable to have it printed and laid on the desks of members in the morning.

Mr. WOODWARD. I move to amend the amendment, by striking out, wherever it occurs, the word, "electing" the judges of the Supreme Court, and substituting, that they be appointed by the Governor, by and with the advice and consent of two-thirds of the Senate.

Mr. CORSON. I now renew my motion.

The CHAIRMAN. The gentleman from Montgomery moves that the committee rise, report progress and ask leave to sit again.

The motion was agreed to.

The committee accordingly rose, and the President having resumed the chair, the Chairman (Mr. Harry White) reported that the committee of the whole had had under consideration the aritcle (No. 15) reported by the Committee on the Judiciary, and had instructed their chairman to report progress and ask leave to sit again.

Leave was granted to the committee of the whole to sit to-morrow.

COURTS OF PHILADELPHIA.

The PRESIDENT. The Chair asks leave to present a memorial at this time. Shall he have leave?

Leave was granted.

The PRESIDENT. The memorial will be read.

The CLERK proceeded to read it.

Mr. J. M. WETHERILL. I move that the further reading be dispensed with.

[Several delegates. "No; no; let it be read."]

The PRESIDENT. The reading is called for.

Mr. TEMPLE. Let us hear the names attached to it.

The memorial was signed by a number of members of the bar, suggesting that it is the desire of the judges, and also of the bar of this city, that the courts of the county of Philadelphia should remain as they now are, both in organization and jurisdiction.

The memorial was laid on the table.

Mr. TEMPLE. I move that the Convention adjourn.

The motion was agreed to, and (at five o'clock and forty-eight minutes P. M.) the Convention adjourned.

EIGHTY-NINTH DAY.

WEDNESDAY, *April* 30, 1873.

The Convention met at ten o'clock A. M., Hon. Wm. M. Meredith, President, in the chair.

Prayer by Rev. James W. Curry.

The Journal of yesterday was read and approved.

MEMORIAL.

Mr. DARLINGTON presented a memorial of citizens of Parkesburg, Chester county, requesting the incorporation of a clause in the Constitution prohibiting the manufacture and sale of intoxicating liquors, which was laid on the table.

OATHS OF OFFICE.

Mr. KAINE, from the Committee on Oaths and Oaths of Office, reported the following article, which was read:

ARTICLE VIII.

OF THE OATHS OF OFFICE.

Members of the General Assembly and all judicial, State and county officers shall, before entering upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth, and that I will discharge the duties of my office with fidelity; and I do further solemnly swear (or affirm) that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination, election, (or appointment,) nor have I knowingly violated any election law of this Commonwealth, or procured it to be done by others in my behalf. And I do further solemnly swear (or affirm) that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the salary or fees allowed by law."

The foregoing oath shall be administered by some person authorized to administer oaths, and in the case of State officers and judges of the Supreme Court shall be filed in the office ot the Secretary of the Commonwealth, and in the case of other judicial and county officers in the office of the prothonotary of the county in which the same is taken. Any person refusing to take such oath or affirmation shall forfeit his office; and any person who shall be convicted of having sworn or affirmed falsely, or of having violated said oath or affirmation, shall be guilty of perjury, and be forever afterwards disqualified from holding any office of trust or profit within this Commonwealth.

Within twenty days after the adjournment of the General Assembly *sine die* every member of the House of Representatives, and every Senator whose term shall expire at the next general election, will take and subscribe before some officer, qualified to administer oaths, the following oath or affirmation:

"I do solemnly swear (or affirm) that as a member of the General Assembly I have supported and obeyed the Constitution of this Commonwealth to the best of my knowledge and ability; I have not knowingly been influenced by corrupt private solicitation from interested parties or their agents; I have not voted or spoken on any matter in which I had or expected to have a private interest; I have not done or willingly permitted to be done any act which would make me guilty of bribery; I have observed the order and form of legislation as prescribed by the Constitution, and I have not knowingly voted or spoken for any law, bill or resolution which I knew or believed to be inconsistent therewith."

The foregoing oath or affirmation shall be filed in the office of the prothonotary of the county in which the Senator or Representative resides; and if any such Senator or Representative shall fail to take and file said oath or affirmation within the time prescribed, (unless unavoidably prevented,) he shall be forever afterwards disqualified from holding any office of trust or profit within this Commonwealth; and if, in taking such oath or affirmation

it shall appear that he has knowingly sworn or affirmed falsely, he shall be deemed guilty of perjury, and also be disqualified as aforesaid.

The PRESIDENT. This article has now been read the first time. It will be laid on the table and printed, according to the order of the House.

THE JUDICIAL SYSTEM.

Mr. DARLINGTON. I move that the House resolve itself into committee of the whole for the further consideration of the article reported from the Committee on the Judiciary.

The motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Harry White in the chair.

The CHAIRMAN. The pending question before the committee is the amendment offered by the gentleman from Philadelphia (Mr. Woodward) to the amendment offered by the gentleman from Allegheny (Mr. S. A. Purviance) to the second section of the article reported by the Committee on the Judiciary.

Mr. WOODWARD. I rise to withdraw my amendment, or rather to modify it. My friend from Allegheny offers to do what he did on a former occasion, withdraw his amendment and let mine in. He can do that.

Mr. S. A. PURVIANCE. Mr. Chairman: Having been appealed to by the honorable gentleman from Philadelphia to withdraw my amendment, for the purpose of allowing him to offer his upon the same subject, I very cheerfully respond to that appeal and withdraw my amendment for the present.

The CHAIRMAN. The amendment of the gentleman from Philadelphia being withdrawn, the gentleman from Allegheny also withdraws his amendment, and the question is on the second section as reported by the Committee on the Judiciary.

Mr. WOODWARD. Now, sir, I move to amend the section under consideration by striking it out and substituting the section of my minority report, which the Clerk has.

The CLERK read the words proposed to be inserted, as follow:

"SECTION 2. The judges of all the above named courts of record, and of such other courts of record as the Legislature may establish, shall be appointed by the Governor, by and with the advice and consent of two-thirds of the Senate. They shall be men of good moral character, learned in the law, who have attained the age of thirty years, and who have had at least five years' practice in some of the courts of record of this Commonwealth. The said judges shall appoint clerks for their respective courts, and exact adequate security for a faithful discharge of duties, and all necessary criers and tipstaves; but it shall not be competent for the Legislature to impose upon said judges the choice or election of any other officers, commissioners, inspectors, superintendents or other agents, whether civil, municipal or corporate, nor to assign to said judges, or any of them, any extra judicial duties whatever; and said judges shall hold no other office, whether federal, State, municipal or corporate; nor receive any fees, rewards, perquisites, emoluments or traveling expenses, whilst holding and exercising the office of judge of any of the aforesaid courts. The General Assembly may for cause, entered upon their journals, upon due notice and opportunity of defence, remove from office any judge, upon concurrence of three-fourths of all the members elected to each House. Associate judges not learned in law shall be continued upon the bench of the common pleas until the expiration of their respective commissions, and thereafter the said office shall be and remain abolished."

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

Mr. S. A. PURVIANCE. I now, with the consent of the gentleman from Philadelphia, renew my amendment, as an amendment to his, to be added to his section.

The CHAIRMAN. The amendment to the amendment will be read.

The CLERK read as follows:

"The Supreme Court shall consist of nine members. The State shall be divided into three districts, Eastern, Middle and Western, as nearly equal in population as may be, in each of which three judges to be elected, whose term of office shall be fifteen years, but who shall be ineligible to re-election.

"The judges of each district shall sit in banc within their districts, commencing on the first Monday of December of each year, and remaining in session until they have gone through with their respective lists. Decisions made in each district to be suspended until reviewed.

"The judges of the three districts shall, on the first Monday of May of each year, and as much oftener as they may desig-

nate, at the seat of the Middle district, hold a court of review, in which opinions previously written, and before being promulgated, shall be reviewed and finally disposed of.

"Until otherwise directed by law, the Eastern district shall be composed of the city of Philadelphia and the counties of Berks, Northampton, Lehigh, Bucks, Montgomery, Chester and Delaware; the Middle district of all the other counties east of the Allegheny mountains, and the Western district of all the counties west of the Allegheny mountains, including Somerset, Cambria, Clearfield, Elk and M'Kean."

Mr. WOODWARD. Mr. Chairman: I have arranged with my friend from Allegheny (Mr. S. A. Purviance) that I am, at this point, to occupy such time as may be necessary in support of my amendment. I am obliged to the gentleman for thus permitting me to get this subject fairly before this body. I have desired some opportunity to present it fairly, and not by a side-wind. Before entering on the main question involved, I wish to say a very few words on the minor questions. I propose:

"The said judges shall appoint clerks for their respective courts, and exact adequate security for a faithful discharge of duties, and all necessary criers and tipstaves."

I suppose that nobody doubts that the judges ought to be permitted to appoint their criers and tipstaves, as they do now, but, with the exception of the Supreme Court, they do not appoint their clerks. I think it of great consequence that all the clerks of the courts should be appointed by the courts whom they serve.

When the Convention of 1837 assembled all these clerks and prothonotaries were appointed by the Governor, and one of the great objects of that Convention was to reduce the patronage of the Governor, and amongst other things those appointments were taken away from him; and that Convention most unadvisedly, in my judgment, in taking them away from the Governor, which I think was right, committed them to the people and made them elective, and they have been elective ever since.

Sir, all these clerks become politicians of the very first magnitude. They hold the judge who sits upon the bench in their political fists. They control the bench; they do it in this city. I believe my friend here, (Mr. Dallas,) presented the prothonotary of the common pleas of the city to a judge sitting in a criminal court, upon affidavits of the most condemning sort; and that judge, as just a judge as I believe sits in Pennsylvania, took up those proofs and delivered a clear, distinct opinion, which is in print, that that prothonotary was guilty of three or four indictable misdemeanors under our election laws. That opinion of the judge is on record to that effect, and yet was the prothonotary ever prosecuted? Was there ever an indictment against him, or any binding over? No, sir, that very judge quailed in the presence of the prothonotary, and refused a trial.

Mr. DALLAS. Will the gentleman permit me to interrupt him?

Mr. WOOODWARD. Certainly.

Mr. DALLAS. I had that prothonotary bound over and an indictment presented. I say this in vindication of my own course.

Mr. WOODWARD. For that the public is indebted to the gentleman and not to the judge. I am stating the record as it was before the judge. I say the judge, a committing magistrate, having before him proof convicting the party of those misdemeanors, refused, upon application, to bind over that prothonotary to answer in the quarter sessions. If my friend had him bound over afterwards, very well. I state the case as it stood upon the record of the judge, and I do it with absolute accuracy.

Now, I say that case demonstrates how the clerk holds the judge in his fist; and is it not a remarkable state of things that you have the ministers of justice overruled and trodden under foot by these clerks, some of whom, I am told, are never seen in their proper offices in this city except when they come to draw the money out of the till? They execute their office by deputies, whom nobody knows, who are responsible to nobody, and who do things that would make the heavens blush, especially about election times. These are the fellows who are supposed to be useful at the hustings and in the ward meetings in this city. These are the men that defy criminal judges sitting on the bench convicting them of misdemeanor; and though a judge has judicial power to bind such a fellow over to the quarter sessions, he dare not do it. If the gentleman got him bound over by other means, I am very glad to hear it, but I presume he will not be convicted. I

presume no such politician can be convicted in Philadelphia of such offences.

Mr. DALLAS. I think that is highly probable.

Mr. WOODWARD. Now, Mr. Chairman, does any gentleman here believe that if that clerk had held his office at the pleasure of that judge the monstrous scene to which I have alluded could have occurred? Does anybody believe that the misdemeanors which were the subject of investigation that day would ever have taken place? Certainly not, because the clerk would say: "If I do this thing I shall be turned out of office; the judge will remove me at once; I hold my office by his appointment, and, instead of an abortive attempt at prosecution, he will remove me from office."

Now, I would like to ask the conservative element in this body, what do you say? Are you going to keep the clerks over the judges, or will you consent to put the judges over the clerks? Somebody has got to rule; somebody must be ruled. The question is, shall the clerk rule the judge, or the judge the clerk? As it is, the clerk rules the judge. I want the judge to rule the clerk. That is about my amendment in that respect, which I submit to the Convention for consideration.

Now, again:

"But it shall not be competent for the Legislature"—

And here I want the attention of everybody in this House—

"But it shall not be competent for the Legislature to impose upon said judges,"

That is, the judges mentioned in the first article—

"The choice or election of any other officers, commissioners, inspectors, superintendents or other agents, whether civil, municipal or corporate, nor to assign to said judges, or any of them, any extra judicial duties whatever; and said judges shall hold no other office, whether federal, State, municipal or corporate; nor receive any fees, rewards, perquisites, emoluments or traveling expenses, whilst holding and exercising the office of judge of any of the aforesaid courts. The general assembly may for cause, entered upon their journals, upon due notice and opportunity of defence, remove from office any judge, upon concurrence of three-fourths of all the members elected to each House. Associate judges not learned in the law shall be continued upon the bench of the common pleas until the expiration of their respective commissions, and thereafter the said office shall be and remain abolished."

One single observation upon this subject, Mr. Chairman. The Legislature of Pennsylvania, finding all other instrumentalities corrupted, committed to the judges of the Supreme Court and the judges of the common pleas these appointments, confessing thereby that the judges were the most reliable and honest portion of the public service. That was well. It was an improvement in regard to the public duties that have been performed by the judges. It shows the preservation of confidence in the judiciary. But its effect upon the judiciary was pernicious, as the effect of the introduction of any foreign element into the judiciary would be.

The judges of the Supreme Court had the appointment formerly, in this city, of all the inspectors of the Eastern penitentiary, and now have of a portion of them, of the Moyamensing prison, of the almshouse board, of the health board, and I know not what amount of municipal patronage of that sort is imposed upon them. The over-worked judges of the Supreme Court, of whom we have heard so much in the last few days, were obliged to do these extra judicial duties. It exposed them necessarily to a great amount of solicitation and electioneering. It is a thing that cannot be done in court. You cannot have the names of the parties presented in open court and discussed, as you have causes discussed, in the manner in which my friend from Allegheny supposes the question of the removal of causes should be discussed. Politicians and parties interested in having particular appointments made must be admitted to the presence of the individual judge. The effect of all this is bad, and that continually, upon the mind, and manners, and morals of the judge. I trust this Convention will never rest until they have cut up that evil by the roots.

Now, Mr. Chairman, having said all that I wish to say on that branch, I have something to say about the main question. In all the discussions that related to a Reform Convention from the time the subject was first agitated, I do not remember one single conversation that I had with any judge, lawyer or layman, in which I did not either say that if I went to the Convention I should move to

abolish the elective judiciary, or in which my friend did not urge that upon me. During all last fall, and the whole season that has elapsed since the subject of a Reform Convention has been before the public, I cannot recall one single conversation, and I have had a great many with judges and lawyers, and men who were neither judges nor lawyers, on the very question of whether judges should be continued to be elected in Pennsylvania, in which that was not the case.

When we assembled in Harrisburg, I came there under the impression that the public sentiment was as nearly unanimous on this point as it was possible for public sentiment to be on any subject; and when I conversed with my fellow-members on the subject there, I found almost absolute unanimity amongst them. In the informal, casual, social conversations there, I got the impression that this great reform, which I so much desired, was going to be accomplished in the easiest possible manner; that the people were all in favor of it; that the delegates in the Convention were all in favor of it; and that there would certainly be no trouble about it. How young and green I was I very soon discovered when we came into the Judiciary Committee, because when we got into that committee, I found that nobody, or scarcely anybody, was in favor of appointing the judges. It was agreed that it was a mistake, and gentlemen announced, with oracular gravity, that the people were in favor of an elective judiciary; that it was idle to talk about abolishing the elective judiciary in Pennsylvania.

Well, sir, I have been among the people all my life and have kept my ear always open to the popular voice, and I have just as good a right to interpret that oracle as you have, and the people have taught me no such language. I do not say that there were not two or three or four gentlemen of the committee who really were in favor of abolishing the elective judiciary, but I did not find a man—perhaps I ought to except my friend over yonder in the corner (Mr. Boyd)—who would agree to stand up with me for this reform in the face of this Convention. I believe my friend from Montgomery did agree partly to stand by me in it. Whether he has gone back or not I do not know. He will let you know whether he will stand by me. But, sir, if I stand alone here, I stand in favor of this proposition; and I am going to discuss the subject, and I propose to have a vote upon it in this body.

I am now disenchanted of the dream of last fall. I know now that my amendment stands no manner of chance in this body; but I intend to discuss it, and if it should ever be submitted to the people as an independent proposition, I should like to discuss it before that tribunal.

In all the public and social discussions which preceded the meeting of the Convention, great unanimity in favor of abolishing an elective judiciary was exhibited, and when the Convention met such seemed to be the opinion of the body. But now we hear from members that the people will not ratify amendments that include such a reform.

Why? Who is authorized so speak for the people? Who is the annointed priest that can alone interpret the oracle?

We all aim at the good of the people. All want to do the best they can for the present and coming generations of Pennsylvanians. Whether an elective judiciary is best is a fair question of debate; but if the Convention should determine that it is not best for the people, it would seem to be a cowardly skulking from duty to assume, without proof, that the people would reject that which was best for them and retain that which was not best.

Let us do right, and let us assume that the people will do right. When the subject is fairly explained to them, it is just as safe to assume that they will dispense with the election of judges as that they will ratify any other judicious amendment.

The advocates for an elective judiciary lose sight of the distinction which exists, and always must exist, betwixt *political* and *judicial* offices. The *nature* and the *functions* of these offices differ so widely that reasoning which confounds them is not entitled to much respect. When the king of Great Britain appointed Governors for these colonies, and empowered them to execute all executive duties without responsibility, except to himself, the people had good reason to complain, and to claim the right of choosing their own Governors. But when they took this power into their own hands, they did not assume the power of choosing judges. *They* recognized the distinction between political and judicial functions. They knew that political offices touched the safety, welfare, liberty and property of *every citizen*, whilst the judicial office concerned only the parties litigant before

the courts; that men were fitted for political office who were honest and intelligent enough to understand, and virtuous enough to respect, the liberties of the people, whilst for the judicial office men of integrity and of technical learning were necessary, men trained and practiced in the profession of the law. Our ancestors would no more have thought of claiming to themselves the election of judges, because they elected Governors and legislators, than they would have claimed, for the same reason, the election of professors in colleges or the ordination of clergymen.

And their views corresponded with those of all antiquity. In the theocratic institutions of the Israelites, those who were to judge between man and man were appointed either divinely or by the appointed leader or law-giver. There is a very interesting incident illustrative of the polity of that people, recorded for our instruction, in the eighteenth chapter of Exodus. Jethro, the father-in-law of Moses, visited him in the wilderness, and when he saw that Moses sat to judge the people "from the morning unto the evening," he said unto him: "The thing that thou doest is not good. Thou wilt surely wear away, both thou and this people that is with thee, for this thing is too heavy for thee; thou art not able to perform it thyself alone."

Jethro thereupon advised him to retain only the weighty causes to himself, and then added, as follows: "Moreover thou shalt provide out of the people able men, such as fear God, men of truth, hating covetousness, and place such over them, to be rulers of thousands, and rulers of hundreds, rulers of fifties, and rulers of tens; and let them judge the people at all seasons, and it shall be that every great matter they shall bring unto thee, but every small matter they shall judge; so shall it be easier for thee, and they shall bear the burden with thee. So Moses hearkened to the voice of his father-in-law, and did all that he had said."

Here we have an instance of an overworked chief magistrate, relieved by a series of intermediate courts. And observe the excellent definition of judges, "*able men, such as fear God, men of truth, hating covetousness*;" but observe again, these men were not left to the chances of popular election, but were carefully selected by Moses and placed over the subdivisions they were respectively to judge. And this institution was not peculiar to the tribes whilst journeying to the promised land, but it became a permanent institution of that wonderful people. After the death of Joshua the rulers of Israel were called judges, but they were rather military than civil officers. The Jewish State rose to great wealth and magnificence, and our jurisprudence, like that of all civilized nations, has been enriched by principles and precepts drawn from the Levitical law, but the justice due from man to man was never entrusted to judges selected by popular elections.

Of the Grecian republics that of Athens enjoyed the advantages of a wise lawgiver in the person of Solon, who very reluctantly assumed supreme command as archon after the overthrow of the kingly dynasty. He divided the community into three classes, according to their wealth, but he admitted the third class, who had no property, to the general assembly. Plutarch says this seemed at first a slight privilege, but afterwards showed itself a matter of great importance, for most causes came to be decided by them, and in such matters as were under the cognizance of the magistrates there lay an appeal to the people. But then Solon placed over the assembly of the people the ariopegas, composed of those who had borne the office of archon and a council or senate of four hundred, by whom all affairs were to be previously considered, and no matter without their approbation was to be laid before the general assembly.

Lycurgus also governed Lacedemon with a Senate, but "lawsuits were banished from Lacedemon with money." With equality of goods, and without money, there was no need of judicial tribunals, for criminal justice was administered by military power.

In all these republics, so called, as well as in the Roman, there was no sharp separation of the judicial office from the executive and legislative functions. Political science had not yet attained to the coordination of departments in civil government. Archons and Consuls were selected by the voice of the people, but these appointed the inferior magistracy.

The Roman prætor, though sometimes acting as consul and sometimes leading armies, was essentially a judicial officer—was elected by the patricians in the comitia, which were the legal or constitutional meetings of the Roman people, convened by a magistrate for the purpose of putting a question to the vote, but the in-

ferior magistracy were appointed by him or the consul. The English chancellor is in many respects the reproduction of the Roman prætor.

In the times of the emperors this power was, of course, exercised by them or their deputies in the provinces, and the imperial example spread all over Europe and into England.

All down the track of time, from the beginning of organized States, the delicate and important duty of selecting judges has been committed to the will of the sovereign, to Consuls or Senates—to somebody who was capable of analyzing and discriminating much more carefully than an uninstructed populace could do. The wildest reformer in modern times, in Germany, France or England has not, so far as I know, proposed the election of judges. In France, where suffrage is more general than with us, the people elect emperors and presidents and legislators, but they are too wise to claim the election of judges. Their Constitution of 1848, democratic in many features, expressly withheld this power from the people.

The charter of William Penn authorized him and the successive governors, with the aid of the provincial council, to erect the necessary courts and appoint the judges. So was our Constitution of 1776, written, as has been said, on the drumheads of the revolution. The federal Constitution, framed by men who had studied all the best modes of government the world had ever seen, lodged the selection of judges in the President and Senate. Our State Constitution of 1790 left it exclusively to the Governor, but the amended Constitution of 1838 required the concurrence of the Senate.

From this rapid survey of the past it will be seen that an elective judiciary is a modern, a very recent innovation upon all the usages, traditions, and institutions of mankind.

But what of all this? Do we not belong to an age of progress? Why should the genius of young America be cabined, cribbed, confined by the examples of antiquity?

I know that some minds are so impatient of authority that they cannot bear the testimony of experience—not even their own experience is permitted to instruct them, much less the experience of others. Yet, what is that inalienable birthright, the common law, of which we boast so much, except the experience and usages of those who have lived before us. Lord Coke declared that even Magna Charta contained no new principles, and was only declaratory of the common law. Can young America live without Magna Charta and the common law? "The independence of the law or the freedom of justice," says Lieber, "in the fullest and widest sense, requires a living common law, a clear division of the judiciary from other powers, the public accusatorial process, the independence of the judge, the trial by jury, and an independent position of the advocate."

At this point I beg leave to read a few words from this author:

"All despotic governments, whether the absolutism rests with an individual or the people, (meaning of course the majority,) strive to make the judiciary dependent upon themselves. Louis the XIV did it, and every absolute democrary has done it. All essential practical liberty, like all sterling law itself, loves the light of common sense and plain experience. All absolutism, if indeed we except the mere brutal despotism of the sword, which despises every question of right, loves mysticism—the mysticism of some divine right. The monarchical absolutists do it, and the popular absolutists do the same. But there is no mystery about the word people. People means an aggregate of individuals, to each of whom we deny any divine right, and to each of whom—I, you, and every one included—we justly ascribe frailties, failings, and the possibility of subordinating judgment and virtue to passion and vice. Each one of them separately stands in need of moderating and protecting laws and constitutions, and all of them unitedly as much so. Where the people are the first and chiefest source of all power, as is the case with us, the electing of judges, and especially their election for a limited time is nothing less than an invasion of the necessary division of power, and a bringing of the judiciary within the influence of the power-holder. It is therefore a dimunition of liberty, for it is of the last importance to place the judge between the chief power and the party, and to protect him as the independent, not the absolute organ of the law.

"Those of our States, which have of late given the appointment of judges to popular elections, labor under a surprising inconsistency; for all those States, I believe, exclude judges from the Legislature. They fear 'political judges' yet make them elective. Now, everything

electional within the State, is necessarily political. If the physician of a hospital, the captain of a vessel, or a watchmaker to repair our time-pieces, were elective by the people, they would, to a certainty, in most cases, be elected, not according to their medical, nautical, or horological skill and trustworthiness, but on political grounds. There is nothing reproachful in this to the people at large. It is the natural course of things. Even the members of the French Academy have been elected on political grounds, when the government took a deep interest in the election."

The CHAIRMAN. The Chair is obliged to remind the gentlemen from Philadelphia that his time has expired.

Mr. MACVEAGH. Mr. Chairman: I ask unanimous consent to permit the gentleman from Philadelphia to proceed.

Mr. CARTER. I object.

[Several delegates. "Let him go on."]

The CHAIRMAN. The Chair hears an objection.

Mr. HAY. I desire to say that if the objection be persisted in, I shall move that the committee of the whole rise, in order that we may relieve ourselves from the burden of the limitation of time.

Mr. CARTER. I object.

The CHAIRMAN. Objection is made.

Mr. HAY. Then, Mr. Chairman, I move that the committee of the whole now rise, report progress, and ask leave to sit again

The motion was agreed to.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Harry White) reported that the committee of the whole had had under consideration the article reported by the Committee on the Judiciary, and had instructed him to report progress and ask leave to sit again.

The PRESIDENT. When shall the committee of the whole have leave to sit again?

Mr. EWING, and others. At ten minutes past eleven.

Mr. ALRICKS, and others. At twenty minutes past eleven.

Mr. MANTOR. Would it be in order to move to rescind the resolution whereby this Convention has restricted debate to twenty minutes in committee of the whole? If so, I will make a motion to that effect.

The PRESIDENT. There can be no order made altering a rule of the House without its lying on the table for one day.

Mr. TEMPLE. I understand that there was a resolution to that effect offered some time ago, and it can now be brought up on second reading. That is my recollection of the way in which the subject is, at present, and I have been informed by the Clerk that I am right in that understanding.

The PRESIDENT. A rule of the House cannot be revoked in that way, but an order of the House may. The Chair is informed that the limitation of debate is a rule of the House.

Mr. STANTON. I move a suspension of the rule. That can be done by a two-thirds vote, and will reach this case.

The PRESIDENT. For what purpose?

Mr. STANTON. I move a suspension of the rule.

The PRESIDENT. A suspension of a rule must be for a particular purpose.

Mr. BOYD. I move that the rule which limits debate in committee of the whole to twenty minutes be suspended for the present.

The PRESIDENT. That motion cannot now be received.

Mr. ARMSTRONG. I move that the rules of the House be suspended for the purpose of rescinding the resolution which limits debate in committee of the whole.

The PRESIDENT. The question now pending is the time when the committee of the whole shall have leave to sit again.

On this question, the motion to fix twenty minutes after eleven was agreed to.

Mr. ARMSTRONG. I now renew my motion.

The PRESIDENT. The Chair regrets to say that that motion is not in order. An alteration of the rules requires to lie over one day. A suspension of the rules for a particular purpose requires a majority of two-thirds and can be acted on at once. If the gentleman moves that the rule relative to debate in committee of the whole be suspended for the purpose of allowing the gentleman from Philadelphia to conclude his argument, that motion will be in order and may be carried by a two-thirds vote.

Mr. ARMSTRONG. I desire to make it broader than that if it can be done, and suspend the rule as applicable to the debate in committee of the whole to-day; or I would make it even broader, and propose that during the consideration of the report of the Judiciary Committee there

be no limitation of debate. ["No!" "No!"]

The PRESIDENT. That motion is in order. It is moved and seconded that the rule limiting debate in committee of the whole be suspended so far as regards the consideration of the article reported by the Committee on the Judiciary. That motion requires a two-thirds vote.

Mr. J. PRICE WETHERILL. Before that vote is taken I should like to hear the rule read.

Mr. ARMSTRONG. I will state to the Chair that my impression is, (and if I be wrong I desire to be corrected by the Clerk,) that it was only an order of the House passed by resolution. I would inquire for information whether that is not the fact.

The PRESIDENT. That was the impression of the Chair, but he was corrected by the Clerk.

Mr. J. PRICE WETHERILL. [After a pause.] I withdraw my call for the reading of the rule if it cannot be found.

The PRESIDENT. It has been found. The order of the House will be found on page 310 of the Journal. The original idea of the Chair turns out to have been correct. It was an order of the House merely. If gentlemen will refer to page 310 of the Journal they will find it. The Journal shows that this limitation of debate is simply an order of the House, and, of course, it can be revoked by a simple majority, on motion.

Mr. EWING. Is it in order to make such a motion?

The PRESIDENT. It is.

Mr. HAY. I move that it be rescinded.

Mr. MACVEAGH. I should like to limit the power of objecting to, say five members. ["No!" "No!"]

The PRESIDENT. Does the gentleman move an amendment?

Mr. MACVEAGH. I think it is exceedingly unwise to rescind the proposition, simply.

Mr. HAY. If the gentleman will permit me, I will make a motion, if it be in order, to suspend the operation of this rule during debate in committee of the whole on the report of the Committee on the Judiciary.

Mr. MACVEAGH. I think that would be equally unwise. I think there are many sections of this report that need no more debate than many sections of other reports which we have already considered. I do regret sincerely that anybody has felt it obligatory on him to insist on the rule when we are discussing a question so fundamental in its character as the election or appointment of the judicial department of the government.

The PRESIDENT. The Chair will remind the gentleman that it is not a rule, but an order of the House.

Mr. MACVEAGH. If it be simply an order of the House, then, in committee of the whole, the single objection would not have prevailed; it would not have required unanimous consent.

The PRESIDENT. The committee of the whole are equally bound by an order of the House.

Mr. MACVEAGH. I understand the House is in committee. I see the distinction of course. What I desire is that a certain number of the members of the House shall always have it in their control to apply this limitation of debate. I do not think it is wise to leave it in the hands of one member because he may be impressed by a conviction that it is his duty, as I doubt not whoever made this objection was impressed by that conviction sincerely that it was his duty to make objection, but that a certain number of members of the House ought to combine in making it in order to limit gentlemen to the rule. But upon such subjects as this, and especially from such authority as that to which we were listening, I do not believe that any considerable number of the House would agree in applying the limitation. Still I think it is unwise to rescind the rule absolutely, and I think the temper of the Convention will be against the absolute recision of the rule, or an absolute recision of it for all the sections of this report.

The PRESIDENT. It is an order, not a rule.

Mr. CARTER. I wish to explain the reasons I had for objecting as I did. I am thoroughly convinced that twenty minutes of concentrated thought directed to the consideration of any article, no matter how important it may be, is sufficient.

Mr. TEMPLE. I ask whether the gentleman's time was not extended two or three times.

Mr. CARTER. I do not wish to be interrupted.

Mr. TEMPLE. I desire to ask the question.

Mr. CARTER. I do not, for one, desire to sit here during the hot season of the year, which is rapidly approaching. Our session has now continued longer than was anticipated, and I see no termination to i

if there is, in this way, to be unlimited debate. But, be that as it may, so long as we have a rule requiring twenty minutes as the time, I, for one, intend to object to extending it, and if one gentleman is permitted, through courtesy, to go on, of course we must permit the humblest member of the House to do so; and it is with a view of economizing time and getting through this most tedious work that I object; not with any personal feeling whatever, but from a sense of duty.

Mr. KAINE. I think a reading of the resolution or order will lead gentlemen to believe that it does not require any change. It is simply this:

"That no member shall be permitted, without leave, to speak more than twenty minutes at any one time, in committee of the whole."

A man is not excluded from speaking by the objection of one member. The gentleman from Lancaster, who made the objection here, had but a single, solitary vote. If the question had been put to the committee, "shall the gentleman from Philadelphia have leave to proceed?" it would have been carried in the affirmative. It is in the power of the committee, by a majority vote, at any time to allow a member to proceed, and he is not excluded by the gentleman from Lancaster, or anybody else, a single man or half a dozen, getting up and saying, "I object." Therefore, I think the order is the best we can get.

Mr. HAY. I may be mistaken, but I think that as it is a resolution of the Convention, the committee of the whole can not give leave to proceed in opposition to the rule.

Mr. MACVEAGH. The rule is that he shall not speak without leave.

Mr. HAY. Without leave of what body?

Mr. KAINE and Mr. MACVEAGH. Of the committee.

The PRESIDENT. There have been so many orders made on this subject that it requires some time to find them all. The last order made is to be found on page 380 of the Journal, adopted on the third of March. It is:

"That hereafter, in committee of the whole, no delegate shall speak longer than twenty minutes at one time, nor more than once on the same proposition."

That is an actual order, and contains no provision for its suspension.

Mr. LAWRENCE. I should like to hear the motion of the gentleman from Lycoming stated.

The PRESIDENT. The motion pending is to rescind the order limiting debate in committee of the whole.

Mr. LAWRENCE. The motion is to rescind the order generally. I move that the order be suspended so far as to allow the gentleman from Philadelphia to conclude his remarks.

Mr. HEMPHILL. I rise to a point of order. Is there not another motion pending?

The PRESIDENT. It is moved and seconded that the order be rescinded so far as to give permission to the gentleman from Philadelphia, who has the floor in committee of the whole, to conclude.

Mr. BIGLER. Does the President entertain that motion? I was about to insist, Mr. President, that the prompt way of reaching this purpose was to suspend the operation of the order. To amend the order or repeal the order, it becomes necessary to proceed to its consideration. It is very obvious that delegates are watchful of the future, and the future would be better taken care of on this subject by suspending for the present. I suggest to the gentleman from Washington, that he modify his motion so as to suspend the operation of the order for the present, or suspend it for this specific purpose, leaving it stand for future adjustment.

Mr. LAWRENCE. I made the motion to suspend the order for a specific purpose. If we suspend this order generally, we cannot tell when this debate will end; but I think it is discourteous to the distinguished gentleman from Philadelphia, who is making an argument on this subject, to cut him off in the middle of the discussion. I make the motion for his sake and for the sake of the Convention.

Mr. BIGLER. If the gentleman made his motion to suspend, then it was right.

Mr. LAWRENCE. To suspend it specifically. That is my motion.

Mr. HAY. My only desire in making the motion I did, was that I and the other members of the Convention might have the opportunity of hearing the remarks of the very distinguished gentleman from Philadelphia, on this question. All members, I am sure, are as anxious as I am myself (with the exception perhaps of one or two members) to hear everything he has to say. Certainly no man is so competent to speak on this subject as he can in this body. I had no desire that

the debate should be protracted into a general discussion, on the question of the suspending or rescinding of this rule, and if it is the sense of the Convention that this amendment should be adopted, I will accept it.

I will, with the consent of the Convention, modify my motion so as to permit the gentleman from Philadelphia to conclude his remarks. I am willing that it shall assume whatever shape may be thought proper.

The PRESIDENT. The motion is modified so as to provide for a suspension of the operation of this order as far as the time of the gentleman from Philadelphia is concerned.

Mr. BUCKALEW. I desire to inquire whether this thing is to recur upon us constantly in case of other gentlemen and on other questions. I submit that our best plan would be simply to change this rule so as to require the consent of two-thirds of the committee, instead of it being absolute. It is impossible to expect that the committee of the whole, when they desire to permit a gentleman to go on with his remarks, will agree that a single gentleman shall defeat their desire. If it is in order, I will move to change that order, so that the consent of two-thirds shall be required.

The PRESIDENT. It will be in order if the present motion is withdrawn.

Mr. LAWRENCE. I suggest to the gentleman from Columbia that unless this motion prevails the time will arrive when we shall go into committee of the whole again, and he can submit his motion again in the morning.

Mr. TEMPLE, and others. Let it be done now.

Mr. BUCKALEW. I make the motion to amend the order so as to provide that no person shall speak more than twenty minutes in committee of the whole, unless by the consent of two-thirds.

Mr. HAY. I withdraw my motion for the present.

The PRESIDENT. The motion of the gentleman from Allegheny is withdrawn. The gentleman from Columbia now moves to amend the order by adding, "unless leave be given by two-thirds of the committee."

Mr. LILLY. I really hope that this amendment of the gentleman from Columbia will not be made, because it will be equivalent to the rescinding of the rule. I think needless debate in this body has been very much shortened by this rule. When the consideration of this article reported by the Committee on the Judiciary came up I made up my mind, and so announced, that I was not going to object to anybody debating the question beyond the time allowed; nor would I, nor did I in this case object; but, sir, I believe the rule should be adhered to as nearly as possible even on this article. I do not object to the gentleman from Philadelphia going on with his speech, to which I have listened with a great deal of interest; but at the same time I think it is necessary, if we intend to get away from here at any time before 1876, unless we intend to sit here as a monument to be looked at by the people coming to the centennial exhibition [laughter] that we should adhere to this rule. If we do not, we shall be here until that time. The motion of the gentleman from Columbia allowing a suspension of the rule by a vote of two-thirds, amounts to a repeal of the rule, because I never saw a motion made in this body for leave for a gentleman to continue his remarks that could not receive a two-thirds vote; and at the same time when I have objected singly, I have been surrounded by dozens of members thanking me for so doing. Gentlemen have not the moral courage to stand up and vote against granting leave for fear of offending, and the consequence will be that this proposition to allow a suspension of the rule by a two-thirds vote will be just equal to a repeal of the rule.

Mr. WHERRY. The force of the remarks of the gentleman from Carbon are entirely lost when we recall the past history of this body. For my part I am unable to perceive that it takes any longer to speak an hour in a week than three times a day, twenty minutes each time.

The PRESIDENT. The question is on the motion of the gentleman from Columbia (Mr. Buckalew.)

Mr. LILLY and Mr. REYNOLDS called for the yeas and nays, and they were ordered.

The question being taken by yeas and nays, resulted: Yeas, seventy-one; nays, twenty-nine, as follow:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Baker, Bannan, Beebe, Bigler, Black, Charles A., Bowman, Boyd, Brodhead, Brown, Buckalew, Carey, Cassidy, Church, Clark, Corson, Craig, Curry, Dallas, Darlington, Davis, Dodd, Edwards, Elliott, Ellis,

Ewing, Gilpin, Gowen, Green, Guthrie, Hanna, Harvey Hay, Hazzard, Hemphill, Horton, Kaine, Lamberton, Long, MacVeagh, M'Camant, M'Murray, Mantor, Mott, Newlin, Niles, Palmer, H. W., Patterson, D. W., Patten, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Russell, Sharpe, Smith, H. G., Smith, Henry W., Stanton, Stewart, Struthers, Temple, Wetherill, J. M., Wherry, White, Harry, Woodward, Worrell and Meredith, *President*—71.

NAYS.

Messrs. Bardsley, Campbell, Carter, Collins, Cronmiller, Curtin, De France, Finney, Howard, Knight, Landis, Lawrence, Lilly, MacConnell, Mann, Metzger, Minor, Mitchell, Porter, Reynolds, Rooke, Simpson, Smith, Wm. H., Turrell, Walker, Wetherill, J. Price, White, David N., White, J. W. F. and Wright—29.

So the question was determined in the affirmative, and the order was modified as proposed by Mr. Buckalew.

ABSENT OR NOT VOTING.—Messrs. Addicks, Ainey, Andrews, Baily, (Perry,) Barclay, Bartholomew, Biddle, Black, J. S., Broomall, Cochran, Corbett, Cuyler, Dunning, Fell, Fulton, Funck, Gibson, Hall, Heverin, Hunsicker, Lear, Littleton, M'Allister, M'Clean, M'Culloch, Palmer, G. W., Parsons, Patterson, T. H. B., Pughe, Read, Jno. R., Ross, Runk and Van Reed—33.

Mr. HAY. If it is in order, I now move to go into committee of the whole on the article reported by the Judiciary Committee.

The motion was agreed to.

The Convention accordingly resolved itself into committee of the whole, Mr. Harry White in the chair.

The CHAIRMAN. The pending question is on the amendment of the gentleman from Allegheny (Mr. S. A. Purviance) to the amendment of the gentleman from Philadelphia, (Mr. Woodward,) upon which the gentleman from Philadelphia had the floor. The gentleman from Philadelphia had consumed more than twenty minutes. Is it the pleasure of the committee that he shall proceed, notwithstanding the expiration of his time? This requires a two-thirds vote.

Leave was granted.

Mr. WOODWARD. Mr. Chairman: A progress that leads us away from such principles as those which I have been stating is a delusion and a snare. The twenty years experience we have had in mixing up the judiciary, with all other departments, in the impurities of political elections, read in the rosiest lights you can throw upon it, will not justify us in stopping our ears to the voice of history, and in giving up the freedom of justice and the independence of judges which the common law brought us.

Whence came the idea of electing judges? Not from the people. I deny that they ever demanded it. In 1849 a political party, long coveting place and power, found themselves in an accidental majority in the Legislature of Pennsylvania. To recommend themselves to popular favor, upon the lowest and most selfish views of political dodgers, this party, availing themselves of the amendatory clause of the Constitution, framed the clumsy amendment of 1850 and submitted it to the people, not with any serious expectation or desire for its adoption, but rather as a tub to the whale.

Of those who voted upon the question, a majority declared for the amendment, and thus it came into our Constitution. Evil examples are infectious. In 1846 the State of New York had, for the first, introduced the elective judiciary, and we hastened to imitate her. And the new western States, unduly influenced by these great central States, made and altered their Constitutions to conform to the novel example of New York. What bitter fruits this tree has borne in New York are known and read of all men. Even our own judiciary has shared, most unjustly, in the hissing indignation with which foreigners have visited the judicial outrages of an elective judiciary in New York. Who doubts that Tweed could be elected to the bench as he has been elected to the Senate of New York, since he was found to be the most stupendous thief of modern times? Honest men owe Tweed their thanks for his forbearance in declining to sit in the Senate, or to take the place of one of the impeached judges.

Mr. Chairman, if it was safe to elect judges in 1850, when our elections were free and pure, it is not safe to elect them now, when, by common consent, popular elections have ceased to be either free or pure. Suppose all the well attested facts that have been established in courts of justice and before committees of investigations, that have been discussed in the newspaper press, and have been stated on this floor, concerning our modern elections, were written in a book, who would not blush to read its pages? Would any-

body prattle about "*progress*" as he read of bribery, ballot stuffing, repeating, forged returns and the innummerable knaveries of political rings? The best thought and the best action of this Convention have been given to efforts to protect the ballot-box, and to make popular elections express the popular will.

Yet it is to the corrupted and debased ballot of our day gentlemen would commit the election of judges. We have no right to assume that our elections will be improved in the future. We may hope it, but our salutary reforms are not adopted yet, and even if adopted, their efficiency has not been tested. We must deal with the facts of our current history. And I say that even if it were wise to make judges elective in 1850, it is infinitely perilous to elect them now. The war, the increase of our population and wealth, the multiplication of corporations, the developement of our physical resources, the thirst for wealth, the greed for office, the irreverence of our popular philosophies, have wrought a mighty revolution in our social life.

We are no longer the people we were in 1850. The instinct of self-love may restrain us from electing bad men to political office, for each man is jealous of his political liberty, but the mass of voters are incompetent to judge of judges; they cannot select intelligently. It is an utter absurdity to submit a comparison of judicial attainments and qualifications to masses of men who know not the candidates, who know not the duties to be performed, nor the training and education essential to a right discharge of those duties. But, after all, the great evil of an elective judiciary is found in the judge himself. He must be a politician. This necessity results from the system. Not only must he be a party man, a liege subject of as absolute a despotism as ever existed on earth, but in his own party there are jealousies to be assuaged, rivals to be conciliated, interests to be reconciled, before he can win the nomination. And when this is won, then comes the tug of war. The election must be carried, and all the arts which success consecrates must be employed for his elevation to the bench, where he is to know only the parties upon the record and only the case that is proved.

Is it possible? Will there be no enemies to punish, and no friends to reward? Is there a party sentiment or movement or triumph in which the judge does not sympathize in just as lively a degree as if he were in a political office. The judicial office becomes identified with the political office, and the judge becomes and must be a politician like the common herd.

But Governors and Senators are politicians, too, and they will appoint judges from their political friends. True, but the Senate represents both parties and the Governor must respect their opinions so far as to present acceptable names. But Governors and Senators last only a few years and then melt into the common mass. If a judge appointed by them should feel a special obligation to them, they are not generally suitors before him, and the sentiment is transitory. It does not haunt him through his whole term like the ever present political obligations which sit like a night-mare upon the elected judge.

The advocates of an elective judiciary are very fond of contrasting the judges whom the people have put upon the bench with those placed there by Executive appointment, but the mode in which the comparison is ordinarily stated is most unfair. They select the worst specimens under the old system and the best under the modern for comparison, without considering how much longer the old system was in operation than the new has been.

The charter of Charles II to William Penn was dated fourth March, 1681. Penn arrived in America twenty-fourth October, 1682, for the purpose of taking possession of his magnificent fief. On the fourth December, 1682, at Upland, as it was called, now Chester, he called an assembly of the people and instituted the government of Pennsylvania. This colonial government underwent many changes and alterations, until it was finally superseded by the Constitution of 1776, which in turn was replaced by that of 1790, which lasted until the first day of January, 1839, when the Constitution of 1838 took effect. Under all these forms of government and Constitutions judges were selected by Governors and Councils or Senates; they were elected by the people under none of them. From 1682 to 1851 (the date of the elective judiciary) was a period of one hundred and sixty-nine years. Since 1851 to this year is a period of twenty-two years. The comparison to be instituted, therefore, is between a period of more than a century and a half and a period of twenty-two years in our judicial history. Now, in that long period all the great principles of our civil and political liberty, as

well as the leading principles of our jurisprudence, were discussed, settled and administered—discussed and administered by appointed not by elected judges.

What if in that long time you can find some inefficient and incompetent judges? Could not some such be pointed out in our twenty-two years experience of elected judges? The long period is adorned with many names that were not born to die. They will live in the grateful recollections of the legal profession as long as virtue, learning and talent are venerated—as long as the common law and the Bill of Rights shall remain the anchors of our liberties. Far be it from me, sir, to depreciate the men whom popular elections have placed upon the bench. I believe the hazardous experiment has worked better than any body had a right to expect, better indeed than it is likely to work in the long run. But those who argue from our experience of twenty-two years against the testimony of a century and a half of our experience are like the traveler who would guide his steps by the meteor flash in preference to the effulgence of a noon-day sun.

I am perfectly aware of the difficulty of returning to the right path from which we wandered in 1850. I understand that, if we should abolish the elective judiciary, demagogues are ready to take the stump and tell the people that a Convention of lawyers propose to take from them their rights; that no free people ever gave up the elective franchise, and that this proposition betrays a want of confidence in the wisdom and virtue of the people.

We shall have to encounter very much of this sort of electioneering. Very well; let it come. Error of opinion can be tolerated whilst reason is left free to combat it. Reared and educated among the people, accustomed all my life to respect their fairly expressed opinions, I have such confidence in their common sense, that I do not believe demagogues are going to lead them to reject a reform so manifestly beneficial to themselves. Nor will I yield this faith till I have seen the appeal fairly tried.

I have avoided any criticism of the elective judiciary that might seem censorious. Facts have occurred under my observation which might be stated to show the evil tendency of introducing the passions and practices of politicians into judicial elections, but I forbear to discuss them here. Long honored with a seat upon the bench, both by executive appointment and by popular election, I have had considerable opportunity to observe the workings of both systems, and now, without the slightest personal interest in the question, (for I shall never again hold a judicial commission,) I bear unqualified testimony in favor of the time-honored mode of selecting judges, and against the portentious novelty of 1850. Nor is this a new and sudden opinion. When the amendment of 1849 was submitted to the people in 1850, I voted against it and advised others to do likewise. On the Judiciary Committee in the Convention of 1837, I had the honor of bringing forward the proposition to substitute the limited tenure of judges for the life tenure, but I did not propose, and I do not remember that any one else proposed, the election of judges. That body was too conservative to entertain such a proposition. The amendment of 1850 was never called for by the people, was not debated or considered as so grave a matter should have been; and though it has not yet wrought all the mischief which it is likely to do in the future, it has lived longer than it deserved to live, and the sooner we bury it out of sight the better for us and our children.

From Democrats we sometimes hear the objection that, to abolish the elective judiciary would throw an undue amount of patronage into the hands of a Republican governor.

From a strictly partisan standpoint this objection would seem to have considerable force. The *Age* a few days ago, and the *Age* under its present management has become one of the best papers in the State, put this argument very strongly; but even the *Age* had to admit, that if our elections could not be purified they ought not to be trusted to select our judges.

If this argument is good for any thing it ought to engage all Republicans to support my amendment, but the fact is that some of the most formidable opponents are the most decided Republicans. Another fact is that when Pennsylvania was Democratic we did not elect judges. If a majority or two-thirds of the Senate be required to concur in Executive appointment of judges, the Governor will be compelled to select carefully and to subordinate party politics to the public good. One of the best Democratic judges now in commission was placed upon the bench of the common pleas by Governor Pollock, whose Republican politics no man will question. And so it would often be. The

smallest kind of a politician who might chance to occupy the Executive chair would feel a just pride in nominating a judge whom two-thirds of the Senate would approve and whom the people would welcome to the bench. And with his constitutional advisers around him and the many means of information ever open to him, the Governor would possess a power of discrimination which neither nominating conventions nor the mass of voters can possess or exercise.

Do gentlemen think that judges ought to be selected at hap-hazard, without inquiry and discrimination? They must have very low views of the judicial office who think so. What is the judicial office? Bacon says it is *jus dicere*, not *jus dare*. Judges interpret the law, but do not make it. They sit without any of the emblems or insignia of power, but the "*opinion of the court*" when it is announced, not only decides the rights of the parties litigant, but on questions of public liberty it thrills through every nerve to the very extremities of the body politic. Of the *lex non scripta*, or the common law, judges are the depositories—the accumulations of the *viginti annorum lucubationes* and they serve it out to suitors as cases arise. The *lex scripta* or statute law they expound, apply and enforce, and how large a power this is may be seen from the principle now well-established that a statute means not what the Legislature understands it to mean but what the judges construe it to mean.

Now these are high and delicate duties, and that chaos may not come again, they must be performed with an intelligent regard to the whole course of antecedent decision. Hence the necessity for the reading of a lifetime.

Who is sufficient for these things? The politician who can manage nominating conventions most adroitly, say the advocates of an elective judiciary. He is just the man who is unfit. As a general rule, the men whom politicians would be least likely to nominate, are the very men who ought to be nominated for judges.

For, to the large attainments to which I have alluded, judges ought to add the sanction of a good life. Not only the law, but sound morals ought to find bold and consistent expositors and defenders in the judges, and he who has learned the arts of intrigue, and the tricks of political elections most successfully, is exactly the man who cannot illustrate either the law or the morals of the community.

Mr. Chairman, I am done with this subject, without by any means exhausting it. If gentlemen are afraid that the amendment I propose will spoil other amendments, let it be submitted to the people separately. I would like to go to the country upon this single issue, and possibly the result would teach some gentlemen that they had greatly underrated the common sense of the people.

But whatever may be the fate of the proposition here or elsewhere, I shall find consolation in the thought, that with as little admixture of selfish motive as human conduct ever had, I have made an honest and earnest effort to save to my native State the manifold blessings of a learned and virtuous judiciary.

Mr. DALLAS. Mr. Chairman: I desire to say that with two branches of the section proposed by the distinguished delegate from Philadelphia (Mr. Woodward) I very heartily concur. I believe that the practice which has grown up in this Commonwealth of imposing upon the judges of our courts extra judicial duties to perform, is a practice that cannot be too soon and too completely put an end to. While it is true, as the able delegate who has just taken his seat said at the outset of his remarks, that the character of many appointments has been improved by conferring upon the courts the power to make them, yet it is equally certain that the tendency of the exercise of such power is demoralizing in the extreme to the judiciary itself. I am also, sir, thoroughly agreed that all the officers of the courts should be appointed by the judges. The idea that it may possibly be said to any counsel, or to any suitor, who has business to do in any court of justice, by one of its clerks or officers, that he feels himself entirely independent of the court—that he cares not what the court may say upon any subject connected with his official duties—is simply outrageous. I know not how it may be in other portions of the State, but that answer has been practically made to suitors in Philadelphia county upon more than one occasion. It goes for nothing that you say to a man elected to the office of prothonotary or clerk of a court that the judges prefer a particular course unless it conforms to his own convenience.

Only very recently it was desired in the city of Philadelphia that the prothonotary of a court should deposit the money of suitors in a certain designated depository to be named by the court, and it required

not merely the instruction of the judges to that prothonotary that the money should be deposited in such a way as the court might designate to be safe and proper, but it was found requisite after long argument upon the subject of the prothonotary's rights in the premises, that there should be made a formal decision of the court against him. But as to any mere instruction or direction of the judges to that prothonotary, he might have laughed it to scorn.

But, sir, in rising to express my views upon that which the gentleman from Philadelphia has justly called the main question involved in this section, I confess—and I do so with much hesitancy and with very great embarrassment—I have so long and so frequently drank of the waters of wisdom that have come to me from the distinguished delegate who has just spoken, that I cannot but unaffectedly fear that I must be wrong when I find myself conscientiously unable to yield my convictions to his, and my judgment to so able an argument as he has just delivered. I agree with him that it is not the manly way to consider any question by trying to guess—for we can do no more—what the people of Pennsylvania may hereafter think about it. When they express their opinion of our work by their votes upon it, when we have submitted it to them, in whole or in parts, and they pass upon it, we will, as we must, submit to their judgment; but I believe it is our duty here to present to them for their judgment, that which *we* believe *should be* adopted. While therefore I—if I may be allowed to hazzard a belief upon the subject—do most potently believe that the people of Pennsylvania have not asked and do not desire a change in that mode of selecting their judges which they themselves adopted more than twenty years ago, I should, if I believed that the change asked for by the delegate from Philadelphia (Mr. Woodward) were proper to be made, vote for it, in order that we might certainly know what view the people now take of so important a matter. But so long as I myself think as I do, that the judiciary of Pennsylvania should not be appointed, but should be elected by the people, I find myself unable to vote for a section in violation of my own judgment.

Mr. Chairman, I believe that, as representatives of the people, in Convention assembled, we are here for the purpose of devising new safeguards for their liberties, and to invent, if we can, further and better means for the protection of their rights, through the suggestion of such new amendments to their Constitution as may better strengthen the framework of their republican form of government. That form of government whose fundamental and distinguishing characteristic is that it is divided into three co-ordinate branches—the executive, the legislative and the judicial—which ought to be kept distinct, and the power lodged in each one of them is but delegated power and sovereignty in and over all, remains with the people of the Commonwealth, and should continue solely with them.

Now, sir, the argument of the gentleman proves too much. If it be true that for any reason, for want of virtue, or for want of judgment, the people of Pennsylvania are unable to select one class of their officers, then, it must follow that they have become unfit to select the officers of the other two branches. And why should the selection of judicial officers be taken from them, or rather, why should they be asked to surrender the right to select them? I do not believe that the office of judge is to be likened, as has been attempted, to that of a captain of a ship, or of a professor in a college, who exercise private employments, and who are, of course, selected by those who employ them. No, sir; the judiciary is a branch of the peoples' government; not merely a set of men selected, as has been said, to decide between parties litigant, but to perform very important, perhaps the most important, functions of government.

It is here proposed that two branches of the government shall unite in selecting the third branch; that that third branch, which should be utterly distinct, and which should receive its grant of power directly from the people, like the rest, shall be selected by the two remaining and merely co-ordinate departments of the State, and that the judiciary, whose chief officer, the Chief Justice of the State, is, in my view, the Chief Magistrate of this Commonwealth, should owe their appointment to the Executive and one branch of the Legislature.

It is said that it was safer to permit the people to elect their judges in 1850 than it is now. I concur in thinking that to-day the elections are much less honest, and much less pure than they were then: but will they, for that reason, produce us better Governors or better legislators? Have

we now or are we likely to have—and I say it with no disrespect to the present incumbent of the executive chair of this State, I refer to no man personally—have we, I say, or are we likely to have a Moses now to select the judicial rulers of hundreds and of tens?

If our elections have come to be so corrupt and so vile that the people's will cannot be purely and honestly expressed in the selection of judicial officers, what more reason have you to hope from such elections, and from elections controlled by such machinery, for the selection of pure Governors or of upright Senators?

Why, sir, this Convention will either fail of its duty, or will admit that it is unfit to perform it, if it does not give to the people of Pennsylvania some further protection and security for the purity of their elections. We should not say to the people of Pennsylvania: "We have found ourselves unable to protect you in your rights. You called us together because you thought that the elections were impure; you brought us here as delegates to devise some means to enable you to give effective expression to your wishes, and to enforce your rights; but instead of meeting that just hope we can only excuse ourselves by saying that your case is so hopeless, you are so sunken in corruption, you are so bound hand and foot by the power of the politicians who have you under their control, that we can devise nothing to aid you. We can only advise that you should surrender your liberties and avoid difficulty; abandon your right to select one branch of your government, because, however pure, however honest, your purposes may be, you cannot be protected in the exercise of it. No matter how just, how good or how able a man you may vote for, he cannot, though elected, be returned.

Mr. Chairman, I very respectfully submit to this committee that it will not do to so give up the contest for fair and pure elections. If the people of Pennsylvania have a right to say who shall be their Governor, they have a right to say who shall be their Chief Justice. I would not, as I have said, have all the minor offices in the State filled by election, for I do not think that that is necessary to the maintenance of the just theory of republican government in the State; but I do believe that the heads of every department of government should be filled directly by the people, and I would make their clerks and subordinates, as this section proposes, responsible to those heads, and they, in turn, to the people, whose servants they are.

Mr. Chairman, our work is not to be as the law of the Medes and Persians, which can know no change. If it ever comes to be the view of the people of the State of Pennsylvania that the section now proposed, or one similar to it, should be placed in their Constitution, they will have the power of saying so; and they will say so when the danger arises which is feared, and when they have learned to believe that the remedy now proposed is the proper remedy for the evil suggested. But, sir, we are now asked to meet simply an anticipation and a fear. The gentleman himself has said that, taking the judiciary of Pennsylvania as a whole, and "for all in all", we did not look upon a better when we had the appointing system, and I think we are not likely to look upon its like again, should we now recur to that system. It is, sir, as I have before said, but an anticipation and a fear of evil that this section proposes to meet. We are asked to adopt the gentleman's prophecy of an evil to come, and then his theory of a remedy to be prepared. It seems to me but the merest charlatanism in state-craft to anticipate the disease, and prepare, in advance, a supposed remedy for it; and I think it worse than charlatanism to propose to the people of this Commonwealth that, because through the machinery of their elections they have been defrauded of their rights, their rights themseves should be surrendered. Not that the body politic should be cured of its corruption, but that it should be yielded at once to the destroyer, and so be wholly and finally relieved of pain.

The CHAIRMAN. The gentleman's time has expired.

Mr. TEMPLE. I move that he have leave to proceed.

The CHAIRMAN. It is moved that the time of the gentleman from Philadelphia be extended, which requires a two-thirds vote.

The motion was agreed to.

Mr. DALLAS. Mr. Chairman: While it has been admitted that the judiciary of the State of Pennsylvania is pure and learned and upright, we have been told to look at our sister State of New York, and see what has happened there. I do not fear to meet that illustration. Who will say that the election of the judiciary produced the results we have in New York? Was corruption in New York

confined to the judiciary? Were the evils to which the gentleman has referred limited to that branch of the government of the State? I apprehend no gentleman in this committee supposes it. But mark what happened. The people of the State of New York, patient and forbearing for a long time, at last become aroused, and then they who elected that judiciary removed them from the office they had disgraced.

What would have been the case if that judiciary, equally corrupt, and appointed—it might have been, by a corrupt Governor, and confirmed by a Senate combining for a corrupt purpose—had held their seats, not by election, but by virtue of such appointment, and for term of life, with the sole power of trying cases of impeachment lodged in the Senate, who had confirmed their appointment? How much better do you think the chance of a corrupt judge would have been for holding his place under such circumstances, than where his office was dependent upon the constantly recurring verdict of the people upon his conduct? Why, sir, it would have been impossible for the people of New York to have cleared their courts as they have.

Mr. Chairman, is it to be supposed that a man who seeks for judicial position will have to use means any less reputable to obtain it from the Governor and the Senate, than he will from the people? It is true that the influence of nominating conventions in recent days has been bad. It is true that the effect of villainous election laws, and of bad men administering them, has been to reduce to their own level candidates for every office, equally bad for the Legislature and for the Governor as for the judiciary. I have heard it only recently said that a gentleman desiring to be made a judge of this State, whose record for such a position would not bear the people's scrutiny for a moment, has proposed, not to ask a nomination and election before the people, but, as a preliminary, to secure from the Governor an appointment to the bench, to assist him subsequently when he offers himself for election to the same office. Why, sir, nothing more naturally occurs to a man whose record is bad, and whose character and reputation will not stand examination, than to seat himself, if possible, under a friendly Governor's appointment, before the nomination of his party is made, and so obtain the advantage which possession of the office gives. For men who could not look for the nomination of their party, and who could not stand for one moment before the people, may hopefully go to a Governor, whose election is greatly due to their exertions, and who owes them not only party fealty, but personal reward, and *demand* positions for which they are unfit, and to which the people would never elect them.

To be sure, it is said that the voice of the Senate in confirmation is some check upon this, which otherwise would be a recognized and acknowledged evil to result from appointment by the Governor. It is true that the voice of the Senate may be some check; but this nation has recently witnessed the sad spectacle of places upon the supreme bench of the United States being filled, and the appointees selected for the purpose of having a particular case decided in a particular way; and that, sir, under a system where the appointing power is subjected to the necessity of confirmation by the higher branch of the Legislature.

And, sir, some time ago, when the report upon city charters was under consideration in this committee of the whole, the gentleman from Philadelphia, who, if he were in his seat would be upon my right, (Mr. J. Price Wetherill,) inquired of the gentleman who sat to my left, but who now sits in front of me, (Mr. Littleton,) "if you should ever be mayor, all other things being equal, you would appoint none but Republicans?" His answer was, honestly, (and I do not object to the answer,) "whether other things were equal or not, they would all be of my party;" and that from a gentleman who holds the second position of trust and honor in the city of Philadelphia, the respected president of select council! Now, sir, when you hear from a gentleman of his standing that, whether other things are equal or not, he would make, if he had it in his power, all his appointments simply and solely upon party grounds, and when you know that he not only says that, but he speaks the universal voice of all party men such as can hope ever to be Governors of Pennsylvania—and I trust he may be—what reason have you to look for in them an appointing power more than political, or to hope for appointments of any but political friends?

Sir, by recurring to appointment of our judges corruption would only be transferred; this contest for judicial honor would but leave the people to be waged before the Governor and the Senate; and, as has been

said of the courts in the exercise of their appointing powers, you would add to the Governor and to the Senate but additional danger of their own corruption. "You would but skin and film the ulcerous place, whilst rank corruption, mining all within, infects unseen." For what would happen at the capital, what bargains would be made, what purposes would be subserved by the combinations there made between the Governor, his proposed appointee, and the Senate, who here can undertake to predict, who here does not fear?

As to the influence upon the judge himself, the gentleman (Mr. Woodward) says: Governors pass from their official station; the Senate is changed; in a short time those who appointed the judge have no official power whatever, and he is relieved from the influence. That statement admits the existence of the influence for a certain period of time. But, sir, though their offices cease, the men continue; they continue to be leading politicians; and the friends who have influenced the appointment continue to live and to be influential politicians. Is it not better that any judge in this Commonwealth should be able to say: "I sit here as the steward of the people, selected by them, responsible to them, owing no one man fealty, but all of them; and the test of my fitness, on the expiration of my term, is to be: 'Did he do his duty faithfully and well?'" than that he should owe his appointment to any Governor, to any Senate, or to the friends of either or both, and be able to place his finger upon the four or five men to whom his position is due? Is not that influence a more dangerous influence to the judiciary and to the people than any influence that could come from election, and from election under a purified system, such as we hope to be able to present to the people, and which, if we fail in, we fail in the discharge of our duty?

But, sir, I have said much more on this subject than I anticipated saying. I will end as I began, by repeating that, whether in all the details I have offered I have been right or wrong, the main consideration, and the one which will affect and control my vote, is that it is the *right* of the people, as twenty years ago they claimed it to be, to select the officers of the judicial branch of their government as well as those of any other department in the State. If they make mistakes, if they select bad men, if they neglect their duty, if they submit to corrupting influences, then let them suffer; let them feel the evils of such things as they have been felt in New York, and they will find and enforce a remedy. Do not say to the people that if they are supine, if they keep away from elections, if they permit corruption to go on unchecked, they at least will have preserved to them a good judiciary; that as to that there shall be a guardian over them to select and take care of and for them. Do not say that, for it is but to encourage the idea that the State can take care of itself, and to lead the people to forget that "eternal vigilance is the price of liberty," and that they must provide for themselves proper checks upon corruption, and watchfully guard their rights. They must first accept from us a proper system for elections, and then they must give their public business their first attention.

A single word on the subject of the comparison of judges. I think that the judiciary of the last twenty years, and the gentleman (Mr. Woodward) was compelled to admit it, in the opinion of all those gentlemen whose recollection of the days that are past better entitles them to an opinion than mine, compares favorably at every point with the judiciary by appointment. We have, under the elective system, in Philadelphia city the happy illustration of two judges—Judge Sharswood and Judge Ludlow, who no man in the whole community doubted did their official duty well and thoroughly—elected over and over again by a city the majority of whose votes were counted against the party to which those two judges owed their political fealty; and we have in the case of Judge Sharswood an election to the bench which he had previously honored for years without a nomination even being made against him, elected by the entire vote of a community whose political majority was cast in opposition to his party.

Sir, we have had not only able and competent judges by election, but the people have shown themselves capable of appreciating them, and I believe they will always do so. The only answer of the gentleman is, that under the old system there was a much longer period of time traveled than under the new; and, therefore, we must anticipate a danger; we must tremblingly look to a fear that when that long number of years has been again passed the good we now have will have given place to evil, and out of the

very system from which we have received thus far nothing but benefit, we should anticipate only disadvantages. That is illogical; it is unreasonable, and it is asking us to do that which, if it were logical and reasonable, it would be time enough to do when the logic and reason of it had been incontestibly established by experience.

Mr. DARLINGTON. Mr. Chairman: I do not know that I should seek to participate in this debate at all if it had not been for one or two considerations which prompt me to say a few words.

The gentleman from Philadelphia who addressed us this morning (Mr. Woodward) and I seem to have, to some extent, changed places. Recurring to our position in years gone by, he occupied the position which he has indicated to us here, in favor of an elective judiciary. Upon that occasion I occupied the position that he occupies now. We have changed ground; and while he has been convinced (and no one doubts the sincerity of his conviction) that an appointed judiciary is the best, I have, by my experience since that time, arrived at the conclusion that the elective is quite as good, if not better, than the appointed.

Mr. WOODWARD. The gentleman will allow me to ask whether I am to understand him as saying that I ever advocated the election of judges?

Mr. DARLINGTON. No, sir; I say that he advocated the limited tenure in the former Convention, while I was for the condition of things that then existed.

Mr. WOODWARD. I not only admitted that I advocated the limited tenure, but I said that the improvement in our judiciary was due to that fact, and not to their election.

Mr. DARLINGTON. Very well.

I presume, Mr. Chairman, that we all agree that in a republican government, such as ours is, after providing for its division into the appropriate branches of Executive, legislative and judicial, the true theory is that the people shall not only elect their Executive and their Legislature, but shall elect also their judiciary, unless it shall be found that they are incompetent to the task. I say this is the true theory, that the people, who are the governors and the governed, after dividing their government into its appropriate branches, shall themselves fill all the offices. It is conceded that with regard to the Executive and the legislative branches, election by the people is the proper mode. No one proposes any other.

The question, then, is with regard to the judicial branch; are the people competent to fill it of themselves, or must they appoint others who shall fill it? Are they competent to do mediately, through others, that which they are not competent to do immediately by themselves? Upon this subject I do not think there is much difference of opinion.

How are we to arrive at a just conclusion upon this question? Only by recurring to the experience that we have gone through. We have tried all three modes. We have tried appointment by the Governor alone; we have tried appointment by the Governor, by and with the advice and consent of the Senate, and we have tried the elective judiciary. Has there been any failure in the success of the latter method that is not incident to either of the former, that has not been experienced in our past history, in each of the preceding, and to a greater extent than in the latter? Who does not remember what the crying evil was under the old system of the life-tenure, as it was called, the good-behavior tenure, to speak more accurately, that existed prior to 1837-38? What was the evil? It was that of incompetent judges, or judges who, if not incompetent, were placed in office, were liable in certain cases to become so; unfit to preside, unfit to administer justice, and then the difficulty was, how to get rid of them.

Some gentlemen here may well remember the case of a judge who, when placed upon the bench, was of average talent and respectability, but who afterwards became entirely unfit, and to remove whom efforts were again and again made in the Legislature without success. I allude to a judge in the interior, and near the centre of the State, long since gone.

Who does not also remember the history of the case of a judge who presided in the Harrisburg district, who became, by his subsequent conduct and life after his appointment, unfit in the judgment of a moral and religious community, to preside, and yet against whom unsuccessful application was made for his removal. I allude to the late Judge Franks.

How many more there may have been throughout the State, I know not; but certain it is that these were among the experiences which the people of Pennsylvania passed through under the good-be-

havior tenure of the judiciary and the appointment by the Governor.

We thought—at least so my friend from Philadelphia (Mr. Woodward) thought, (I did not share with him in the judgment at that time,)—that we improved that state of things by the change we made in 1837-8 by appointing the judges with the advice and consent of the Senate, and for a term of years. The term of years secured us undoubtedly the advantage of getting rid of an unfortunate appointment, and that is a feature which I presume no one now proposes entirely to dispense with. If we get upon the bench a man who turns out to be a mistake, from whatever cause, we have at least the consolation of knowing that we have to bear with this infirmity only for a few years when the people will have it in their power, without the necessity of application to the Legislature or to the Senate, by impeachment or address, to make a change and rid themselves of the grievance.

Under that system, while it existed, I do not say that the experience was much better, or that it was much worse, than that under the preceding system. I am better acquainted with the experience which our district was compelled to have under the second system than under the first. It was our misfortune to lose the valued services of his Honor, Judge Bell, in our district, by his transfer to the bench of the Supreme Court. We were at sea. We had a Governor of respectability, a Senate of respectability. No question was asked of any man in the district, as to whom we would like to have preside over us. Not a man, I venture to say, in the whole of the district, composed of the counties of Chester and Delaware, not even the Senators or Representatives at Harrisburg, were asked, "who would be a suitable and convenient and appropriate appointment for me to make;" but a gentleman was appointed by the Governor, and confirmed by the Senate, and sent to us. We found him wanting in the qualities that we thought essential to a good judge; wanting in activity of body and in activity of mind. He was superannuated, to a certain extent, and we were obliged to go to Harrisburg and ask the Senate to reconsider its confirmation. It did so, and reconsidered its confirmation, it not being too late; and while some members of the bar of our county were there, the Senate reconsidered and rejected him. What next? We were favored with another appointment, of a gentleman from Franklin county. He came there. He differed in some material respects from the gentleman who had preceded him, but he was unsuited to the temper and condition of our people and of our bar. Again, honest man though he might be, and was—I have nothing to say against him—we were obliged to go to the Senate and ask that he should be rejected. He was rejected, and then, and not before, did the then Governor of Pennsylvania condescend to inquire what we did want. Then, and not before, he made the inquiry whether, should he make the appointment of Judge Chapman, his own son-in-law, he would be satisfactory to us. We said "yes" with one voice. We did not wish to run any further risks, and we were satisfied with him. That was our experience under that system. Who can wonder that the people of our district became in favor, almost unanimously in favor, and that the bar became in favor, of a change which would give us something to say, when there was a judge to be appointed, as to whom we would have selected. That was our experience under that dispensation. I do not know what has been the experience of other gentlemen elsewhere; probably tolerably favorable, for I know of no great objections which they have made to that system.

Then came the change of 1850, under the amendment drawn by the honored Senator from Chester. I refer to William Williamson, Esq., then our representative in the Senate; passed through both Houses in one year, again passed through them the next year, and submitted to the people and adopted. I do not remember what the vote was, but it was adopted by the votes of our district as well as of others; and since then we have been electing our judges by popular vote.

What has been our experience under it? Have we shown ourselves incompetent to the discharge of this duty? I do not speak now of my own district, but I ask the question of gentlemen from all quarters of the State, have their people shown themselves incompetent to the discharge of that duty in the selection of the man who should preside over the administration of justice; or have not the selections been in the main good? Where has any complaint arisen as to the character and quality of the judges that have been elected under this system? I am yet to hear of such cases, with the exception of one or two, possibly, which may exist in

some portions of the State. If proper care is taken, as it always will, I trust, be taken, good selections will be made for our presiding judges. No failures have occurred within my knowledge; or if any failures have occurred, it is owing to the fault and want of care of those who have had the discharge of that duty cast upon them.

How is it with your Supreme Court? Have we failed there? Have the people of Pennsylvania failed in their selection of proper men? I need only point to those who are our companions here, as a living refutation of the allegation. I might point to the history of that bench from the time we began to elect its members until the present day, and you will not find many incompetent men there. There are men there who may be unsatisfactory to those doing business before them in particular cases. What lawyer is there within the sound of my voice who was always satisfied with the decision of the court against him? and, of course, it must be for or against him in almost every case. But who is there that will not bear testimony to the general ability, the general capacity, the general intelligence, the general learning of the whole bench? Nobody doubts their integrity. You may point to an instance, if you please, in which a gentleman placed upon the bench may become superannuated; he may not be all that his friends expected of him when placed there—I allude to no particular individual—he may be growing old, if you please. What then? All we have to do is to possess our souls in patience for a few years, without applying to the Legislature, or without impeachment, or without alleging anything against him, and he will soon pass from the scene, and we shall elect another.

Now, is there any doubt about the ability of the people? The gentleman from Philadelphia says that the mass of the people do not know anything about the qualifications of the judges; but we do know that the intelligent bar of every county knows who is capable of being judge over them. The intelligent bar of the State, accustomed to argue causes before the Supreme Court, make the accquaintance, and know the men throughout the length and breadth of the land who are fit to be selected for places upon the supreme bench, and the selections are made by the advice of the bar everywhere. It would be in vain for the electors of a county, of any party, to take up a man who did not receive the sanction of his fellow-members of the bar. They know who are competent to be elected judges, and they take care to have a man elected who is competent to discharge the duties of the office.

Thus, then, you will see that this matter of election is not so wild a thing as some men suppose. Is there not as much safety in trusting the people to elect a proper man as there would be in devolving that duty upon the Governor? The Governor is but a man; and highly respected and respectable as these Governors are who have enjoyed the honors of that office in our body, and highly respectable as are those gentlemen who have been candidates for that office and are members of our body, and highly respectable as are all who aspire, and justly aspire, to that high office, yet they are but men. They will have their favorites in appointments. Take a gentleman who knows Chester county and Delaware county well; who dictates to him that he ought to appoint my friend, Mr. Hemphill, or myself, or some other member of the bar? His predilection might be in favor of a friend of his own party; mine might be in favor of a gentleman of my party; but be that as it may, the Governor will be very apt to think, if he is an honest man, that the principles of policy which he adopts and would bring into action in the government of the country and of the State, if shared by one of these applicants for office rather than another, make that man nearer right in his judgment than one who thinks otherwise than he does. It is but human nature; it is what we might expect of any Governor, that he would select from among the men who surround him, or who are presented for his acceptance, those of the same political party with himself.

We are not alone in this; we are not singular. It occurs in England; it occurs all the time in every administration there. If any gentleman wants to amuse himself with seeing how the English judges are appointed, let him take up, if he has not already had the pleasure of reading, the reminiscences of Lord Brougham, published in three volumes recently, and see what he tells you of the inner workings of the government; how such a man as Solicitor General wanted to be Attorney General, or how he wanted to jump over the Attorney General and be appointed a judge; all of the same political party

with the men in power. And who complained of this? There is much jealousy, just as many heart-burnings, just as much anxiety to get office there as here. Nor is it strange that it should be so. It is a laudable ambition. I do not object to men entertaining it, although for myself, never having conceived myself fit to be a judge, never having had any aspirations that way, I would most respectfully and firmly decline any attempt which anybody should foolishly make to put me on the bench. But I say again, it is a laudable ambition for men to seek such a position. Nay, it is proper they should enjoy it. But it results in this: That party men go upon the bench. If the administration is Democratic, a Democratic judge is presented to the Senate for confirmation. If a Republican Governor is in office, a Republican candidate is presented. We select according to availability in the candidate. In our district we shall probably elect Republicans as we have done, and nobody finds fault with it. In Montgomery county they choose to elect one of another party, and who finds fault with that? Both are good judges; nobody ever charged either of them, so far as I have heard, with any abuse of trust after they got the office, or with deciding any case from predilections of that kind. When elevated to the office of judge, if a man be fit for the office at all, he must discard all trifling party predilections.

The CHAIRMAN. The gentleman's time has expired.

Mr. WORRELL and Mr. REYNOLDS. I move that the gentleman's time be extended.

The motion was agreed to by a two-thirds vote.

Mr. DARLINGTON. I am much obliged to the committee, and I hope I shall not abuse the patience they have shown me.

I do not propose, Mr. Chairman, to go into the discussion of any other question at the present time than this one, although a wider field is opened upon the amendment proposed by the gentleman from Allegheny. I propose, before I take my seat, to say to the gentleman from Allegheny, that if he will modify his amendment so as to present now the simple question as to an elective or appointed judiciary, (it may be done by a very trifling modification,) then we can readily meet and dispose of that question. I do not propose to take up the time of the committee further with discussing it; but in that way we shall be brought to a vote, and if I do not mistake, although I am not given much to prophecy, there will be probably as decided, if not a more decided, vote in favor of the elective judiciary which we now have, than there was yesterday afternoon in favor of the proposition that was then submitted against the circuit courts. I am sorry I was not here, for I should have been glad to make one more of that majority, as I intended to do.

If such a modification as this be made, we shall then be brought to the bare question, that and that alone: "Are we in favor of an elective judiciary, or of an appointed judiciary?" If we decide in favor of an elective judiciary, then we all go together and endeavor to fix up the article in the best manner possible.

Mr. TEMPLE. Mr. Chairman——

Mr. WORRELL. I wish to move that the committee rise.

Mr. TEMPLE. I give way for that purpose.

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

The motion was agreed to, there being, on a division, ayes, thirty-four; noes, thirty-one.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Harry White) reported that the committee of the whole had had under consideration the article (No. 15) reported by the Committee on the Judiciary, and had instructed him to report progress, and ask leave to sit again.

Leave was granted the committee of the whole to sit again this afternoon.

Mr. BRODHEAD. I move that the Convention now take a recess.

The motion was agreed to, and accordingly the Convention, at twelve o'clock and fifty-four minutes P. M., took a recess until three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

THE JUDICIAL SYSTEM.

Mr. LAWRENCE. I move that the Convention resolve itself into committee of the whole on the article reported from the Committee on the Judiciary.

The motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Harry White in the chair.

The CHAIRMAN. The pending question is on the amendment of the gentleman

from Allegheny (Mr. Purviance) to the amendment of the gentleman from Philadelphia, (Mr. Woodward,) on which the gentleman from Philadelphia (Mr. Temple) is entitled to the floor.

Mr. BIDDLE. I should like to have it read, as I was not here this morning.

Mr. PURVIANCE. I rise for the purpose of withdrawing my amendment for the present, to enable my colleague (Mr. MacConnell) to offer an amendment.

The CHAIRMAN. The gentleman cannot withdraw his amendment while the gentleman from Philadelphia is on the floor.

Mr. TEMPLE. I yield for that purpose.

The CHAIRMAN. The amendment is withdrawn. The gentleman from Allegheny (Mr. MacConnell) offers an amendment, which will be read by the Clerk.

The CLERK. The amendment is to strike out the first and second lines of the amendment of Mr. Woodward, and the third line to and including the word "Senate," and to insert as follows:

"The judges of the Supreme Court shall be elected by the legal voters of the State at large, and each of the other judges by the legal voters of the district in which he is to exercise his office.

The CHAIRMAN. The question before the committee is on the amendment to the amendment.

Mr. TEMPLE. Mr. Chairman: I thoroughly appreciate the importance of the subject now under consideration; and I should not at this stage of the debate, or at any other time, undertake to obtrude any sentiments of my own upon the committee were it not for the fact that I consider this one of the most important questions likely to come before us. I have always believed, since I became a member of the profession, that the judicial system of the State of Pennsylvania was one which could be very materially improved upon. It may be, Mr. Chairman, that I derive this view, to a certain extent, from the surroundings with which I was blessed, as I believe, while I was pursuing the study of the law. I had the honor to read law in the office of a gentleman who I believe to have possessed the strictest integrity, and in whose office the correct and proper principles as applied to the judiciary were always and under all circumstances sought to be promulgated. I refer to the late George M. Wharton, a man of as much integrity of purpose, as thoroughly honest, one who as conscientiously discharged his duty as any man that ever lived; and while in his office, surrounded by the influences that were naturally flowing from him and from his practice, I was taught to believe that the judiciary should be entirely independent both of the bar and of the people. It was such a man, who, being the embodiment of professional attainments and moral virtues, was most devoted to the profession in the highest sense; it was under such a man's tutorship that the great truths of legal science were inculcated. It was such an one who could properly pass judgment upon the judicial structure of our Commonwealth. He, sir, was thoroughly imbued with the idea that a partisan judiciary was likely to be subordinated to the evil passions of corrupt politicians.

When I say that the judiciary of the Commonwealth should be independent of the people, I mean that it should be independent of everything emanating from the people which would divert or tend in any way to divert it from its proper and legitimate purpose. My idea of the judiciary is, that it should be so composed, both by reason of the system upon which it is founded and by reason of the judges who preside upon the bench, that a judge, when he takes his seat, should feel that he has attained the high and lofty position to which he has been called without the improper influence of any person or any combination of persons. It seems to me that we are all agreed, in this Convention, that the purity and the independence of the judiciary is the principal object to be arrived at. I suppose there is no delegate upon this floor who will not, provided he is convinced that the present machinery of the judicial system of Pennsylvania is not what it should be, cast his vote to change that system.

I have a few remarks to make in answer to the distinguished delegate who last spoke this morning (Mr. Dallas.) He started out with the inquiry whether the delegates upon this floor desired to strip the people of their rights. He said that by adopting the amendment of the distinguished delegate from Philadelphia, (Mr. Woodward,) we should deprive the people of a certain portion of their political rights. I do not look at this question in that light. I do not believe that, being a co-ordinate branch of the government, the judiciary of this Commonwealth, or any other Commonwealth, should be dependent upon the political changes of the people. To a certain extent, and to a certain extent only, do we deprive the people

of the right of selecting their own judges by adopting this amendment. It is brought home to the people in an indirect manner, by relying upon the wisdom and judgment of the direct representatives of the people. Thus this inquiry of the gentleman from Philadelphia, about robbing the people of their rights, is not well founded, in my opinion. I do not believe that the gentleman himself would declare, upon this floor, that the people of the State of Pennsylvania would consider that their political rights had been bartered away if we, in this Reform Convention, can be the means of lifting the judiciary above the party politics of the day.

Again, the gentleman said that if we adopt the amendment of Judge Woodward, placing the appointment of the judiciary in the hands of the Governor and the Senate of the Commonwealth, the appointments will be subject to the intrigues of trading politicians, who would go to Harrisburg and barter with the Executive with regard to appointments. This may be so, to a certain extent. I will admit that there might be, under some circumstances, an effort made upon the part of the politicians to secure the appointment of persons to the judiciary who were in favor with the politicians. I only speak of this to answer the argument of the distinguished gentleman from Philadelphia, and I undertake to say that if the appointing power is left to the Executive and Senate, as provided for in this amendment, the inducements which have heretofore operated on politicians, first, to seek the Executive to have appointed to judicial positions persons of immoral character, or in any other way inefficient for that high and lofty position, would no longer be held out to the politicians; and the Governor, therefore, would not be run down by such clamors as those of which the gentleman has spoken. But suppose, forsooth, that such was the fact; I ask the members of this committee of the whole whether it would not be much easier to get rid of such a judiciary thus established in this Commonwealth, under the system provided by this amendment, than by referring it back to the people under our present system.

In saying this, I do not detract one iota from what I have said heretofore on this floor, that I was in favor of preserving to the people the largest amount of control in their political management of the affairs of government; but I undertake to say that in permitting the people to reserve to themselves this right of electing their judiciary, we are permitting them to retain that which they now have for the purpose of their own destruction or for the purpose of destroying the liberties and the rights of the people of this Commonwealth.

The distinguished gentleman from Philadelphia (Mr. Dallas) said this morning that he believed that the judiciary of Pennsylvania was perfect and complete. Aye, he went further, and said that it is all the people want. I thoroughly appreciate, and am not insensible to the fact, that one who stands in this presence or in any other deliberative body and discusses a subject of this kind is, unless he conforms to a certain line of argument, likely to bring upon his head judicial execration. But believing that I have a duty to perform, and desiring to give this committee of the whole my reasons for supporting the amendment of the gentleman from Philadelphia, (Mr. Woodward,) I believe it also to be my duty to speak what I believe upon that branch of this case after what has been said by the gentleman from Philadelphia (Mr. Dallas) upon it. But I say to the delegates upon this floor that I do not believe the people of Pennsylvania, or at least the people of that section of the State from which I came, have that kind of judiciary that they desire. It has been said upon this floor, upon another occasion, when a very important subject was before the House, and I desire to call the attention of the delegates to it, because the language was uttered by one of Philadelphia's proudest lawyers, one who is the peer of any judge in this State or elsewhere, one whose legal acumen and wisdom no man could gainsay—I say that it has been said here, and the records of the Debates will bear me out in it, by the distinguished delegate from Philadelphia, (Mr. Cuyler,) that in all cases of a *quasi* political character, and contested election cases particularly, the judgment of the court was always or often anticipated before the case was heard. I ask the delegates here present whether, in view of such a declaration as that, not coming from myself, a junior member of the bar, but coming from the highest authority in this city or out of it, whether it is not well for us to take into consideration at least the inquiry as to whether the judiciary is what the people desire and expect. But it will be argued by gentlemen who desire to favor the continuance of our present system, that upon everything else outside of purely political ques-

tions the judiciary is always correct, and that it is always above reproach and always above suspicion.

There is another branch of this subject which is outside of political questions, or of questions of a *quasi* political character, which I shall, at another stage of this debate, when another section of this report comes up for consideration, take the liberty to discuss. I desire to say that, outside of questions of a political character, there are things pertaining to the administration of justice in the city of Philadelphia which are a crying disgrace to all the people who live in the city and county of Philadelphia. And when that communication was read by the Clerk, yesterday, signed, as it was, by a portion of the members of the bar of the city of Philadelphia, asking this Convention to maintain the judicial system under its present workings, a distinguished lawyer, sitting upon this floor, who signed that petition, when he was asked the question whether he knew what it was, distinctly denied having anything to do with it, or knowing anything about it, but declared that he signed by mistake; and he pronounced the assertion that a meeting of the bar of Philadelphia had been called on the subject as untrue in point of fact.

But enough of that for the present. When section six comes up for consideration it will be time enough to speak of certain things connected with the judicial machinery of the city and county of Philadelphia, that being a portion of the State. I do not here speak of the thousands and thousands and thousands of dollars thrown into the lap of judicial favorites by our local judges; but I, for one, as long as I have the opportunity, will never sit quiet in my place and cast a vote to let the judicial machinery of this Commonwealth, so far as concerns the county in which I have the honor to reside, remain as it is, placing millions of dollars of the people's property at the disposal of judges who have sat upon our benches and handed the results of industry and economy over to be devoured by their friends. But enough of that, Mr. Chairman; that matter will come up in the proper line of this discussion; but it was one of the reasons adverted to by the distinguished delegate from Philadelphia this morning when he said that the judiciary of the State of Pennsylvania was all that the people wanted.

Again, the gentleman said that an appointed judiciary was merely an experiment. If the experiment has been tried in other places, and has been found to work well, why should not we have it in the Commonwealth of Pennsylvania? We had it before 1850, and, as has been said by the distinguished gentleman from Philadelphia, (Mr. Woodward,) during an experience of one hundred and fifty-eight years of the judiciary, as it then existed, there never was any serious cause of complaint. They have it in the State of New Jersey, where the judges are appointed by the Governor, by and with the advice and consent of the Senate. No man ever hears, coming from the State of New Jersey, any imputation upon the judicial integrity of those who administer justice in that State. So, likewise, in the State of Delaware, where the judges are appointed during good behavior; and I would have this amendment go that far. But from those States where they have an appointed judiciary, where the party politics of the country have nothing to do with elevating men to these non-political positions, I say that there never has been a breath of suspicion coming.

The State of New York has been referred to here. It has been said by the distinguished gentleman from Philadelphia (Mr. Dallas) that the judiciary of the State of New York was a crying shame and disgrace all over this country. I will admit it in the main. I will admit that the judiciary system of the State of New York has been denounced not only in this country but in England and in other countries abroad; but the distinguished delegate forgot to say that they have the very system in the State of New York which we have here, only on a more enlarged and extended scale. There they have given to the people a weapon with which to work their own ruin and shame.

Mr. Chairman, why should not we have the Governor to appoint the judges of the courts, by and with the advice and consent of the Senate; because I take it that if this Convention change our judicial system in this important respect, we must give the people sufficient reason for that change. Let us look at it for a moment. I take it that the office of a judge, as I said before, has nothing to do, whatever, with the party politics of the country, or with the people of the State, except so far as their relative rights are concerned. The judiciary has nothing to do, whatever, with the executive branch of the government, except so far as it relates to the proper administration of justice, in connection with the general affairs of the

State. If a judge is selected by the Governor to administer justice, and goes upon the bench and takes his seat as one who is to protect the rights of suitors, he is not responsible to anybody for his appointment, except the Governor. He is appointed, if you please, as I would have it, during good behaviour. Then to whom is he responsible, except to the people who are directly concerned with the causes which are to be tried before him? He then can maintain that judicial independence which will secure to us blessings which we have long since needed, and which will elevate that high branch of a popular government in the estimation of free and independent people. Judicial opinions will then command the respect of all people, everywhere. It will then be regarded as the instrument which will save a great republic from shame and disgrace.

Now, Mr. Chairman, let us look at the assertion of the gentleman from Philadelphia. Let us see, in other words, whether the judges, as now elected, are elected by the people. Let us look at it for a moment in the light in which the facts exist, and as they exist in this city; and I challenge any delegate upon this floor to contradict what I am now about to say I undertake to declare that the judges of the city and county of Philadelphia are primarily elected by about a score of politicians in this county, every one of them, not excepting the gentleman spoken of by Mr. Dallas this morning; and in saying this, I desire to say that there is no man in this Commonwealth who has more respect, I had almost said reverence, for the distinguished Judge Sharswood, than I have, because if there is one man in this Commonwealth of whom I feel proud, it is Judge Sharswood; but I will say, Mr. Chairman, his case was rather the exception than the rule. About the other instance to which he has referred, I have only to say that in that case, as in other cases in this county, the judges elected by the people are primarily selected by the politicians.

How are these things conducted? It was admitted this morning by the delegate from Philadelphia, who sits nearest me, (Mr. Dallas,) that we must judge of the future by the past. I will take his standard; I will take his own argument; and I think I can convince the members of this committee, who are ready to be convinced, and who are upon this floor from the city of Philadelphia, of the truth of the assertion that I make, that the judges elected are selected primarily by the politicians. They are selected by the nominating conventions as candidates for other positions are selected.

Mr. HANNA. I want to ask my colleague a question, whether the rule is any different here from what it is in any other locality of the State of Pennsylvania?

Mr. TEMPLE. I do not know that it is. You have the Crawford county system here, which, I believe, exists in one county of the State. With that exception, I do not know of any difference.

That does not alter the argument. If it exists in other portions of the State, so much the more to its discredit; but in the city of Philadelphia the people, of whom and of whose rights we have heard so much here, have nothing to do with the selection of the judges.

Now, it is a notorious fact, which even my learned friend from Philadelphia who just made the inquiry of me knows, that it often happens that a person who is a candidate for the position of judge is found around the town trading and bartering with other persons who are candidates for other positions in the campaign just immediately before his nomination. It was a notorious fact, during the last campaign, I believe, that one of the persons who was a candidate for judicial honors was found in every ward of the city of Philadelphia, hob-nobbing with the very worst elements of both political parties in order to secure nomination. These are facts that some gentlemen will be glad to deny, either because they court judicial favor or fear judicial proscription. I have no doubt gentlemen will take the position upon this floor that these nominations for the judiciary have always been correct and proper. I say they have been no different from the nominations of other candidates. How often do we see that in a close election for judge the matter results in a contest? What is the result of that? Perhaps fifteen or twenty votes may determine the matter. It then goes before an investigating committee. We all know very well what those investigating committees are. We know what they have been in the past, and we can judge what they will be in the future.

Again, Mr. Chairman, assuming that the nomination and election of a judge was as pure as could be desired, is not the judge who is thus placed upon the bench to a certain extent dependent upon the persons who put him there. I say, from my

experience in the practice of law in the city of Philadelphia, that such is the case, and there is no use in gentlemen rising on this floor and saying that it is not so. I know very well that the distinguished gentleman from Chester (Mr. Darlington) finds that things are different in his section of the State, but he has failed to show us that the result would not be even better if we had an appointed judiciary; but I do say that here in the city of Philadelphia the change is demanded if we would preserve judicial integrity.

The CHAIRMAN. The Chair is obliged to remind the gentleman that his time has expired.

Mr. EWING. I move that the gentleman's time be extended.

The motion was agreed to.

Mr. TEMPLE. I have but a few words more to say.

Mr. Chairman, when it has been shown to be a fact, when it becomes notorious that persons who occupy positions upon the bench in our local judiciary have been elevated to these positions in this manner, should we shrink from a duty? Are the advertised candidates for a position as judge of the Supreme Court to be recognized by an honest people? It is making a mockery of justice. And yet we have the example in this community, while this Convention is actually sitting here, of gentlemen who occupy the position of judges in the court of common pleas being the advertised candidates of the politicians for seats upon the Supreme bench.

Mr. DARLINGTON. Will the gentleman name the judge to whom he refers?

Mr. STANTON. I rise to a question of order.

The CHAIRMAN. The gentleman from Philadelphia will state his point of order.

Mr. STANTON. My point of order is that my colleague from Philadelphia (Mr. Temple) is reflecting upon a gentleman who is occupying a seat upon the bench, who has no control over what his friends desire him to be, and who is not in a position to reply to the gentleman.

The CHAIRMAN. The Chair decides that the point of order is not well taken. Very large latitude is allowed in the discussion of this question. Taste must control gentlemen very much in the discussion. The gentleman from Philadelphia (Mr. Temple) will proceed.

Mr. TEMPLE. I am very much obliged to the Chair for the intimation that this allusion may be out of taste; but with great respect to the Chair I submit that when duty calls taste is not always to be consulted. I propose to discuss this subject in my own way, within the latitude of parliamentary debate; and if it falls heavily upon the ears of the gentleman from Philadelphia, (Mr. Stanton,) I cannot help it. If he is here as the champion of the person whom I have been describing, without denying the truth of what I say, I will leave that for him; it is a matter for his consideration; but I say to him, and I say it boldly upon this floor, without regard to the judicial execration that may hereafter follow me, that what I say of the judges who are seeking these more lofty positions is true, and neither he, nor any other delegate on this floor, dare deny it. I say that it tends to degrade the judiciary when a person who is holding the position of judge in one of our local courts is advertised for a position one step further upon the ladder of judicial fame. Why did not my friend take exception to the language of the distinguished gentleman from Philadelphia, whom I now see in his seat, (Mr. Cuyler,) who, I said a moment ago, was considered the father of the profession in this county, the peer of any judge in this Commonwealth, when he proclaimed upon this floor in reference to the judiciary, that counsel could in certain cases predict or anticipate the decision of the court before the case was heard.

Mr. CUYLER. Will the gentleman allow an interruption.

Mr. TEMPLE. Certainly,

Mr. CUYLER. If the gentleman refers to me, I am very sure that I have never arraigned any judge of this Commonwealth or expressed other than the profoundest personal respect and admiration for them all; and I cannot share with the gentleman in his denunciation of a learned judge who has no opportunity of reply to remarks upon him here. It may not be the ground of a point of order, but I do think it is in very bad taste.

Mr. TEMPLE. I have not mentioned the name of any one. I repeat that the gentleman did say on this floor, (and if I am in error I shall be very glad to be corrected, but I think I shall be borne out by the debates,) that in questions of a political character the judgment of the court could be anticipated before the case was heard. That language was used; it is part of the records of this Convention; and I insist that it is an imputation not less broad than the one which I have made,

because I have referred to no person by name and have said nothing but the truth. Neither have I made any such wholesale charge of gross impartiality as this. I said a moment ago that I was well aware that this was dangerous ground to tread upon; but, sir, I shrink not from the performance of a duty. I will never cast my vote in this Convention in a certain direction because I feel and believe that my doing so will be the means of drawing upon me judicial disfavor or proscription.

If there is an error here, it ought to be corrected. It has been proclaimed, as I have said, on this floor, that the judgment of our courts, in political cases, could be anticipated before the cases were heard. Why was not that sentence complained of? I will tell you the reason. It is because some persons who are interested, probably, in the result of our judicial nominations and elections, do not desire them to be changed.

Now, Mr. Chairman, I shall support the amendment of the gentleman from Philadelphia (Judge Woodward.) I could desire that there should be placed in the Constitution a clause which would not only give the Governor the right to appoint the judges, but providing that they should hold their offices during good behavior, and that thereafter they should never hold any other office under the Constitution and laws of this Commonwealth. Inasmuch as the distinguished gentleman from Philadelphia (Mr. Dallas) referred this morning to Judge Sharswood, I would say from my place, authoritatively, that I speak none other than the sentiments of that distinguished judge when I say that it is his view, from long experience on the bench, that the judges of our Commonwealth should be appointed, during good behavior, and that they should never hold any other office under the laws of our Commonwealth.

If that doctrine is distasteful to those gentlemen who desire to participate in the nomination and election of judges for the sake of judicial favors, let them inquire at head-quarters. If a man is to be cried down and denounced in the community because he is in favor of an honest and pure judiciary, and because he advocates that policy which he believes will secure that desirable result, I am willing to be placed in that position. But, sir, from what I have seen, and I refer to it in no manner of disrespect to any gentleman on this floor, but as a reason why some other principle should be adopted than the one which we have now in the Constitution, I desire to point gentlemen, those who are overly fastidious about our present system, to the fact, that in almost all cases of a *quasi* political character that have come even before the Supreme Court, the Supreme Court have been divided, the judges of one political party holding to the side of the case to which their politics naturally inclined them, and the judges of the other side leaning to a directly opposite result.

If there was no other reason why we should have a judiciary entirely independent and above the party politics of the day, that one alone is sufficient, in my opinion, to warrant us in taking this course. Just think of it for a moment. In the Supreme Court of our State, which has been spoken of here in such terms of eulogy, (and I will not say one word to detract from what has already been said,) in almost every case that has come before that tribunal—to say nothing about the cases which have been decided by the local courts—you find the court divided, one set of judges deciding one way, and another set deciding another way. In my opinion, it is a disgrace to the judiciary of our State that we place gentlemen upon the bench who thus divide upon political considerations. I say this in no disrespect whatever; I trust it may not be considered unparliamentary because the distinguished gentleman who offered this amendment this morning spoke of it himself; but that one fact alone, in my judgment, is sufficient to induce us to place the judiciary above the party politics of the land, even if we place it beyond the immediate control of the people. But we do not do that by giving the appointment to the Governor, by and with the advice and consent of two-thirds of the Senate. If the people forfeit their rights, and judges should be appointed who are not what they should be, they can appeal to their representatives, and by address to the Governor, the judges can be removed. There is an easy way of getting at it, and I submit to the delegates on this floor that it is a much safer way. We can more easily get rid of those who will not go from tavern to tavern in our large cities; who will not go to the haunts of politicians of the worst character, as is the case now; and I care not who denies it, it is a fact. I say that we get rid of that class of judges in the manner indicated, and there will be no

frequent necessity of calling upon the Governor by address to remove the judge.

Mr. DARLINGTON. Allow me to ask the gentleman one other question. Suppose gentlemen were appointed by the Governor who were all of one political proclivity, and any political question were to come before them, how would it be likely to be decided?

Mr. TEMPLE. I have but one answer to that, and that is, when the judiciary is constituted as I would constitute it by this amendment, and when the judge takes his place upon the bench, he divests himself of everything of a partisan character; he is dependent upon no partisan body, nor is he likely to serve the trading politician.

Mr. C. A. BLACK. Why does he not do it in the other case?

Mr. TEMPLE. Because he must look to political influence to keep him in position after his time expires. The very moment you place a judge upon the bench in the manner in which I have advocated here, that very moment you relieve him from the position in which they now are. I have spoken of the judiciary of the State of Delaware. Some gentlemen here may turn up their noses at it, but I say that, in my judgment, there is not a more pure, upright and honest judiciary in this land to-day than exist in the State of Delaware.

Mr. EWING. Oh, there is nothing to corrupt them there.

Mr. TEMPLE. Yes, sir; they have questions of a political character there as well as in Pennsylvania. They had them during the war and since, upon questions growing out of the late war; and I heard a gentleman in Dover, a gentleman of distinction at their bar, who differed with Chancellor Gilpin, say that when a certain decision growing out of contracts during the war was pronounced, it gave not only universal satisfaction in that State, but was received at the city of Washington, though against the party in power, as the positive law in the case, and was universally respected.

How is it in the State of Maryland? It is the same way there. How is it in the State of New Jersey, where they have an appointed judiciary? We saw sometime ago that when Governor Parker re-appointed Judge Woodhull to the bench in Camden county, the people universally asked for it; the people of both politcal parties asked for the re-appointment of a gentleman who, when he took his position on the bench, was as thoroughly partisan as any man in Camden county or probably in the State of New Jersey, but being placed upon the bench, knowing that he never could receive any further political power from the people or from the class of people who were known as politicians, he at once disrobed himself of everything, of a party character, and decided that he would serve the people by the proper administration of the law and in the protection of their rights. He takes the record for his guide. The honest judge knows no man when he comes before him, save by the record of the cause and from the evidence produced to sustain the case of either party, as it may be; he has no favorites to reward; he has no favors to give to those who might not only help him into power, but be the means of helping him another step up the ladder into further judicial fame; (I trust my friend, Mr. Stanton, will pardon me;) but he knows the people alike, one and all, and when he has the record before him he declares the law to be just what it is, in his judgment, conscientiously.

Why, Mr. Chairman, the case of the United States has been referred to. The gentleman from Philadelphia (Mr. Dallas) referred to the appointment of a judge to the bench of the Supreme Court for the purpose of securing a certain result. Well, Mr. Chairman, that is an exception, but I am happy to say that in the elevation of one of Pennsylvania's sons to the supreme bench of the United States, not only the Supreme Court itself, but the people of Pennsylvania, received an acquisition to that bench of which the government will hereafter be proud, and which will prove to be a blessing to the people.

Again, Mr. Chairman, as I am reminded by my friend from Philadelphia, (Mr. Biddle,) this gentleman, after being appointed to the bench of the Supreme Court, only adhered to the doctrines which he had already enunciated here on our own bench. His principles, therefore, were well known. He was not the man upon whom the politicians could rely.

But again, Mr. Chairman, in answer to the language of the delegate this morning, (Mr. Dallas,) I desire to say that probably if that were the case—which I am not here to assert—it was only arriving at the result a little bit quicker. It would have been the easiest thing in the world, if the judge was to be elected by the people of

the United States, for them to have secured the election of a partisan who was in sympathy with that principle which it is said he was appointed to secure.

But, again, we have another very happy example of this, in my opinion, a little nearer home, and in the city of Philadelphia. We have in the United States district court in that city a gentleman who was appointed during good behavior or for life, and I leave it to every candid man within the sound of my voice in this Convention, who knows anything of the facts, to say whether in all questions they ever saw that distinguished judge waver or falter in any particular for any favorite, under any circumstances, or in any cause. It could not be safely asserted of him that the decision was anticipated before the case was heard. He may have his peculiarities; he may have certain idiosyncracies that may be distasteful to some; but it is the universal opinion of the people in this county and of all who go before him, that his decisions are ever stamped with that impartiality and honesty that should always characterize a judge's action. You never hear it discussed in a lawyer's office to his client, "that likely the judge will be against us on this because he is of a different party from us." I know that it is distasteful to remind some lawyers of Philadelphia of this fact; but I appeal to some of the older heads to know whether they have not sat in their offices, when questions of a *quasi* political character were to be decided, and attempted to reason with their clients upon the fairness of the judge. Aye, as was said this morning by the distinguished gentleman from Philadelphia, (Mr. Woodward,) the people all over the State are asking and making anxious inquiries as to whether the judiciary cannot be relieved from the party politics of the country as they now exist.

I have said, Mr. Chairman, about all that I desired to say upon this section. As I have intimated, when the sixth section comes to be discussed, I desire to give some of the gentlemen who are overly tenacious on this subject warning now, that I propose to be fortified with figures and dates. It is a part of the argument here, it is a part of the argument under the section now before us for consideration; but it will more properly come up under the sixth section, and I expect, then, to argue to this committee that under the present judicial system of a portion of this Commonwealth, as I stated a moment ago, not only hundreds, but thousands upon thousands of dollars have been unnecessarily taken from the estates of decedents and placed at the disposal of the favorites of the bench of Philadelphia, for the purpose of assuaging, if you please, the sentiments of the bar in favor of the judiciary. It is a cry as universal as the populace of this city, wherever you go, that the system of auditing accounts by the judges of the orphans' court has become an abominable nuisance, and that men who could not make an honest living outside of the auditing of accounts, have fattened into opulence and extravagance, time and again, because of the partisanship of the judges, or that species of favoritism of which I have been speaking. I say, Mr. Chairman, this is a disgrace to the community, and if these be words which do not fall welcomely upon the ears of some, even if they be the means of bringing upon my head judicial wrath, let it be so. I would rather be right upon a question of this kind than be wrong or silent, and be one of the recipients of judicial patronage.

I say, Mr. Chairman, that for the reasons which I have expressed I shall vote for the amendment. I desire to say one word, in conclusion, and that is this: If there was but one valid objection to the present system, everything else being equal, the manner in which political questions are generally determined by our courts, it would be sufficient reason to lift our judiciary above the party politics of the country and place it where it naturally belongs, independent of the bar, beyond favoritism, and, if you please, so far independent of the people as to place a barrier between the masters of the people and the judiciary of the land. Let the judicial ermine be spotless and pure; strip our judges of all extra judicial power; appoint them during good behavior and prohibit them, forever, from holding other offices under the laws of this Commonwealth—and the rights of the people will be protected, and they will not consider it a forfeiture of their rights. I contend, sir, that the judge should be above suspicion, because

"Index est lex loquens."

I firmly believe, sir, that if justice can prevail between man and man, there can no danger, though all the functions of government should stand still.

Mr. MACVEAGH. Mr. Chairman: I do not purpose to delay the committee very long upon this matter; yet as it happens

to be one of those subjects upon which I have more definite views than perhaps upon any other likely to engage their attention, I should like their patience while I explain the grounds upon which I shall vote for the amendment of the gentleman from Philadelphia, (Mr. Woodward,) incorporating the doctrine of the appointment of the judiciary into the organic law of the Commonwealth. I trust, whatever considerations weigh with me, the accidental character of this or the other judge will not weigh with me. Whether under one system a wise selection was made by the authority endowed with the privilege of selecting, or not, is to me a matter of very little consequence. Whether anybody anywhere is a candidate for judicial office who ought not to be in the opinion of anybody else, certainly ought not to weigh as a feather in the balance of this great argument. Gentlemen, if we cannot forget the personal characteristics of the men who happen to be occupying the judicial positions in Pennsylvania to-day, if we cannot forget the accidental characters of those who occupied them in days gone by, if we cannot find some ground of reason, of principle upon which we can range ourselves on this question, we shall decide it badly, however we decide it.

I trust the Convention will gravely consider three things: First, the peculiar relation of the judiciary to a free State; secondly, the best method of securing efficiency in that department of the government; and thirdly, the very great danger which always menaces a deliberative body, of exaggerating the desire of the people for the immediate control of patronage.

Gentlemen, I trust you will never forget that the judiciary is in no sense whatever a representative department of the government. It is not intended in its very nature, it is not possible for it by its very constitution, to represent any interest, any party, any combination whatever. As it is not a representative department, so it ought not to be, by the very nature of its life, a political department. It is not that politics are degrading. We may be degraded politicians; but with the memories of the great men who have served States since the race had a history, I believe it is not true that politics are degrading. It is not less noble to serve the State than to serve yourself in the accumulation of private fortune by means fair or foul. Accidents have degraded some of the surroundings of American politics; but it is not that political action, political sympathy, political partisanship, in a free State, is necessarily degrading. There is no truth in the idea; and the ermine of the judge is not to be soiled because of the degrading character of political associations. We owe it to our fathers who "builded better than they knew," and they knew they were building wisely, to utterly discard and repudiate any such idea. But the judiciary is degraded by being made a political department of the government; not because political action and political service are of a degrading character; but because the judiciary is in no sense whatever a representative body, and therefore, having no representative functions, it ought not to be, and cannot with safety be, a political body. Your Executive department is a political department, and ought to be controlled by political considerations. Your legislative department is a political department, and ought to be controlled by like considerations. But your judicial department is nothing of the kind. Its function is not representative. Its function is not initiative. It develops itself in the confidence of a free people simply by the faculty of judgment, and of judgment not upon abstract considerations, not upon general issues, but upon particular causes. In that is the philosophy of the conviction that mantles each man's face with the blush of shame when he remembers that he knows in advance the decision of his judge in a political cause. It is no matter of shame for me that, upon political questions, I know I am in sympathy with my Governor, and in sympathy with my President. It is a source to me of honest pride that it is so. It is not a matter of shame, but of gratification, that I am in political sympathy with the majority of either House of the National Congress and of the State Legislature; but it is a source of undisguised mortification that I should ever find myself knowing in advance that I am in political sympathy with the majority of a bench of judges.

Gentlemen, do not let us belittle this great question. Do not let us lose sight of the cardinal considerations which ought to control it, in discussing whether that man had better have been nominated, or the other man made a president judge. Let us, as far as we can, strip it of these considerations and go to the root of this matter and answer, yea or nay, shall our judges be politicians? That is the question upon this amendment, and nothing else. I tell you not only they will be, but I tell

you they ought to be, if you continue this abominable system any longer. Whoever is dependent for his nomination, his election, and the approval of his conduct, upon a political convention of political partisans, in the very logic of things, ought to fill a political partisan office, and there is no reason why he should not. If this is a representative department of the government, if this is a political department of the government, I ought to vote for a man of my political views, and if I am in the majority he ought to represent my views, or the views of the men who elect him. I would regard with utter scorn a man who would secure my suffrage for a representative or political office, and the morning afterward say coolly to me, "why you are entirely mistaken; you voted for me upon a ticket of your political party; but now that I am in office, in a political office, nominated and elected by partizan conventions, I propose to forget the party to which I belonged up to last night."

I grant you that thus far your judges, as a general rule, have been better than they were under the old system, perhaps, or as good. I have nothing to say about that. The traditions of an unstained judiciary are powerful for twenty years. The traditions of an unstained profession are powerful for twenty years. But already your harness has joints of weakness in it. Already your panoply will not protect you. Already your elective system is not only upon trial, but it is, as sure as you live, my friends, in process of condemnation. And why should we continue it? It is contrary to all logic, it is contrary to the whole current of thought upon the question.

There is not, from Aristotle to John Stuart Mill, a single writer upon the subject worthy of quotation before thoughtful men, who has not accepted the statement that you must train a body of men, an exclusive profession, for the administration of justice. And as you must train the advocate, so you must, from the body of trained advocates, select the judge. That is a part of the division of labor far older than Adam Smith. It is a separate profession to which they belong. It is a monopoly; it is a close corporation, if you choose; it is anything you please to call it, except a representation of the entire body of the people. That it is not. That, in the very nature and logic of events, it never can be, and you do injustice to your own intelligence—I say it with great deference, for I know many men far more thoughtful than I am, and far more experienced, differ from me—I say, with due deference, that you do injustice to your intelligence when you submit to the ordeal of political selection a separate and trained profession set apart for the work of judges, not of politicians, for the decision of individual cases, not for the discussion of abstract principles, for the settlement of controversies between one man and another, to hold scales, into neither of which has been cast the burden of partisan prejudices or convictions.

I do not care how good the fruits may be for a little while. Bad systems may bear good fruits for a while. You cannot get rid of the impulsion given to good government by changing the method of it, for a life time or for a generation, except, indeed, when the system is subjected to great pressure, to very great pressure. Let me ask thoughtful Americans how many more years of your civil war would your elective judiciary have endured the strain? I belong to a political organization that had no cause to complain of the decisions made during the war; but how many more years could American liberty have endured the peril of an elective judiciary? That peril cannot be exaggerated. It cannot be magnified. The judiciary is an office separate and apart from political consideration. It is not a matter in which the people desire to judge as partisans. They desire to retain power in their own hands, and let me warn gentlemen here, that no man is needed as a bulwark for the American people. Do not be in the least alarmed about that. There is not the danger that my eloquent young friend from Philadelphia (Mr. Dallas) supposed this morning, that they may be bound, hand and foot, and delivered over to any tyranny. They are masters, as I had occasion to say the other day, of all persons, natural or artificial or political, in any sense, in the American Union, and they will have their way in all such matters, as they ought to have it. Whether they will secure an independent and non-partisan judiciary or not is a question for them to decide; and how any gentleman who rises to argue the question can attempt to state the function of the judiciary in a State like ours, can attempt to state the duty that is devolved upon it, and then can hope to argue with the slightest prospect of success that he will secure those qualities necessary for such a judiciary in the discharge of such a duty by a popular nomi-

nation and a popular election, I cannot imagine. It is futile for him to point to a good judge here and a good judge there; it is futile for him to point to the system of elections, the purest and the most undefiled. It is not a good election, it is not a good nomination, it is not the good man that is elected, that is in question here. It is that it makes your judiciary a political department of the government.

Oh, I beg you, my friends, to trust the common sense of the American people! It is far wiser than any of your statutes. It is more thoughtful than the most thoughtful of your statesmen. It knows more law by instinct than your learned profession learns in a hundred years. This question has been tried whether the judiciary can be a political institution or not, and I rejoice in the result to-day, but not on partisan or political grounds. Not many years ago the august tribunal of last resort in the American Union arrayed itself in the interest of a political dogma. Not very long ago the Supreme Court of the United States announced certain conclusions of law that were intended to bind with iron bands the political action of the American people. And how they broke the fetters in their disdain and almost broke the court in their contempt. They did not want politics from the bench. They did not want, therefore, politicians on the bench; and they do not now want your judges nominated and elected by your political machinery.

And now one thing more. Trust the people! Give them a chance to retrace their steps! Why, gentlemen, in the vast aggregations of individual wealth that are now going on in this country, it is indispensable for the safety of the future to have a judiciary beyond reproach and without fear. And I beg you to believe that you must have permanency of tenure and utter, absolute, final independence of political dictation, in the selection of your judges as far as that can be obtained. Politics, political arrangements, the division of the departments of government, are all matters of expediency, of compromise, of doing the best thing attainable. Everybody learned that long ago from Burke, if he did not learn it from those who preceded him. In this matter it is absolutely necessary that we should do the best attainable thing, not the best thing; and as in a political organization, which all human government is, the power of appointment must reside somewhere, rest it in your Chief Executive, and hedge it about with the approval of a non-partisan majority of the Senate.

What more can you do? Whoever will suggest a better plan shall have my vote. Whoever will take the judiciary further out of the political range of the government shall have my vote. But whoever brings them closer to it, whoever tends to make them politicians, not only in the bad sense but in the good, shall never have it. I am not of those who believe that this state of things will go on from bad to worse; that the elections of the great cities will become more corrupt; that frauds upon the ballot-box will multiply and increase. I hope rather that, as we emerge from the inevitable discouragements to morality, public and private, engendered in the course of a long war, so we are coming into a purer atmosphere, a better and a higher public life, and that our elections are yet to be pure, that our representatives are yet to be honest, and that this poison which seems to be creeping into the heart of the body politic in America, the corruption of the great representative bodies, shall be first stayed and then extirpated.

But even out of the pure elections of the good time coming, which my faith in American democracy requires me to cherish the hope of, out of the pure elections of those better days, I purpose to give my voice and my vote, God helping me, to lift the judiciary of my native State, because it is not and never was intended to be, and never safely can be, a political department of the government. But out of the pollutions of to-day, out of the strifes of partisan politics now, who will not help to lift the judges? Who will compel them to attend the ward meetings in person or by proxy? Who will tell the judges of your last resort, that they must seek their support where the assessor and the collector of taxes seek theirs; that they must have friends to help them, as they will have enemies to oppose them; because no man dreams that amid the corruptions of great American cities, the judiciary, if required to struggle for the prizes of that corruption, can themselves remain pure. It is utterly unphilosophical, it is utterly contrary to all experience, to all reason, to expect it; and if we cherish any such fond illusion we shall be rudely awakened from our dream.

Gentlemen talk much in these days of disregarding party obligations, of overstepping party lines. I am not of that

faith. Belonging to a great political organization, I purpose to remain within her lines and do what I can to purify her political action and elevate the character of her political candidates; but I want my political action limited by political considerations. I am for the party of which I am a member, in political administration, municipal, State, national, believing it to be the better party and the safer party of the two; but I want to be limited in my partisan action and my political action by proper political considerations, and therefore it is that if you persist in making the judges elective, the logic of the position is that they shall become politicians; and when your judges are politicians, the last hope now left us in America seems to me to be gone!

I beg, therefore, that this committee will trust the people with an opportunity to review, and, if they see fit, to revoke their decision heretofore made, and that they will give to the Commonwealth of Pennsylvania a judiciary lifted far above all possible temptation to do evil, and walled about only with the incorruptibility which has come down to us from our fathers, and which it ought to be our duty to transmit to our children's children.

Mr. S. A. PURVIANCE. I should like to ask a question of the gentleman from Dauphin before he takes his seat.

Mr. MACVEAGH. With pleasure.

Mr. S. A. PURVIANCE. I ask the gentleman where he knows of a single instance, since the elective principle was applied to the judiciary, of any judge who after being elected played politician whilst upon the bench in Pennsylvania.

Mr. MACVEAGH. As I said before, Mr. Chairman, with entire respect to the learned gentleman, so much my superior in experience, in ability, and certainly the equal of every gentleman here in a stainless character, I cannot forbear my conviction that we must not allow this debate to turn upon those considerations. I trust that it will turn upon the other and the graver considerations to which I have alluded; but I will tell him, as his friend, though not his colleague, that I do know, to my great regret, of sections of this State in which by the elective system the judicial ermine has been dragged through the filth of many pot-houses, and will never be reinstated until the system is changed.

Mr. H. W. PALMER. One question, Mr. Chairman, for no other purpose than because I am seeking for light, and am open to conviction.

Mr. MACVEAGH. I know that.

Mr. H. W. PALMER. In what respect would a change in the mode of selecting judges secure to the people an independent and non-partisan judiciary? Would the judicial office not be conferred inevitably as the reward for political services?

Mr. MACVEAGH. It is not necessarily to be conferred as a reward for political service. I venture to say that any gentleman who will cast his eye backwards over the last dozen years of our history, who will begin twelve years back, and remember the Governors that have enjoyed the favor of the State, and the Attorneys General who have advised them, beginning in 1860, not excepting the present Governor and his able, sagacious and incorruptible Attorney General, will agree that there has not been one who would dream of imposing upon the people of this State an incompetent or corrupt judge. The question, if the committee will pardon me for a moment, is this: Whether the judges shall be appointed by a responsible authority, or by the irresponsible authority of a partisan caucus and the subsequent nominating convention.

I do not say that either course is entirely free from evil, but I say you are obliged to choose between the partisanship of a convention and of a Governor, who has his own self-respect to preserve, who has his own character to preserve, who has the advice of the leader of the bar of Pennsylvania, and the self-respect of that counsellor to help him. Moreover, his nominee has to run, not the gauntlet of the purchased delegates of a city caucus, but the gauntlet of the Senate of a great Commonwealth, and to secure two-thirds of their suffrages in his favor.

I submit the day would never come when any bar of this State, entitled to be heard, protesting against the character of a nominee for judge, would not secure, under this system, his rejection by the Senate of Pennsylvania.

Mr. HORTON. Mr. Chairman: I have not the least disposition or desire to take much time, and shall occupy only a very few minutes of the time of this committee. I wish to say in the outset that I cannot enter into the warmth of political debate that I hear round about in this hall, for the reason that I never was brought up in that, and I do not know how to talk that kind of talk. I should not have risen at all to say a word on this

occasion if I had not felt that I was invited to do so by the distinguished delegate from the city of Philadelphia, (Mr. Woodward,) who brought us a Bible argument, and I always value that kind of argument. In order, however, that I may have the semblance of being somewhat in order, I wish to have the amendment read. I want to know what the amendment to the amendment is, and I should like to have it read, for I have forgotten what it is.

The CHAIRMAN. The amendment to the amendment will be read for the information of the gentleman from Bradford.

The CLERK. It is proposed to amend, by striking out the words down to and including the word "Senate," in the third line, and inserting: "The judges of the Supreme Court shall be elected by the legal voters of the State at large, and each of the other judges by the legal voters of the district in which he is to exercise his office."

Mr. HORTON. I hold myself open to conviction. I do not say that I am really and entirely convinced that the method of electing the judges of the Supreme Court is the very best method we can possibly adopt; but from my present standpoint I incline to that opinion. I incline to the opinion that we had better elect them; and if I might express a crude opinion here, I would say that if it was submitted to me I would as lief the judges of the Supreme Court and the Senate should elect the Governor, as that the Governor and Senate should appoint the judges of the Supreme Court.

I am in favor of this amendment to the amendment because it seems to harmonize with the democratic faith in which I was brought up. I say nothing about parties; I do claim, honestly, that I belong to no party, nor have I for many long years. I must say here, in all candor and honesty, that in 1864, after the emancipation proclamation, I did vote with the Republican party, and I have voted for most of their candidates from that day to this. I do not know what the people in my own district thought when they put me in the place that I now occupy, whether they gave me this honor as a Democrat, a Republican or an abolitionist, and I do not care which.

But, sir, I crave the indulgence of the committee just a few minutes, because I said that this amendment looked to me in the direction of the democratic principle. Now what is the principle involved in democracy? "Democracy means justice between man and man, between State and State, between nation and nation. It is morality. It is giving to every man his due; it is doing unto others as we would have them do unto us. It advocates the banishment of falsehood, pride, violence from the affairs of men. It is the moral code of Him who spake as never man spake. It is the perfection of reason and the law of God." "Democracy is a sentiment not to be appalled, corrupted, or compromised. It knows no baseness; it cowers to no dangers; it oppresses no weakness. Fearless, generous and humane, it rebukes the arrogant, cherishes honor, and sympathizes with the humble. It asks nothing but what it concedes, and it concedes nothing but what it demands. Destructive only of despotism, it is the sole conservator of liberty, labor and property. It is the sentiment of freedom, of equal rights and of equal obligation. It is the law of nature pervading the law of the land." "Neither christianity nor democracy can be pure separated from each other. They are both founded on the love of mankind and the immutable principles of equality and justice. Oppressive, unequal and unjust laws, are opposed to both christianity and democracy."

These are the principles of that democratic faith which I imbibed long years ago, and which, I trust, I cherish in my heart to this day. But I do not enter into any argument in relation to anything more than the one point that I spoke of when I began.

Now, I think the argument drawn from the eighteenth chapter of Exodus needs a little supplementing. I was exceedingly well pleased to hear that argument. I always like to hear men go to the fountain-head of authority, and if you will prove to me that the judiciary should be appointed instead of elected from this Book, then I will go for it with all my heart. That is the very thing, however, that I am not yet convinced of. I shall not take your time to read the twenty-first verse which was referred to this morning, having reference to the kind of men you are to provide, but will simply say that the word there is not "appoint" but "provide;" and then if we go a little further, to the twenty-third verse, we will find that it says: "If thou shalt do this thing, and God command thee so." There is the point. Now do you think that Moses, that old law-giver, that servant of God, undertook to appoint judges?

No, sir, not without the Divine authority, and this verse proves it:

"If thou shalt do this thing, and God command thee so, then thou shalt be able to endure, and all this people shall also go to their place in peace."

Now, I ask for the proof that the judiciary under that old Hebrew commonwealth were appointed by any class of officers aside from the people. All our institutions of freedom have been, to a greater or less extent, derived from that old Jewish commonwealth, and it can be proved from history all the way along down. Rome and Greece have been referred to; other nations have been referred to; but here is the nucleus; here is the germ. It was in this Jewish commonwealth that for nearly four hundred years you had republican institutions—democratic institutions—and they were not destroyed or taken from them until, in their iniquity, in the pride of their hearts, they asked for a king, like the heathen nations around about them. There is where the destruction of their liberties came from. They asked for a king. But they always retained more or less of that spirit of freedom and liberty. It is carried all the way down, until we find the same code of common law which they had in that old Hebrew commonwealth in England, under the name of the common law of England. I tell you, Mr. Chairman and gentlemen, you cannot find a principle in that whole common law of England but was in that Hebrew common law.

I have not the strength of voice nor the strength of lungs to talk long on this subject; but if I had, I should like to demonstrate it fully that their judges were elected by the people; for it is said expressly in another verse, "Judges and officers shalt thou make thee,"—not appoint. That word "make" means choose, elect or select; and there is the principle involved all the way through that code. But I said I would not take up time. I am waiting to hear an eloquent speech, perhaps on the other side, from my friend, Mr. Gowen.

Mr. H. W. PALMER. Will the gentleman read the twenty-fifth verse of the same chapter before he sits down?

Mr. HORTON. I will read it. That twenty-fifth verse proves just what I have been saying. "Moses, after he was commanded of God;" there you bring in the idea of theocracy, just what I said.

Mr. H. W. PALMER. What did he do? He appointed judges, did he not?

Mr. HORTON. Yes, sir. My mother catechized me, and she knew better how to do it than the gentleman does.

Mr. H. W. PALMER. Will you read the verse?

The CHAIRMAN. Gentleman will address the Chair.

[Several Delegates. "Read the verse."]

Mr. HORTON. "And Moses chose able men"—do you see the point? "And Moses chose able men out of all Israel, and made them heads over the people, rulers of thousands, rulers of hundreds, rulers of fifties, and rulers of tens." There you have the best judiciary, chosen by the Divine authority, and afterwards it was made elective by the people, the best we have ever had. I think we have as good a one now.

Mr. SHARPE. Mr. Chairman: I purpose, as briefly as I can, to give expression to some general views on the subject now before the committee. Having the honor of being a member of the Committee on the Judiciary, (although a very humble one,) I have given considerable consideration to the details of this report, and after calm and mature deliberation I felt constrained to concur in every part of it.

But before proceeding to the discussion of the immediate question before the committee, I desire to say something in regard to a feature of that report which has already been under discussion before this body, and which an opportunity failed me, on yesterday, to consider. I trust I shall be pardoned for saying that it seemed to me uncandid and unjust for gentlemen on this floor, whilst we were standing upon the threshold of the discussion, to hawk at and tear to pieces the superstructure of the Judiciary Committee, and then, pointing to its dismantled and disjointed fragments, pronounce them unfit for the temple of justice. The proudest achievements of the human intellect cannot be subjected to such treatment and live. The grandest achievements of architecture, when toppled to the earth by some sudden convulsion of nature, cease to excite the admiration and wonder of mankind. If it would be unjust to the author, after dismembering the offspring of his brain, to pronounce it an abortion; if it would be harsh to the architect, after pulling down his stately fabric, whilst gloating over its ruins, to pronounce him a failure and a fraud, so I insist that when the gentlemen of this

committee stoutly refused to look at the report of the Judiciary Committee, except in fragments, and stoutly shut their eyes against it as a scheme and a perfected whole, they placed themselves in a position of injustice and harshness towards the Committee on the Judiciary.

There is a temptation, sir, and a very strong one, to pull down the structures of other men, and few there be who can resist it. I do not pretend that I am above this common infirmity; but in the discharge of my duties here, I have striven hard, and, I believe, to some extent successfully, to curb this natural tendency of the human heart, and on almost all occasions I have satisfied myself that the schemes and conceptions of other delegates were far better than my own.

The attention of delegates has already been largely engrossed in framing changes in the organic law, applicable to the executive and the legislative departments of our State government. During the discussion upon these questions it was more than once charged that stupendous evils had grown up in those branches of the government which threatened the overthrow of our institutions and the immolation of our liberties and prosperity. To the assault upon these covert enemies that had entrenched themselves behind the ramparts of the old Constitution this Convention moved forward with steady step and unbroken front.

Recognizing this temper of the Convention, the Judiciary Committee hoped that if weaknesses and defects existed in the judicial department of the government, the same alacrity and unanimity would be exhibited for their suppression; for to the committee it seemed that nothing secular should be hallowed to the hearts of a free people as their judiciary, and nothing should be so unspotted and pure to their eyes as the ermine of their judges.

There can be no reasonable difference of opinion among thoughtful and intelligent men as to the main principles which ought to be incorporated into the judicial system of our State. That it should be so constructed as that right and justice shall be administered without sale, denial or delay; that the suitor should be subjected to as little inconvenience and expense as is compatible with the vindication of the right; that the judges should be pure, upright and learned men, and as completely independent as it is practicable to have them, are requisites which none will dare dispute.

Whilst these things are accepted by all here as axiomatic truths, there is still a wide difference of opinion among gentlemen on this floor as to the best method of carrying them into practical operation. We unite in theory upon this subject; we separate in practice. We are harmonious in sentiment; we are discordant in action.

There are two schools of thought upon this subject, represented upon this floor. The one school adheres straightly and closely to the judicial system of our present Constitution without change or amendment; the other school, whilst holding on to the old foundation and the old judicial edifice, still thought it wise to add a new wing for the accommodation of the greatly increasing family of litigants of this Commonwealth. Of this last school of thought a majority of the Judiciary Committee were disciples.

They remembered that it is thirty-four years since the adoption of the present Constitution; that the judicial system that now prevails has lived the life-time of one generation; that during this period the State of Pennsylvania has advanced with giant strides to the very forefront of States; that her population has increased immensely; that her mountains and valleys have been traversed by great lines of railway; that the smoke of her manufactories rises upon the morning air in every direction; that everywhere the hum of busy industry mingles with the voices of nature; that electricity does the business and the commands of her citizens upon a net-work of wires; that thriving villages and populous cities now populate places, that, thirty-four years ago, were an untrodden wilderness. I say, sir, that the Committee on the Judiciary, being mindful of these facts, and not forgetful of the additional fact that the intelligence of the people has kept pace with the material growth of the Commonwealth, were of the opinion that the present judiciary system of the State was not adequate to the demands that were made upon it. They recognize the fact that when that system was established Pennsylvania was comparatively poor, and that her interests were to a great extent agricultural, and that, therefore, a judiciary system that was adapted to that state of affairs was inadequate to the exigencies of the times to which we have now come; and the committee, when they looked at the Declaration of Rights, saw that it was there written that the citizen should have justice and right administered to

him without denial and without delay, and turning to the records of our courts of last resort they discovered the astounding fact that we were daily living in violation of that sacred right, and that long delay in the determination of causes in the court of last resort was an inevitable necessity.

To lift this weight of business off the court, to relieve it of what seemed to be unseemly burdens, a majority of the Judiciary Committee proposed to the intelligent consideration of this body the establishment of an intermediate court of appellate jurisdiction. The advantages and disadvantages of that court have been ably and eloquently discussed during the past two days, and it has gone down under an unparalleled popular condemnation in this body. We may regard it, therefore, as an established fact that in this Convention there is to be no intermediate court of errors between the present court of last resort and the courts of common pleas. I stood strongly committed to the scheme of the committee, because I believed it to be the best plan that could be suggested for the attainment of the end that the committee had in view, and for the correction of the abuses and evils which are admitted by every gentleman upon this floor.

Thus much, sir, I have felt it to be my duty to say in vindication of the Judiciary Committee, although these remarks are not strictly germane to the question now under consideration. But the decided action of the committee of the whole upon this question has set me free, and I stand here to-day ready to adopt any other scheme that may meet my approbation, and may seem to be best adapted to cure any of the existing evils that may now lurk in our judicial system.

As I probably shall not occupy the attention of this committee again on this subject, (although what I am going to say is upon a measure not directly before the committee,) yet I hope the committee will indulge me in the expression of some views upon the proposition of the gentleman from Allegheny (Mr. S. A. Purviance.) When we met here this morning the gentleman from Allegheny presented to the consideration of the committee a scheme which he supposed would cure the evils from which we are now suffering. This afternoon, at the meeting of the Convention, the learned gentleman withdrew his amendment. It is therefore not before this body; but I desire to speak to it for a very few minutes, so that any future vote I may give against that proposition, or any similar proposition, may be understood without my being required to trouble the committee with any reasons for the vote.

The gentleman from Allegheny proposed a scheme which contemplates an increase of the membership of the Supreme Court to nine. He subdivides the State into three districts, and his scheme contemplates that the citizens of those districts shall elect three judges, and that those judges shall sit in banc and hear the causes that come up to that court from those districts, with a right of review before the whole nine judges in banc before the promulgation of any opinion. I suppose that this scheme has been conceived with reference to the abuse which is said to exist, and which is said to consist in this: That the present Supreme Court, sitting together as one compact judicial body, has not sufficient time to hear, in each district of the State, the causes that come up before it; and the idea of the gentleman from Allegheny is, by subdividing and breaking up the compactness of this court, giving it three branches, that a fuller opportunity will be given for the hearing of all causes; that instead of all the members of the Supreme Court sitting together, they shall sit separate, and thus we can have three Supreme Courts, sitting in three different places at the same time.

Now, sir, it must strike the intelligence of every member of the legal profession that whilst it is important that every cause should be heard, and should be heard promptly and speedily, it is of infinitely more importance that every cause shall be heard properly and rightly. The practical operation of the scheme of the gentleman from Allegheny will be to make almost every decision of the Supreme Court the judgment of three of the judges, and it may happen that it will be the judgment of but two of them, if but two happen to sit together in any one of these districts.

It is true that the gentleman says, in his scheme, that before the opinions are promulgated, those opinions which are previously written shall be reviewed by the whole of the judges in banc. There are several objections to this. Every lawyer conversant with the practice of the Supreme Court knows that oral arguments are much more effective before that tribunal than the printed paper-book

and printed argument of counsel. By an oral argument the mind of the judge and the mind of the counsel have a sort of attrition, and by pointed inquiry to counsel during the course of argument and by other methods, the court can grasp the true points of a case which they may fail to see from the perusal of the paper-book.

The scheme of the gentleman from Allegheny contemplates that only three of the nine judges shall have the benefit of an oral argument of counsel; and furthermore, the scheme contemplates that after the opinions have been written out by each of the three judges in their respective circuits, those opinions shall be carried up and reviewed by the whole of the judges. Is it within the range of probability or of reason that after the opinions have already been written by three of the judges, the whole nine, in banc, will travel over the whole record, will read through the whole paper-book, will examine the question *de novo*, and order the judges who have already written out their opinions to retrace their steps and come to different conclusions and reach different opinions? I say that the practical operation of this whole scheme of the gentleman from Allegheny, and not only of his scheme, but every other scheme that contemplates the sub-division of the Supreme Court into branches, will be to have our causes decided by a minority, in fact, instead of a majority of the bench.

Now, sir, since this intermediate court of errors has gone down, I shall adhere to the system of the committee in regard to the numerical strength of the Supreme Court, that it shall consist of seven judges. I shall also adhere to the scheme of the committee that five of those judges shall be a quorum, and that four of them shall be necessary for the giving of an opinion, and that when the court is equally divided, instead of the present practice which now affirms the judgment of the court below, it shall be a good cause for a re-hearing before a full bench, so that we shall never have the anomaly of a judgment of a court below affirmed, simply because the judges above are equally divided in regard to its correctness.

With that scheme, and with the abolition of the court of *nisi prius*, and with an additional thing that I consider very important, that the Supreme Court shall be compelled to hold all its sessions at the seat of government; that the judges shall be compelled to reside there with their families, so that we shall know where to find the judges when we want them; with that additional feature I believe that the scheme of the committee, in regard to the numerical strength and make-up of the Supreme Court of Pennsylvania, is the only feasible plan, and the only one that ought to be adopted by this Convention; that no hydra-headed court of last resort should ever receive the intelligent consideration of any legal gentleman on this floor.

Now, sir, the immediate question before the committee is, how shall these judges receive their appointment?

The CHAIRMAN. The Chair is obliged to remind the gentleman that his time has expired.

Mr. BIDDLE. I move that his time be extended.

The motion was agreed to.

Mr. SHARPE. I concurred, sir, in the report of the majority of the committee, that the judges of the Supreme Court should be appointed by the Governor. It is, perhaps, not wrong in me to say that in the discussions of the Committee on the Judiciary on this subject, there was great division of sentiment, and that the report of the committee making the judges of the Supreme Court appointive, and the residue of the judges, including the judges of the contemplated circuit court, elective, was a compromise made by the committee, in which I concurred. But the proposition of the distinguished and learned gentleman from Philadelphia (Mr. Woodward) goes far beyond the report of the committee, and introduces a radical change in the present method of selecting the judiciary of the State. It grieves me very much to be obliged to differ with so high an authority, and so distinguished a gentleman. I listened with close attention to the able, elaborate and very learned address which he gave to us this morning; and so far as I could gather, the three strong reasons which he adduced against an elective judiciary were these: First, that there is an essential difference between a judicial and a political office—that all the traditions and customs of the ages past had recognized this essential distinction, and were against an elective judiciary; secondly, that, whilst in 1850 it was possible, aye, probable, that there was public virtue enough in the people to elect their judges, yet owing to the demoralization of the war, owing to the thirst for wealth, owing to the greed for office, owing to the

baleful effect of the sceptical philosophy of the present day, the bands of public virtue have been loosened and private morality has deteriorated; and, thirdly, the injurious effect of the elective judiciary upon the judge himself. These, as I understood the gentleman, constitute the main argument against an elective judiciary, and in favor of their appointment by the Executive.

Now, sir, so far as the traditions and customs of other countries are concerned, it seems to me that they can be of very little value to us in determining this question; for, sir, what other nations, with other forms of government, have done in the past cannot furnish exemplars for what a free people ought to do in the present. There never has been a system of government upon the face of the earth exactly like that of Pennsylvania, or of the general government of the United States. In England the Crown is not elective; it is hereditary. In England the House of Lords is not an elective body; it is an hereditary body. The House of Commons alone is within the control of the elective franchise of the people. Therefore, to argue that our judiciary should not be elective because it is not elective in Great Britain, where the form of government is essentially different from ours, with the greatest deference to the distinguished gentleman, I say is illogical.

The form of government under which we live consists of three co-ordinate branches—the executive, legislative and judicial; and it is a fundamental principle of our government that each one of these departments shall be independent of the others. The Executive shall not be dependent upon the Legislature; the Legislature shall not be dependent upon the judiciary; and I say, sir, that it follows, as a logical consequence, that the judiciary shall not be dependent upon either the executive or the legislative branch of the government, or both combined, because to make the appointment of the judges dependent upon the Executive and the sanction of one branch of the Legislature is to dwarf the judiciary into a subordinate branch of the government, and that is my chief objection to an appointive judiciary. It destroys, in my judgment, the dignity of the judicial department. The judges, instead of deriving their power from the people, who are the fountain of all power in a free country, derive their office from the favoritism of an Executive, sanctioned by another branch of the government.

I say, therefore, that we ought not to retrace our steps; that, having extricated the judicial branch of the government from its dependence upon the executive and the legislative branches, we ought to keep it independent, and hold it fast in the high dignity and rank which it has attained by its liberation from the thraldom of executive favor.

Now, sir, one word more upon the objection of the distinguished gentleman from Philadelphia, that the people cannot be safely trusted with the election of their judges, owing to the debauchery of public morals, growing out of the causes which the gentleman elaborated in his very elegant address this morning. Grant, sir, that the people have become debauched; grant that our popular elections, instead of being the reflex of the will of a free people, have become corrupted and debased, so as to thwart and turn aside the popular wishes upon many subjects, yet no gentleman here contends that the people are not qualified to elect their Executive and their Legislature. If the people are debauched, so that their hands must be kept off the judges, the probability is that the men whom they will elect to the executive department and the legislative department will share the debauchery which is common to the body of the people. Now, supposing this to be the natural result of the tendencies of the times to which the distinguished gentleman made allusion, we would then have the judiciary of this State at the mercy of a debauched Executive and a debauched Legislature, elected by a debauched people. Sir, I have more confidence in the people than that. I believe that if there is anything in this world which the people have determined to hold high above the dark currents in the atmosphere of political intrigue, it is their judiciary; and that they will not allow their judiciary to be swallowed up in the dirty pool of politics, I point to the history of twenty-two years' successful trial of an elective judiciary. Would the distinguished gentleman who now sits before me (Mr. Woodward) have occupied a seat upon the supreme bench of Pennsylvania; would he have filled with credit the high position of Chief Justice of this Commonwealth, if his accession to the bench had depended upon Executive favor? Why, sir, gentlemen, in claiming that we ought to go back to the old sys-

tem, are extremely anxious to forget the experience of the past. They say it proves nothing; I say it proves everything. It proves that during twenty-two years of trial of this system of an elective judiciary, it has been a success. It proves that the very best men of this State have sat upon the supreme bench; and when the term of the distinguished gentleman from York (Mr. J. S. Black) had expired, he was re-nominated with entire unanimity, and re-elected with entire unanimity; and I say, sir, the practice of the profession and of the people has been that, whenever they get a good judge, either on the supreme bench or on the bench of the lower courts, to re-nominate and re-elect him; and it is only in cases of strictly partisan contests, such as we had last fall, that judges will ever go down under a political current when they deserve to be kept up.

I do not desire, sir, to trespass longer upon the time of this committee.

Mr. CUYLER. Will the gentleman pardon an interruption?

Mr. SHARPE. Certainly.

Mr. CUYLER. I ask him whether a very eminent and pure and distinguished judge did not fail of re-election last fall?

Mr. SHARPE. Yes, sir; I made that exception.

Mr. BIDDLE. Will the gentleman allow me to ask him a question, for I have been listening to him with great interest? I should like to know how it is that, entertaining the opinions on this subject which he so well expresses, he tells us that he intends to vote here for the appointment of the judges of the highest court of the Commonwealth.

Mr. SHARPE. The gentleman misapprehended me. I said that I concurred in the report of the committee making the highest court appointive, but that since the amendment was introduced to make all the judges elective, I would vote to make them all elective.

Mr. BIDDLE. I misunderstood you. I thought you said you concurred in the report of the committee.

Mr. SHARPE. The case to which the distinguished gentleman from Philadelphia (Mr. Cuyler) alluded falls within the exception I have just mentioned, that in times of high political excitement a judge will go under the current, along with his political associates; but in regard to that distinguished judge to whom he alludes, whose term of office expired last December, if we had an appointed instead of an elective judiciary, does any man who possesses a sane mind suppose that he would have been appointed his own successor on the supreme bench by a partisan Executive?

It is said we must not make judges politicians. I admit that; but whether the judge is elected by a political party or whether he is appointed by a political Executive, he always feels more or less under the influence of the political party or the political man to whom he owes his place. I would make the tenure of office longer; I would make judges not eligible to a second term; and I think with those restrictions the elective system is a better system of selecting our judges, if we are to learn anything from the experience of the past, than the system proposed of appointing them.

Mr. GOWEN. Mr. Chairman: I believe that there should be but one Supreme Court of Pennsylvania, and that it should be the only court of last resort. I believe that it should sit throughout the year in one place; that it should have a well-known local habitation and a name. I believe that, as well in its deliberations and in listening to arguments as in the delivering of opinions, it should be a unit, and should not be divided. I believe the proper relief is to increase the number of common pleas judges and, if you can, elevate the character of those judges. I believe that perfection in the administration of justice is brought about when the highest ability fills the lowest place in the system; and the spectacle presented to us by those eastern nations whose monarchs sat for hours at the gates of their palaces or at the gates of their cities to administer justice openly and publicly to the meanest suitor exactly as it was administered to the wealthiest citizen, is one that compels our admiration. I believe that all the merit of the intermediate circuit appellate court, which has been stricken down by the committee, can be secured by districting the State so that there shall be in each district at least five, and not more than nine, common pleas judges, who shall not constitute a separate, but who, *ex-officio*, shall be judges of the particular court in which the case first originated, and upon a certificate from the president of that court shall decide, as an intermediate appellate court, all legal questions before they can be taken to the Supreme Court.

Mr. Chairman, if you take the records of the Supreme Court and pick out the

counties in which there are good judges and the counties in which there are bad judges, you will find that the increase of the business of the Supreme Court is due to the incompetence of some of the lower judges. You have eight or nine hundred cases a year on the dockets of the Supreme Court. But there are five or six counties in the State of Pennsylvania in which the proportion of cases sent up to the Supreme Court is so small that if such proportion existed throughout the entire State, two-thirds of the business of the Supreme Court would be swept away. Wherever you have a good judge, a man of known ability, whom the public respects, the suitors and the lawyers are apt to regard his decision as some evidence of what the law is; but where you have an incompetent man, whose decision upon the law is *prima facie* evidence that it is the other way, every case that he decides will be taken to the Supreme Court.

If this system be adopted of districting the State so that from five to nine common pleas judges were thrown together into one court in banc, every suitor whose case was brought into a court presided over by an incompetent judge would have the expression of a competent tribunal before he took his case to the Supreme Court; and if the expression of opinion by that competent tribunal was in accordance with the decision primarily announced, he would hesitate long before he burdened the records of the Supreme Court with his cause.

This is my cure for the evil now existing. I believe that it is about the only plan that has been suggested for relief which can now be incorporated into the report of the Committee on the Judiciary, for, as the circuit court has been stricken out, the whole fabric based upon the creation of that court has fallen to the ground.

The question now before the Convention, however, is upon the election of judges, and to that I desire to speak. I would beg to remind the Convention that, as I understand the question, the adoption of the amendment proposed by the delegate from Philadelphia (Mr. Woodward) does not in any way interfere with the residue of the section reported by the Committee on the Judiciary; for the object of the gentleman from Philadelphia evidently was (before the question of the number of judges, the character of the tribunal, and all that, came into consideration) to announce these as great cardinal principles—that all judges shall be appointed, that they shall be the high priests in the temple, and that every subordinate officer ministering at that altar shall hold his office subject to their approval and be dismissed at their will. I am in favor of that, and I believe that section can be adopted without any disrespect to the report of the Committee on the Judiciary, or without at all affecting its main features. I am in favor of an appointed judiciary. I believe judges should hold their offices for life or during good behavior. I believe that they should be well paid, and I believe that upon attaining a certain age they should have the privilege of retiring with a compensation sufficient to save them from the degradation of again entering into a struggle for their bread. I believe this proposition is not one which the people would reject on any principle of economy. There is no economy as false as that which stints the judges that preside over our courts; but if it is to be argued on the question of economy—if a saving of dollars and cents to this Commonwealth is to be the consideration—then let me tell gentlemen that if they take away the enormous perquisites from our sheriffs and recorders, and such officers, we can pay every judge in the State such a salary as would attract to the position the highest ability at the bar in every district throughout this Commonwealth. Make the salary $10,000 or $15,000, or, if you will, make it $20,000. That State will be the most prosperous whose judges are the best paid, because it will have the best talent; and I take it the judicial fabric of that State must crumble in ruin, sooner or later, whose judges owe their title of office to no other quality than the ability to secure a favorable expression of popular admiration.

I have not the requisite ability or learning to select off-hand texts from the Bible and argue from them what should be done, but if I know anything about that sacred book, if it is to be invoked in this case, the only authority and the only illustration that I know, which is at all apposite, is this: When the title of that great Ruler, who is the Judge of all, and who, at one time, is to come again in glory to judge this world, was submitted to the Jewish people, the elect and chosen people of God, they cried out with singular unanimity, "crucify him! crucify him!" and they gave their suffrages to a robber and

a thief. And what the people did eighteen hundred years ago, they will do to the very end of time. Let the angel Gabriel come down to the earth and claim title to an office, and the merest charlatan may arise to oppose his claims, and the expression of popular admiration will be given to the charlatan, and not to the angel. This is what the Bible tells us, and within my memory it is the only case in which the title, not only to the judge, but to the life of the judicial officer, was submitted to the decision of popular vote.

Mr. HORTON. Will the gentleman from Philadelphia allow me to ask him a question?

Mr. GOWEN. I will.

Mr. HORTON. Does the Bible approve of that act?

Mr. GOWEN. The Bible does not approve of it, but the Bible stamps with its condemnation the guilty people whose suffrages were so given.

Mr. EWING. They condemned him as their king?

Mr. GOWEN. They condemned him as their king and as their judge. Mr. Chairman, there are a few reasons that I desire to present to the calm consideration of the committee of the whole upon this subject. The first is, that that office will be the best filled where the sense of responsibility is not only the greatest in him who fills it, but the greatest in him who holds the power of appointment. Am I understood? There are two ideas: First, the sense of responsibility in the mind of the man exercising the office; next, the sense of responsibility and accountability in the mind of him who has the power to make the appointment. Where is the responsibility, in the people? Who, when he votes as one of a hundred thousand, admits or feels afterward that he is to blame for the character of the officer that he was electing? The infinitesimal part that he has taken in the appointment removes from his mind the sense of responsibility which should always be present when he is about to make the appointment; but when you vest that appointment in one man, in the Governor, subject to the approval of a majority of the Senate, you have that sense of responsibility fastened upon men who stand upon a pedestal, as it were, open to the condemnation of the people for their acts. You cannot divide this responsibility among one hundred thousand people, so that each one will properly appreciate the importance of the position that he occupies. But when you point your finger at one man, at the Governor, and say to him, "you have the power to make good or you have the power to make bad judges;" when you can call to account Senators who hold their office for three or four years, and say to them, "the responsibility must rest upon you," you add to the responsibility of the judge the antecedent responsibility of the officers who have the power of appointing him. You have a safeguard, you have something to rely upon, which you never can have where mere popular admiration is to confer a title to the office of a judge.

Again, the sense of degradation which must be felt by a candidate who submits his name to a primary convention, keeps many a sensitive and high-minded man from entering into the stormy political arena. How are our elections conducted? Is it the hundred thousand voters who make our judges? It is the twenty pothouse politicians that meet together and make the judges—and they have the power to defeat any man, no matter what his ability may be, no matter what his character may be. They make the judges as they make the sheriffs, as they make the tax-collectors, as they make the row officers; and the office of the judge, if of any use to them at all, is only valued by the number of votes which a candidate can give to them in their conventions in exchange for the votes which they will give him. I take it to be an admitted fact that no man in the city of Philadelphia could be elected as a judge, no matter what his character might be, no matter what his antecedents might be, against the opposition of the men who understand the manipulation of party politics and the control of primary elections.

It is no answer to this argument to say that good men have been elected. It is no answer to it, for the reason that the office of judge, up to this time, has not been of such pecuniary value to a certain class of people to warrant them in taking it for the simple purpose of making a living. But if this Convention does not lay its strong hand upon one other evil—that is the evil of conferring upon the judges the power of appointing other officers—you will inevitably have the office of judge, in the city of Philadelphia, sought after from the same motives, by the same people, who now seek for all our row offices; and the very moment that this class of people enter into this arena, from that moment honor and integrity and ability and all that makes a man noble, and all that

makes a man respectable, is stricken into the dust, and the politician rides roughshod over the people, and, with his legions swarming at his back, installs his candidate into office just as certainly as the prætorian guards secured the election of their favorites in the decadence of the Roman empire. The third reason why a judge should not be elected is on account of the fickleness of popular favor. Personal allusions have already been made, and let me also refer to the gentleman from Philadelphia who occupied the position of Chief Justice of the State of Pennsylvania. We were indebted for his position upon the supreme bench to a popular vote. But how recent is it that that very gentleman, after having been for fifteen years, without reproach, upon the highest bench in the State of Pennsylvania, and after having qualified himself by a judicial experience of twenty-five years, and after having been, as we all must admit, as fully competent, if not more so, than any man in the State of Pennsylvania, in one hour of weakness, submitted himself again to this tribunal of popular suffrage, and was ignominiously rejected as unfit to preside over the court of a single county. Why was this? It cannot be accounted for on any other reason than the mere fickleness of popular favor—that what to-day is good, to-morrow is considered bad; and no experience, no learning, no ability, and no character, is sufficient to turn the tide of popular favor when it has once set in a certain direction.

Again, the election of judges is often influenced by political excitement. This objection may be considered in two ways. First, not only political excitement, but political favor or political advantage is considered in his nomination; and second, political excitement alone determines his election. A Convention of the whole State of Pennsylvania is assembled for the purpose of nominating a judge. They are not alone to nominate a judge; they are to nominate, probably, a Governor; they may nominate a State Treasurer, and they may nominate three or four other State officers, and a supreme judge is to be nominated at the same time. Who does not know how rings are formed in that convention, how the various adherents of one candidate unite his votes for the votes that can be brought to him by the adherents of the candidate for judge, and wherever this system prevails the candidate for judge who will bring the greatest number of votes will secure the nomination by a coalition with delegates of other candidates. But assume that a candidate for judge says nothing, assume that he brings there no influence such as that I have named; assume that he may be, not only a competent man, but an honorable man, who disdains to resort to any such schemes as these, what other matter is often considered by a nominating convention? They nominate a Governer who comes from the west; they nominate a State Treasurer who comes from the east. The office of judge remains to be filled; there may be twenty men in the east and twenty in the west willing to take this office, and any one of them may be considered, by all who are competent to judge, as fully entitled to the position. The election of any one of them might be considered an honor for any political party; but I tell you, Mr. Chairman, that if the two other candidates come, one from the east and one from the west, the party managers will select the candidate for judge from the middle of the State, for fear that if they do not the people from the middle of the State will not vote for their ticket, and you have a man selected to preside for fifteen years over the deliberations of the highest appellate court of the State for no other reason than that the mere accident of his birth and the geographical position in the State in which he has his residence.

But, again, suppose the nomination made, the election is to take place at the same time with the election of other officers. It may be a Presidential election. The fierce ire of political passion is aroused. What man sits down to think calmly over what he is doing in the struggle of a Presidential election? The October election, we are told, will determine the Presidential election, and in the October election the worst candidate for judge must be elected because, in the opinion of the electors, if he is not elected a greater evil will result in the defeat of his particular candidate for the President of the United States. Will any gentleman in this Convention tell me that if James Thompson had been a candidate for judge of the Supreme Court one year before he was, the people of Pennsylvania would have defeated him?

Mr. BEEBE. If the gentleman from Philadelphia will pardon the question, I would like to ask him whether he thinks that under the appointing system James Thompson would have been continued upon the supreme bench?

Mr. GOWEN. I believe he would. [Laughter.] I have that much confidence in the sense of responsibility that attaches to the Governor and to the Senate, to believe that they could not, and would not, and dare not, withstand the demand that would go up for the retention of a faithful officer against whose judicial record no man in the Commonwealth dared to allege aught. We know that he was not elected by the popular vote last fall; but if he had been a candidate a year before I believe he would have been elected, and if he were to be a candidate a year hence I believe he would be elected.

Again, the sense of gratitude, the feeling of gratitude on the part of the judge to those who placed him in nomination and to those who elected him, ought to be removed from his breast. A man may be an intelligent man, he may be a man of integrity, he may be a man of ability, but it is almost impossible for him to divest from his mind a feeling of gratitude toward those to whom he is indebted for his appointment or his election. Where the office is elective these people must be those who are suitors in his court; but where the office is appointive there is not one case in a thousand in which the person from whom he derives his appointment will ever be before the tribunal in in which he presides as a judge.

We are told, however, that we must give this right to the people. Mr. Chairman, do the people possess it now? Do any of us who are familiar with the manner in which these elections are brought about, believe that the mass of the people have any voice in the nomination or election of a judge?

The CHAIRMAN. The Chair is compelled to remind the gentleman from Philadelphia that his time has expired.

Mr. EWING. Mr. Chairman, I move that the gentleman from Philadelphia have leave to proceed.

The motion was agreed to.

Mr. GOWEN. Does anybody suppose that the people exercise this right now? No, sir. Twenty people, or thirty or forty people in the nominating convention make the judge. In how many do we propose to vest it by the appointing power? We propose to vest it primarily in the Governor, and we propose to have a concurrence of two-thirds or three-fourths of a Senate, which probably will contain sixty or seventy people.

Mr. KAINE. I wish to ask the gentleman a question, if he will yield for that purpose.

Mr. GOWEN. Certainly.

Mr. KAINE. I ask the gentleman from Philadelphia whether it would not be as likely that one hundred and thirty-three gentlemen in a convention, perhaps one-third or one-half of them lawyers, would nominate as good a man for judge of the Supreme Court as John F. Hartranft, the present Governor, would appoint?

Mr. GOWEN. It would depend entirely upon the character of the people who occupied seats in that nominating convention; and as the experience of the State is that the men who make our nominations are not the leading spirits of the land, and the men who make our nominations are not always members of the bar ——

Mr. KAINE. Will the gentleman allow me again?

Mr. GOWEN. Certainly.

Mr. KAINE. I will preface my question by saying that I have been a member of conventions that have nominated candidates for supreme judge. I was a member of the convention that nominated Judge Thompson and Judge Strong. Now, I desire to ask the gentleman if he does not think that that convention which nominated him as one of the delegates at large to this Constitutional Convention was a very able convention? [Laughter.]

Mr. GOWEN. The gentleman has no right to ask such a question as that. I must admit the ability of the members of the convention that nominated me; but the very fact of their sending a person like me to a Convention like this shows that they are not to be trusted with the selection of our public officers. [Laughter.] They might have made a great deal better selection. The distinguishing point is this, that there is a sense of responsibility on the minds of Senators and Governors that there is not on the minds of those who have the mere ephemeral political existence of one day as members of a nominating convention.

Mr. J. S. BLACK. Will the gentleman say to whom they are responsible?

Mr. GOWEN. They are responsible to those who elected them.

Mr. J. S. BLACK. To the same conventions that would nominate the judges if they were elected?

Mr. GOWEN. Not necessarily the same.

Mr. J. S. BLACK. Now suppose that the caucus which should nominate the judge

should meet and command the Governor and the Senate to appoint that same man as judge, would it not it be just as certain to be followed, no matter what the character of the judge might be, as the election would be after the nomination?

Mr. GOWEN. No, I think not.

Mr. J. S. BLACK. Does the gentleman suppose that the present Governor of this State or any Governor elected in the same way that he is—I do not speak of him particularly personally—would be able to resist the command of his party caucus to nominate those whom they would present to him or somebody that would be equally agreeable to them?

Mr. GOWEN. I not only believe that he would have the moral courage to resist, but I believe that he would have the common sense to know that if he acquiesced, he signed his political doom.

Mr. CURTIN. I should like to ask the gentleman a question, in the presence of the late Chief Justice, whether, as a member of the bar, he ever knew a Governor of Pennsylvania to appoint a judge without the approbation and petition of a majority of the members of the bar in the district?

Mr. GOWEN. Does the gentleman ask me that question?

Mr. CURTIN. I do.

Mr. GOWEN. I do not know. I hope he did not. I believe myself that if the members of the bar had the selection of the judge to preside over them, we should have good judges. I am told that in one or two cases Governors did make appointments, ignoring the recommendation of the bar; they are exceptional cases, and the exception perhaps proves the rule. I do not believe that any Governor would resist a proper application by the members of the bar.

Mr. CURTIN. And never did.

Mr. GOWEN. I hope not.

Mr. J. S. BLACK. Both the gentlemen are mistaken. I know, and the chairman of this committee knows very well, a case in which a Governor appointed a judge against the almost universal popular wish of the people, as well as of the bar.

Mr. CURTIN. The gentleman on the floor will allow me to say that that is what brought on us the calamity of an elective judiciary.

Mr. GOWEN. Mr. Chairman, so far do I believe in the power of the bar, if properly exercised, that I should agree, and I have myself thought of preparing such a section, to make it the duty of the Governor peremptorily to remove a judge on the address of three quarters of the members of the bar. I believe the members of the bar are the proper officers, and if we are to have elective judges, and you will declare that no judge shall be elected except him that receives the nomination of the bar, then, and not till then, will I willingly vote for elective judges. I will vote for elective judges if the nominee to be voted for must be selected by the bar, and I will vote for the peremptory removal, *eo instanti*, of any judge, upon a proper address by a proper number of the members of the bar.

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

Mr. GOWEN. Yes, sir.

Mr. MANTOR. I should like to know if the judges of to-day, in their decisions of questions of law and their morals as men, do not compare favorably with those who were appointed under the old system?

Mr. GOWEN. As I was a very young boy in 1851, when the judges were first elected, I cannot say anything about the morals of the bench at that time. There was a little looseness on the question of drinking—a little whisky was drank in those days, I am told; and I believe that the epigramatic expression of an advocate of the election of judges in 1850, that he would "rather have demagogues than demijohns," explains the reason for the adoption of the whole elective system. I believe there were such judges on the bench. I do not know that their brains were befuddled with liquor, or that they were any the worse for it as judges; but they presented, probably, a melancholy spectacle to the community, and a great many good men thought the only way to get rid of them was to elect judges, and they got rid of them and elected new judges in their place.

Mr. LAWRENCE. I know how unpleasant it is to interrupt a gentleman or to be interrupted, but as the gentleman is on this point, will he allow me to ask him a question?

Mr. GOWEN. Certainly.

Mr. LAWRENCE. I do it for information in part. I do not mean to indicate on what side of the question I am going to vote; but I put the inquiry because I want an answer. I want the gentleman to state if he does not know that some of the most incompetent judges—district judges—in the State have not been those who have been appointed by the Gover-

nor. Some of the most incompetent we have ever known in parts of the State have been the very ones appointed by the Governor, and the people have removed them afterwards by nominating and electing others.

Mr. GOWEN. I do not know that.

Mr. LAWRENCE. I know that to be the case in my own district, in two instances.

Mr. GOWEN. My experience in public life has not been long enough to compare, from personal experience, the practical workings of the two systems. The very fact, however, that this system of elective judges has only been in existence for twenty years, and the argument drawn from the fact that we have had good judges, is no argument at all in my opinion. We have had some very good judges, and we have had some very bad judges. We have had judges elected who worked like politicians for their nominations, and I have known of a case where a judge upon the bench sat at the entrance of a convention hall and handed out to the delegates a printed paper which contained a history of his claims to the office that he sought.

Mr. CORSON. I desire to ask a question merely for the purpose of allowing the gentleman to amplify the idea enunciated in the commencement of his argument, with which I am fully in accord, though I dissent from the latter part of his speech on the subject of appointing judges by the Governor because I think, if we are to have one authority above the other, I would rather have the Supreme Court appoint the Governor than the Governor appoint the Supreme Court. But the idea of having five, or six, or nine judges in the country districts, meets with my approval. If we can get rid of the judge who made the decision when they come together in banc for consultation and review of their work, I think that idea may be adopted. I should like my friend to embody his thoughts in a written section, or put it in practical form, for adoption, as an amendment to the judiciary system.

Mr. GOWEN. Well, Mr. Chairman, to go back to that, my idea, reduced to practice, is simply this: That we should have at least one hundred common pleas judges in the State; that we should have fifteen to twenty districts; never less than five and never more than nine judges in a district; and that every legal argument, everything that presented a question of law, upon the request of any suitor, should be certified by the president judge into that court in banc, which court in banc would not be a separate court of record, but whose judges would be, *ex-officio*, judges of the particular tribunal in which the suit was brought, and their decision would be entered by the prothonotary of the original court.

In that way every suitor would have, not only the opinion of the judge who originally tried the case, but he would have the expression of opinion of sometimes five and sometimes nine other judges, and out of that five or that nine there almost invariably would be one man or two men of such known character and ability as to satisfy the losing suitor that their decision was correct, and he would not take his case to the Supreme Court.

Now I have in my mind two counties in this State of about equal population.

Mr. CUYLER. Will the gentleman suffer an interruption? Allow me to ask him whether in his experience at the bar he ever knew an instance of a suitor who was convinced by an adverse decision?

Mr. GOWEN. Oh, yes, sir.

Mr. CUYLER. Or a lawyer, either?

Mr. GOWEN. Oh, yes.

Mr. CUYLER. I never have.

Mr. GOWEN. I have, a great many.

I have now in my mind two counties in this State of about the same population, in one of which there are from forty to fifty cases a year going to the Supreme Court, and in the other but four or five. Why is it that so few go from one county? Simply because the character of the judge is of such eminence that lawyers and suitors are convinced that his exposition of the law is a correct one, and they are satisfied with his decision. Those counties being contiguous, if a district were created both of the judges would sit in banc upon the argument of every legal question, and the suitors of the one county would have the benefit of the experience and knowledge of the other judge in determining the question in their own minds as to whether they should or should not take their causes to the Supreme Court.

I have said now, Mr. Chairman, all that I desired to say. Since I have been in this Convention I have taken some pride in the fact that I have presented but one resolution of amendment to the Convention. That resolution had for its object the purification of the judiciary; that there should be removed from the judge

any power to exercise any political or extra judicial power. The scope of that resolution is embraced in the section now under consideration. I advocate the section for that cause; and if any one member accomplishes as much by the introduction of a resolution as will be accomplished by removing from the judicial officers of this State any extra judicial power, they will deserve the plaudits of their constituency when they go home. Next to this in importance is the question of the election of judges; and I believe that we can do nothing that will so surely elevate the character of the judiciary as to say: "The system of an elective judiciary is hereby abolished, and judges shall be appointed for life or good behavior, with ample salaries, and with retiring pensions at a proper age."

Mr. EWING. Mr. Chairman: ——

Mr. HANNA. I suggest that the gentleman yield to a motion that the committee rise.

Mr. EWING. I give way for that motion.

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

The motion was agreed to.

The committee accordingly rose, and the President having resumed the chair, the Chairman, Mr. Harry White, reported that the committee of the whole had had under consideration the article (No. 15) reported by the Committee on the Judiciary, and had direted him to report progress and ask leave sit again.

Leave was granted to sit again on tomorrow.

Mr. LAMBERTON. I move that the House adjourn.

The motion was agreed to, and at five o'clock and fifty-eight minutes P. M. the Convention adjourned.

ERRATA.

On page 309, second column, twelfth line from bottom, for "hypocritical," read "hypercritical."

On page 316, first column, thirty-second line from top, for "consideration," read "construction."

On page 392, first column, thirteenth line from bottom, for "working," read "making."

On page 447, first column, tenth line from top, for "profess," read "possess."

On page 466, first column, second line from top, for "framers," read "framing."

On page 469, first column, twenty-third line from bottom, for "These," read "There."

On page 517, second column, eighth line from bottom, for "discussion," read "decision."

On page 761, second column, eighth line from bottom, for "Index est lex loquens," read "Judex est lex loquens."

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